

LIST OF EXHIBITS

Exhibit No.	Description
C-1	ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers (as amended 18 June 2018), <i>available at</i> https://www.icann.org/resources/pages/governance/bylaws-en (last accessed on 21 Sep. 2018)
C-2	ICANN, Amended and Restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (approved on 9 Aug. 2016, filed on 3 Oct. 2016), <i>available at</i> https://www.icann.org/resources/pages/governance/articles-en (last accessed on 29 July 2018)
C-3	ICANN, <i>gTLD Applicant Guidebook</i> (4 June 2012)
C-4	Power Auctions LLC, <i>Auction Rules for New gTLDs: Indirect Contentions Edition</i> (24 Feb. 2015)
C-5	ICANN, New gTLD Auctions Bidder Agreement (3 Apr. 2014)
C-6	ICANN, Supplement to New gTLD Auctions Bidder Agreement (22 June 2016)
C-7	ICANN, Approved Board Resolutions, Special Meeting of the ICANN Board (6 Nov. 2018), <i>available at</i> https://www.icann.org/resources/board-material/resolutions-2018-11-06-en (last accessed on 13 Nov. 2018)
C-8	ICANN, New gTLD Application Submitted to ICANN by Afiliis Domains No. 3 Limited, Application ID: 1-1013-6638 (13 June 2012)
C-9	ICANN Board Rationales for the Approval of the Launch of the New gTLD Program (20 June 2011)
C-10	Letter from Senators T. Cruz, M. Lee and S. Duffy (United States Senate) to R. Hesse (Acting Assistant Attorney General, United States Department of Justice) (12 Aug. 2016)
C-11	M. Hargrave, “Profit from a ‘Monopoly on the Internet’ with 45% Upside,” <i>StreetAuthority</i> (6 Nov. 2013), <i>available at</i> https://www.streetauthority.com/profit-monopoly-internet-45-upside-30422763 (last accessed on 14 Mar. 2018)
C-12	B. Katz, “VeriSign Is Brian Katz’s Highest Conviction Holding - Here’s Why,” <i>Seeking Alpha</i> (29 Dec. 2009), <i>available at</i> https://seekingalpha.com/article/180092-verisign-is-brian-katzs-highest-conviction-holding-heres-why (last accessed on 14 Mar. 2018)
C-13	“Verisign: Time To Make Some Real Money,” <i>Seeking Alpha</i> (29 Jun. 2016)
C-14	Verisign, “Fourth Quarter 2017 Domain Report,” 15(1) <i>The Domain Name Industry Brief</i> (Feb. 2018)

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C-15	VeriSign, <i>Verisign Statement on .com Registry Agreement Renewal</i> (1 Nov. 2012), available at https://www.sec.gov/Archives/edgar/data/1014473/000101447312000024/statementnovember12012.htm (last accessed on 22 Feb. 2018)
C-16	United States Department of Commerce, Amendment to Financial Assistance Award (VeriSign, Inc.) (29 Nov. 2012)
C-17	D. Dayen, “Special Investigation: The Dirty Secret Behind Warren Buffett’s Billions,” <i>The Nation</i> , available at https://www.thenation.com/article/special-investigation-the-dirty-secret-behind-warren-buffetts-billions/ (last accessed on 15 Feb. 2018)
C-18	VeriSign (VRSN) Q2 2018 Results - Earnings Call Transcript (26 July 2018)
C-19	Afilias, <i>About Us</i> , available at https://afilias.info/products-services (last accessed on 14 Feb. 2018)
C-20	ICANN, Generic Names Supporting Organization, Final Report, Part A: Introduction of New Generic Top-Level Domains (8 Aug. 2017), available at https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm (last accessed on 13 Mar. 2018)
C-21	ICANN, Adopted Board Resolutions (26 June 2008), available at https://www.icann.org/resources/board-material/resolutions-2008-06-26-en (last accessed on 28 Sep. 2018)
C-22	ICANN, <i>News & Media: New gTLD Frequently Asked Questions</i> , available at https://newgtlds.icann.org/en/applicants/global-support/faqs/faqs-en (last accessed on 21 Sep. 2018)
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C-24	ICANN, New gTLD Application Submitted to ICANN by NU DOT CO LLC, Application ID: 1-1296-36138 (13 June 2012)
C-25	ICANN, New gTLD Explanatory Memorandum, Discussion Draft: Market & Economics Impacts (15 Apr. 2011)
C-26	ICANN, Registry Agreement (as of 31 July 2017), available at https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf (last accessed on 24 Sep. 2018)
C-27	ICANN, Economic Case for Auctions in New gTLDs (8 Aug. 2008)
C-28	ICANN, Program Statistics (as of 31 Aug. 2018), available at https://newgtlds.icann.org/en/program-status/statistics (last accessed on 20 Sep. 2018)

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C-29	Peter Lamantia, “.WEB Acquired for \$135 Million. To much? How does it compare?,” <i>Authentic Web</i> (undated), available at https://authenticweb.com/brand-tlds-digital-strategies/dot-web-acquired-for-135-million/ (last accessed on 12 Oct. 2018)
C-30	K. Murphy, “Verisign likely \$135 million winner of .web gTLD,” <i>Domain Incite</i> (1 Aug. 2016), available at http://domainincite.com/20820-verisign-likely-135-million-winner-of-web-gtld (last accessed on 22 Feb. 2018)
C-31	Cybele Negris, “How a \$135 million auction affects the domain name industry and your business,” <i>BIV</i> (10 Aug. 2016), available at https://biv.com/article/2016/08/how-135-million-auction-affects-domain-name-indust (last accessed on 11 Sep. 2018)
C-32	“The Next Big Domain Extension,” <i>Supremacy SEO</i> (undated) available at https://supremacyseo.com/TWS60 (last accessed on 12 Oct. 2018)
C-33	Email Communications between .WEB Applicants (various dates)
C-34	Email from J. Kane (Afilias) to H. Lubsen (7 July 2016)
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C-39	<i>Ruby Glen, LLC v. ICANN</i> , Case No. 2:16-cv-05505 (C.D. Ca.), Declaration of Jose Ignacio Rasco III in Support of ICANN’s Opposition to Plaintiff’s <i>Ex Parte</i> Application for Temporary Restraining Order (25 July 2016)
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C-41	<i>Ruby Glen, LLC v. ICANN</i> , Case No. 2:16-cv-05505 (C.D. Ca.), Exhibit F to Declaration of Christine Willett in Support of ICANN’s Opposition to Plaintiff’s <i>Ex Parte</i> Application for Temporary Restraining Order (25 July 2016)
C-42	Kevin Murphy, “Is Verisign .web applicant’s secret sugar daddy?,” <i>Domain Incite</i> (14 July 2016), available at http://domainincite.com/20748-is-verisign-web-applicants-secret-sugar-daddy (last accessed on 9 May 2018)
C-43	K. McCarthy, “Someone (cough, cough VeriSign) just gave ICANN \$135m for the rights to .web,” <i>The Register</i> (28 July 2016), available at https://www.theregister.co.uk/2016/07/28/someone_paid_135m_for_dot_web/ (last accessed on 27 July 2018)
C-44	Letter from A. Willett (ICANN) to Members of the .WEB/.WEBS Contention Set (13 July 2017)
C-45	Verisign Inc., <i>Form 10-Q (Quarterly Report)</i> (28 July 2016)
C-46	Verisign, <i>Verisign Statement Regarding .Web Auction Results</i> (1 Aug. 2016)
C-47	Verisign Inc., Edited Transcript of Earnings Conference Call or Presentation (8 Feb. 2018)
C-48	VeriSign (VRSN) Q1 2018 Results - Earnings Call Transcript. (26 Apr. 2018)
C-49	Letter from S. Hemphill (General Counsel, Afilias) to A. Atallah (President, ICANN’s Global Domains Division) (8 Aug. 2016)
C-50	Letter from C. Willett (Vice President, ICANN’s gTLD Operations) to J. Kane (Vice President, Afilias’ Corporate Services) (16 Sep. 2016)
C-51	Letter from J. Kane (Vice President, Afilias’ Corporate Services) to C. Willett (Vice President, ICANN’s gTLD Operations) (7 Oct. 2016)
C-52	Letter from A. Ali (Counsel for Afilias) to ICANN (18 June 2018)
C-53	Email from ICANN to A. Ali (Counsel for Afilias) (20 June 2018)
C-54	Email from ICANN Independent Review to A. Ali and R. Wong (Counsel for Afilias) (13 Nov. 2018)
C-55	ICANN, Updates Change Request Process (30 Sept. 2014), available at https://newgtlds.icann.org/en/announcements-and-media/announcement-20sep14-en (last accessed Oct. 10, 2018)
C-56	ICANN, New gTLD Application Change Request Process and Criteria, available at https://newgtlds.icann.org/en/applicants/global-support/change-requests (last accessed on 10 Oct. 2018)

Exhibit No.	Description
C-57	ICANN, Memorandum of Understanding between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (25 Nov. 1999), <i>available at</i> https://www.icann.org/resources/unthemed-pages/icann-mou-1998-11-25-en (last accessed on 14 Feb. 2018)
C-58	S. Hrg. 112-394, ICANN’s Expansion of Top Level Domains, Hearing before the Committee on Commerce, Science, and Transportation, U.S. Senate, 112 th Congress, First Session (8 Dec. 2011), <i>available at</i> https://www.gpo.gov/fdsys/pkg/CHRG-112shrg74251/html/CHRG-112shrg74251.htm (last accessed on 11 Sep. 2018)

EXHIBIT C-1



Resources

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 18 June 2018

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ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

Section 1.1. MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("**ICANN**") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN:

(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("**DNS**") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers. In service of its Mission, ICANN (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("**IETF**") and the Regional Internet Registries ("**RIRs**") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN shall not act outside its Mission.

(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.

(d) For the avoidance of doubt and notwithstanding the foregoing:

(i) the foregoing prohibitions are not intended to limit ICANN's authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN's performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN's Mission or otherwise exceed the scope of ICANN's authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN's Articles of Incorporation ("**Articles of Incorporation**"):

(A)

(1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on 1 October 2016^[1], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;

(2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B) any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C) ICANN's Five-Year Strategic Plan and Five-Year Operating Plan existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN.

(iv) ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.

Section 1.2. COMMITMENTS AND CORE VALUES

In performing its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, each as described below.

(a) **COMMITMENTS**

In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

(i) Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;

- (ii) Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet;
- (iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
- (iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;
- (v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and
- (vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.

(b) **CORE VALUES**

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN:

- (i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN and relevant external expert bodies;
- (ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;
- (iii) Where feasible and appropriate, depending on market mechanisms to

promote and sustain a competitive environment in the DNS market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN's other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community;

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and

(viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

(c) The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission.

ARTICLE 2 POWERS

Section 2.1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1). With respect to any matters that would fall within the provisions of Section 3.6(a)-(c), the Board may act only by a majority vote of all Directors. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of the Directors present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those Directors present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "of all Directors."

Section 2.2. RESTRICTIONS

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN. Nothing in this Section 2.2 is intended to prevent ICANN from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 2.3. NON-DISCRIMINATORY TREATMENT

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE 3 TRANSPARENCY

Section 3.1. OPEN AND TRANSPARENT

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent bodies (including the detailed explanations discussed above).

Section 3.2. WEBSITE

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "**Website**"), which may include, among other things, (a) a calendar of scheduled meetings of the Board, the EC (as defined in Section 6.1(a)), Supporting Organizations (as defined in Section 11.1), and Advisory Committees (as defined in Section 12.1); (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices and agendas as described below; (d) information on the ICANN Budget (as defined in Section 22.4(a)(i)), the IANA Budget (as defined in Section 22.4(b)(i)), annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN activities of interest to significant segments of the ICANN community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN's physical meetings and public forums; and (i) other information of interest to the ICANN community.

Section 3.3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN, including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 3.4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 3.5. MINUTES AND PRELIMINARY REPORTS

- a. All minutes of meetings of the Board, the Advisory Committees and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary ("**Secretary**") for posting on the Website. All proceedings of the EC Administration (as defined in Section 6.3) and the EC shall be provided to the Secretary for posting on the Website.

- b. No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the resolutions made publicly available. The Secretary shall send notice to the Board and the Chairs of the Supporting Organizations (as set forth in Article 9 through Article 11) and Advisory Committees (as set forth in Article 12) informing them that the resolutions have been posted.
- c. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.
- d. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN's principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:

(i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;

(ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN's public comment practices), prior to any action by the Board; and

(iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee ("**GAC**" or "**Governmental Advisory Committee**") and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.

(c) After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS, financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.

(d) Where a Board resolution is consistent with GAC Consensus Advice (as defined in Section 12.2(a)(x)), the Board shall make a determination whether the GAC Consensus Advice was a material factor in the Board's adoption of such resolution, in which case the Board shall so indicate in such resolution approving the decision (a "**GAC Consensus Board Resolution**") and shall cite the applicable GAC Consensus Advice. To the extent practical, the Board shall ensure that GAC Consensus Board Resolutions only relate to the matters that were the subject of the applicable GAC Consensus Advice and not matters unrelated to the applicable GAC Consensus Advice. For the avoidance of doubt: (i) a GAC Consensus Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are

specifically identified as such by the Board; and (ii) a Board resolution approving an action consistent with GAC Consensus Advice received during a standard engagement process in which input from all Supporting Organizations and Advisory Committees has been requested shall not be considered a GAC Consensus Board Resolution based solely on that input, unless the GAC Consensus Advice was a material factor in the Board's adoption of such resolution.

(e) GAC Carve-out

(i) Where a Board resolution is consistent with GAC Consensus Advice and the Board has determined that the GAC Consensus Advice was a material factor in the Board's adoption of such resolution as described in the relevant GAC Consensus Board Resolution, the Governmental Advisory Committee shall not participate as a decision-maker in the EC's exercise of its right to challenge the Board's implementation of such GAC Consensus Advice. In such cases, the Governmental Advisory Committee may participate in the EC in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count as support or an objection for purposes of the thresholds needed to convene a community forum or exercise any right of the EC ("**GAC Carve-out**"). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC Carve-out shall only apply if an IRP Panel has found that, in implementing GAC Consensus Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.

(ii) When the GAC Carve-out applies (A) any petition notice provided in accordance with Annex D or Approval Action Board Notice (as defined in Section 1.2 of Annex D) shall include a statement that cites the specific GAC Consensus Board Resolution and the line item or provision that implements such specific GAC Consensus Board Resolution ("**GAC Consensus Statement**"), (B) the Governmental Advisory Committee shall not be eligible to support or object to any petition pursuant to Annex D or Approval Action (as defined in Section 1.1 of Annex D), and (C) any EC Decision (as defined in Section 4.1(a) of Annex D) that requires the support of four or more Decisional Participants (as defined in Section 6.1(a)) pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting.

(iii) For the avoidance of doubt, the GAC Carve-out shall not apply to the exercise of the EC's rights where a material factor in the Board's decision

was advice of the Governmental Advisory Committee that was not GAC Consensus Advice.

Section 3.7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN Budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE 4 ACCOUNTABILITY AND REVIEW

Section 4.1. PURPOSE

In carrying out its Mission, ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and procedures for periodic review of ICANN's structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 4.2. RECONSIDERATION

(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.

(b) The EC may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC of these Bylaws. The EC Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

(c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("**Reconsideration Request**") to the extent that the Requestor

has been adversely affected by:

- (i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

- (i) Disputes relating to country code top-level domain ("ccTLD") delegations and re-delegations;
- (ii) Disputes relating to Internet numbering resources; and
- (iii) Disputes relating to protocol parameters.

(e) The Board has designated the Board Accountability Mechanisms Committee to review and consider Reconsideration Requests. The Board Accountability Mechanisms Committee shall have the authority to:

- (i) Evaluate Reconsideration Requests;
- (ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;
- (iii) Evaluate Reconsideration Requests for urgent consideration;
- (iv) Conduct whatever factual investigation is deemed appropriate;
- (v) Request additional written submissions from the affected party, or from

other parties; and

(vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ICANN shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Accountability Mechanisms Committee:

(i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted:

(A) for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;

(B) for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or

(C) for requests challenging either Board or Staff inaction, within 30 days after the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

(ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.

(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at

<https://www.icann.org/resources/pages/accountability/reconsideration-en>.

Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request, not including exhibits. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) The Board Accountability Mechanisms Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Accountability Mechanisms Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Accountability Mechanisms Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the

Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

(m) The Board Accountability Mechanisms Committee may ask ICANN Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.

(n) The Board Accountability Mechanisms Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard. The Board Accountability Mechanisms Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation.

(o) The Board Accountability Mechanisms Committee may also request information relevant to the Reconsideration Request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation. Any information collected by ICANN from third parties shall be provided to the Requestor.

(p) The Board Accountability Mechanisms Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the Requestor, by the ICANN Staff, and by any third party.

(q) The Board Accountability Mechanisms Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Accountability Mechanisms Committee shall endeavor to produce its final recommendation to the Board within 90 days of

receipt of the Reconsideration Request. The final recommendation of the Board Accountability Mechanisms Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Accountability Mechanisms Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Accountability Mechanisms Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

(r) The Board shall not be bound to follow the recommendations of the Board Accountability Mechanisms Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Accountability Mechanisms Committee within 45 days of receipt of the Board Accountability Mechanisms Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board's final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board Accountability Mechanisms Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3 of these Bylaws. If the Requestor so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considered the Board Accountability Mechanisms Committee's recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that ICANN maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN's redaction.

(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to

the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN's principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

(t) The Board Accountability Mechanisms Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Accountability Mechanisms Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Accountability Mechanisms Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Accountability Mechanisms Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

(u) The Board Accountability Mechanisms Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

(i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;

(ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;

(iii) an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and

(iv) whether or not, in the Board Accountability Mechanisms Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 4.3. INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

(a) In addition to the reconsideration process described in [Section 4.2](#), ICANN shall have a separate process for independent third-party review of Disputes (defined in [Section 4.3\(b\)\(iii\)](#)) alleged by a Claimant (as defined in [Section 4.3\(b\)\(i\)](#)) to be within the scope of the Independent Review Process ("**IRP**"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

- (i) Ensure that [ICANN](#) does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.
- (ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in [Section 4.3\(b\)\(i\)](#)).
- (iii) Ensure that [ICANN](#) is accountable to the global Internet community and Claimants.
- (iv) Address claims that [ICANN](#) has failed to enforce its rights under the [IANA Naming Function Contract](#) (as defined in [Section 16.3\(a\)](#)).
- (v) Provide a mechanism by which direct customers of the [IANA](#) naming functions may seek resolution of PTI (as defined in [Section 16.1](#)) service complaints that are not resolved through mediation.
- (vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in [Section 15.1](#)), Staff members, [Supporting Organizations](#), [Advisory Committees](#), and the global Internet community in connection with policy development and implementation.
- (vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.
- (viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.
- (ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes of the IRP.

(b) The scope of the IRP is defined with reference to the following terms:

(i) A "**Claimant**" is any legal or natural person, group, or entity including, but not limited to the EC, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

(A)The EC is deemed to be materially affected by all Covered Actions. ICANN shall not assert any defenses of standing or capacity against the EC in any forum.

(B)ICANN shall not object to the standing of the EC, a Supporting Organization, or an Advisory Committee to participate in an IRP, to compel an IRP, or to enforce an IRP decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant's capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel (as defined in Section 4.3(g)) concludes based on evidence submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the Claimant purports to act.

(ii) "**Covered Actions**" are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.

(iii) "**Disputes**" are defined as:

(A)Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:

(1) exceeded the scope of the Mission;

(2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

(5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws.

(B) Claims that ICANN, the Board, individual Directors, Officers or Staff members have not enforced ICANN's contractual rights with respect to the IANA Naming Function Contract, and

(C) Claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

(c) Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

(i) EC challenges to the result(s) of a PDP, unless the Supporting Organization(s) that approved the PDP supports the EC bringing such a challenge;

(ii) Claims relating to ccTLD delegations and re-delegations;

(iii) Claims relating to Internet numbering resources, and

(iv) Claims relating to protocol parameters.

(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC to commence an IRP ("**Community IRP**"), the EC shall first comply with the procedures set forth in Section 4.2 of Annex D.

(e) Cooperative Engagement Process

(i) Except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process ("**CEP**") for the purpose of attempting to resolve

and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.

(ii) The CEP is voluntary. However, except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant does not participate in good faith in the CEP and ICANN is the prevailing party in the IRP, the IRP Panel shall award to ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

(iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator ("**IRP Mediator**") after at least one CEP meeting.

(iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

(f) ICANN hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code ("**CCC**") against any Claimant, and shall not object to the standing of any such Claimant to participate in or to compel an IRP, or to enforce an IRP decision on the basis that such Claimant may not otherwise be able to assert that a Covered Action is ultra vires.

(g) Upon the filing of a Claim, an Independent Review Process Panel ("**IRP Panel**", described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure (as defined in Section 4.3(n)(i)). Following the selection of an IRP Panel, that IRP Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN's written response ("**Response**") in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is timely filed by ICANN, the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.

(h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel.

(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.

(i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.

(ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.

(iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.

(iv) With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN's obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.

(v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.

(j) Standing Panel

(i) There shall be an omnibus standing panel of at least seven members (the "**Standing Panel**") each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS and ICANN's Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN on the workings and management of the Internet's unique identifiers and other appropriate training as recommended by the IRP Implementation Oversight Team (described in Section 4.3(n)(i)).

(ii) ICANN shall, in consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP.

(A) ICANN, in consultation with the Supporting Organizations and Advisory Committees, shall initiate a tender process for an organization to provide administrative support for the IRP Provider (as defined in Section 4.3(m)), beginning by consulting the "**IRP Implementation Oversight Team**" (described in Section 4.3(n)(i)) on a draft tender document.

(B) ICANN shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations and Advisory Committees and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.

(C) The Supporting Organizations and Advisory Committees shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).

(D) Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.

(iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team.

(iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region (as defined in Section 7.5).

(k) IRP Panel

(i) A three-member IRP Panel shall be selected from the Standing Panel to hear a specific Dispute.

(ii) The Claimant and ICANN shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist from the Standing Panel. In the event that a Standing Panel is

not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider's rules shall apply to selection of the third panelist.

(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members' individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.

(iv) Upon request of an IRP Panel, the IRP Panel shall have access to independent skilled technical experts at the expense of ICANN, although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.

(v) IRP Panel decisions shall be made by a simple majority of the IRP Panel.

(l) All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.

(m) IRP Provider

(i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider ("**IRP Provider**"). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other submissions arising from an IRP at the direction of the IRP Panel, and shall function independently from ICANN.

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community. The IRP

Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.

(ii) The Rules of Procedure shall be informed by international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA naming functions and are not resolved through mediation. The Rules of Procedure shall be published and subject to a period of public comment that complies with the designated practice for public comment periods within ICANN, and take effect upon approval by the Board, such approval not to be unreasonably withheld.

(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment that complies with the designated practice for public comment periods within ICANN.

(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:

(A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;

(B) Issues relating to joinder, intervention, and consolidation of Claims;

(C) Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and expert), including its length, both in support of a Claimant's Claim and in support of ICANN's Response;

(D) Availability and limitations on discovery methods;

(E) Whether hearings shall be permitted, and if so what form and structure such hearings would take;

(F) Procedures if ICANN elects not to respond to an IRP; and

(G) The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.

(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:

(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;

(ii) Request additional written submissions from the Claimant or from other parties;

(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws, declare whether ICANN failed to enforce ICANN's contractual rights with respect to the IANA Naming Function Contract or resolve PTI service complaints by direct customers of the IANA naming functions, as applicable;

(iv) Recommend that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;

(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

(vi) Determine the timing for each IRP proceeding; and

(vii) Determine the shifting of IRP costs and expenses consistent with Section 4.3(r).

(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the *status quo*. A single member of the Standing Panel ("**Emergency Panelist**") shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider's rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all of the following factors:

- (i) A harm for which there will be no adequate remedy in the absence of such relief;
- (ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and
- (iii) A balance of hardships tipping decidedly toward the party seeking relief.

(q) Conflicts of Interest

(i) Standing Panel members must be independent of ICANN and its Supporting Organizations and Advisory Committees, and so must adhere to the following criteria:

(A) Upon consideration for the Standing Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.

(B) Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN positions.

(ii) The IRP Provider shall disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.

(r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Except as otherwise provided in Section 4.3(e)(ii), each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an

early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. The preceding sentence does not provide the basis for a Covered Action.

(t) Each IRP Panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.

(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.

(v) Subject to this [Section 4.3](#), all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law.

(w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.

(x) The IRP is intended as a final, binding arbitration process.

(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.

(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over [ICANN](#) without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.

(iii) [ICANN](#) intends, agrees, and consents to be bound by all IRP Panel

decisions of Disputes of Covered Actions as a final, binding arbitration.

(A) Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B) If an IRP Panel decision in a Community IRP is in favor of the EC, the Board shall comply within 30 days of such IRP Panel decision.

(C) If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction. In the case of the EC, the EC Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.

(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

(y) ICANN shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.

Section 4.4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization, council or committee has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies,

stakeholder groups, organizations and other stakeholders.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC under the Articles of Incorporation and these Bylaws.

(b) The Governmental Advisory Committee shall provide its own review mechanisms.

Section 4.5. ANNUAL REVIEW

ICANN will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required by Section 4.6 and the status of ICANN's implementation of the recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review ("**Annual Review Implementation Report**"). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.

Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

(i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees,

balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN. The Operating Standards must be aligned with the following guidelines:

(A) Each Supporting Organization and Advisory Committee participating in the applicable review may nominate up to seven prospective members for the review team;

(B) Any Supporting Organization or Advisory Committee nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and

(C) If any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member seats shall be filled and, if so, how the seats should be allocated from among those nominated.

(ii) Members and liaisons of review teams shall disclose to ICANN and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and Operating Standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.

(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN shall pay the reasonable

fees and expenses of such experts for each review contemplated by this [Section 4.6](#) to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

(v) Each review team may recommend that the applicable type of review should no longer be conducted or should be amended.

(vi) Confidential Disclosure to Review Teams

(A) To facilitate transparency and openness regarding [ICANN's](#) deliberations and operations, the review teams, or a subset thereof, shall have access to [ICANN](#) internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "**Confidential Disclosure Framework**"). The Confidential Disclosure Framework must be aligned with the following guidelines:

(1) [ICANN](#) must provide a justification for any refusal to reveal requested information. [ICANN's](#) refusal can be appealed to the Ombudsman and/or the [ICANN](#) Board for a ruling on the disclosure request.

(2) [ICANN](#) may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. [ICANN's](#) designation of documents may also be appealed to the Ombudsman and/or the [ICANN](#) Board.

(3) [ICANN](#) may require review team members to sign a non-disclosure agreement before accessing documents.

(vii) Reports

(A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted draft report and shall

amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration. Within six months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, and determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board's decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.

(b) Accountability and Transparency Review

(i) The Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

(ii) The issues that the review team for the Accountability and Transparency Review (the "**Accountability and Transparency Review Team**") may assess include, but are not limited to, the following:

(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN's present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;

(B) assessing the role and effectiveness of the GAC's interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;

(C) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale

thereof);

(D) assessing the extent to which ICANN's decisions are supported and accepted by the Internet community;

(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and

(F) assessing and improving the Independent Review Process.

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

(v) The Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting.

(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.

(c) Security, Stability, and Resiliency Review

(i) The Board shall cause a periodic review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN coordinates ("**SSR Review**").

(ii) The issues that the review team for the SSR Review ("**SSR Review Team**") may assess are the following:

(A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet's system of unique identifiers;

(B) conformance with appropriate security contingency planning framework for the Internet's system of unique identifiers; and

(C) maintaining clear and globally interoperable security processes for those portions of the Internet's system of unique identifiers that ICANN coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS, and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS, consistent with ICANN's Mission.

(iv) The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.

(d) Competition, Consumer Trust and Consumer Choice Review

(i) ICANN will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD Round**").

(ii) After a New gTLD Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("**CCT Review**").

(iii) The review team for the CCT Review ("**CCT Review Team**") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD Round's application and evaluation process and

safeguards put in place to mitigate issues arising from the New gTLD Round.

(iv) For each of its recommendations, the CCT Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.

(v) The CCT Review Team shall also assess the extent to which prior CCT Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(e) Registration Directory Service Review

(i) Subject to applicable laws, ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").

(iii) The review team for the Directory Service Review ("**Directory Service Review Team**") will consider the Organisation for Economic Co-operation and Development ("OECD") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD in 1980 and amended in 2013 and as may be amended from time to time.

(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service

Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.

Section 4.7. COMMUNITY MEDIATION

(a) If the Board refuses or fails to comply with a duly authorized and valid EC Decision under these Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a mediation process pursuant to this Section 4.7. The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC Decision if the Board has not complied with the EC Decision within 30 days of being notified of the relevant EC Decision.

(b) If a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) is delivered to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC Administration shall designate individuals to represent the EC in the mediation ("**Mediation Administration**") and the Board shall designate representatives for the mediation ("**Board Mediation Representatives**"). Members of the EC Administration and the Board can designate themselves as representatives. ICANN shall promptly post the Mediation Initiation Notice on the Website.

(c) There shall be a single mediator who shall be selected by the agreement of the Mediation Administration and Board Mediation Representatives. The Mediation Administration shall propose a slate of at least five potential mediators, and the Board Mediation Representatives shall select a mediator from the slate or request a new slate until a mutually-agreed mediator is selected. The Board Mediation Representatives may recommend potential mediators for inclusion on the slates selected by the Mediation Administration. The Mediation Administration shall not unreasonably decline to include mediators recommended by the Board Mediation Representatives on proposed slates and the Board Mediation Representatives shall not unreasonably withhold consent to the selection of a mediator on slates proposed by the Mediation Administration.

(d) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS and ICANN. The mediator may not have any ongoing business relationship with ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC. The mediator must confirm in writing that he or she is

not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC.

(e) The mediator shall conduct the mediation in accordance with these Bylaws, the laws of California and the rules and procedures of a well-respected international dispute resolution provider, which may be the IRP Provider. The arbitration will be conducted in the English language consistent with the provisions relevant for mediation under the IRP Rules of Procedure and will occur in Los Angeles County, California, unless another location is mutually-agreed between the Mediation Administration and Board Mediation Representatives.

(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(g) ICANN shall bear all costs of the mediator.

(h) If the Mediation Administration and the Board Mediation Representatives have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, the Mediation Administration or the Board Mediation Representatives may terminate the mediation at any time by declaring an impasse.

(i) If a resolution to the dispute is reached by the Mediation Administration and the Board Mediation Representatives, the Mediation Administration and the Board Mediation Representatives shall document such resolution including recommendations ("**Mediation Resolution**" and the date of such resolution, the "**Mediation Resolution Date**"). ICANN shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC Administration shall promptly notify the Decisional Participants of the Mediation Resolution.

(j) The EC shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC Community IRP Initiation Notice (as defined in Section 4.2(e) of Annex D) pursuant to and in compliance with Section 4.2 of Annex D within eighty (80) days following the Mediation Resolution Date.

ARTICLE 5 OMBUDSMAN

Section 5.1. OFFICE OF OMBUDSMAN

(a) ICANN shall maintain an Office of Ombudsman ("**Office of Ombudsman**"), to

be managed by an ombudsman ("**Ombudsman**") and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN Budget recommended by the ICANN President to the Board. Nothing in this Section 5.1 shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 5.2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results. With respect to the Reconsideration Request Process set forth in Section 4.2 , the Ombudsman shall serve the function expressly provided for in Section 4.2 .

Section 5.3. OPERATIONS

The Office of Ombudsman shall:

(a) facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either a Reconsideration Request or Independent Review Process;

(b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests;

(c) exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;

(d) have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);

(e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;

(f) maintain neutrality and independence, and have no bias or personal stake in an outcome; and

(g) comply with all ICANN conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

(a) No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

(b) ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

(c) Contact with the Ombudsman shall not constitute notice to ICANN of any

particular action or cause of action.

(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

(e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

Section 5.5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE 6 EMPOWERED COMMUNITY

Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

(a) The Empowered Community ("EC") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO (as defined in Section 10.1), the GNSO (as defined in Section 11.1), the ALAC (as defined in Section 12.2(d)(i)) and the GAC (each a "**Decisional Participant**" or "associate," and collectively, the "**Decisional Participants**").

(b) This Article 6 shall constitute the articles of association of the EC and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC, and the terms contained herein and in these Bylaws relating to the EC shall be the EC's "governing principles" (as defined in Section 18010 of the CCC), which may only be amended as set forth in Section 25.2. Where necessary for purposes of interpretation of these Bylaws, an "associate" shall be deemed to be a "member" of the EC as defined in Section 18015 of the CCC. Any change in the number and/or identity of Decisional Participants for any reason (including the resignation of any Decisional Participant or the addition of new Decisional Participants as a result of the creation of additional Supporting Organizations or Advisory Committees), and any corresponding changes in the

voting thresholds for exercise of the EC's rights described in Annex D of these Bylaws, will only be effective following the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D. The EC may not be dissolved except upon the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D.

(c) The sole purpose of the EC is to exercise its rights and perform its obligations under ICANN's Articles of Incorporation and these Bylaws, and the EC shall have no other powers or rights except as expressly provided therein. The EC may only act as provided in these Bylaws. Any act of the EC that is not in accordance with these Bylaws shall not be effective.

(d) The EC shall not acquire, hold, manage, encumber or transfer any interest in real or personal property, nor have any directors, officers or employees. The EC shall not merge with or into another entity nor shall it dissolve, except with the approval of the Board and as part of a Fundamental Bylaw Amendment (as defined in Section 25.2(b)).

(e) Decisional Participants shall not transfer their right to be an associate of the EC. Any attempted transfer by any Decisional Participant of its right to be an associate of the EC shall be void ab initio.

(f) The location and street address of the EC shall be the principal office of ICANN.

(g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters.

Section 6.2. POWERS AND ACKNOWLEDGMENTS

(a) Pursuant to and in compliance with the terms and conditions of these Bylaws, the EC shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

- (i) Appoint and remove individual Directors (other than the President);
- (ii) Recall the entire Board;
- (iii) Reject ICANN Budgets, IANA Budgets, Operating Plans (as defined in Section 22.5(a)(i)) and Strategic Plans (as defined in Section 22.5(b)(i));
- (iv) Reject Standard Bylaw Amendments (as defined in Section 25.1(a));
- (v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in Section 25.2(b)), and Asset Sales (as defined in Article 26(a));
- (vi) Reject PTI Governance Actions (as defined in Section 16.2(d));
- (vii) Require the ICANN Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));
- (viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and
- (ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

(b) The EC may pursue an action in any court with jurisdiction over ICANN to enforce the EC's rights under these Bylaws. ICANN acknowledges the EC's legal personhood and shall not raise the EC's legal personhood as a defense in any proceeding between ICANN and the EC. ICANN shall not assert as a defense that prior filing or completion of a Reconsideration Request or an IRP Claim was a prerequisite to an action in court regarding the EC's power to appoint or remove an individual Director or recall the Board (except to the extent an IRP Panel award is applicable pursuant to Section 3.6(e)).

(c) By nominating a Director for designation by the EC or exercising the community mechanism contained in Annex D with respect to any rights granted to the EC pursuant to these Bylaws, the EC and each of its Decisional Participants agrees and consents to the terms of these Bylaws and intends to be legally bound hereby.

Section 6.3. EC ADMINISTRATION

(a) The Decisional Participants shall act through their respective chairs or such other persons as may be designated by the Decisional Participants (collectively, such persons are the "**EC Administration**"). Each Decisional Participant shall deliver annually a written certification from its chair or co-chairs to the Secretary designating the individual who shall represent the Decisional Participant on the EC Administration.

(b) In representing a Decisional Participant on the EC Administration, the representative individual shall act solely as directed by the represented Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with Section 6.1(g).

(c) In representing the EC Administration, the individuals serving thereon shall act as required for the EC to follow the applicable procedures in Annex D, and to implement EC decisions made in accordance with such procedures.

(d) All communications and notices required or permitted to be given under these Bylaws by a Decisional Participant shall be provided by the Decisional Participant's representative on the EC Administration. All communications and notices required or permitted to be given under these Bylaws by the EC shall be provided by any member of the EC Administration. Where a particular Bylaws notice provision does not require notice to the Secretary, the EC and the Decisional Participants shall provide a copy of the notice to the Secretary in accordance with Section 21.5, and ICANN shall post it on the Website.

(e) ICANN shall be entitled to rely on notices from a Decisional Participant's representative or an individual serving on the EC Administration delivered in accordance with Section 21.5 as evidence that the actions set forth therein have been approved by or are the actions of the Decisional Participant, the EC or the EC Administration, as applicable, pursuant to and in compliance with the requirements of these Bylaws (including Annex D) .

(f) No person participating in the EC, the EC Administration or a Decisional Participant shall be liable for any debt, obligation or liability of ICANN or the EC, other than in the case of a fraudulent act committed by such person.

Section 6.4. CONSENT TO BOARD-INITIATED REMOVAL OF DIRECTOR WITHOUT CAUSE

In the event the EC Administration receives from the Secretary a valid notice as described in Section 7.11(a)(i)(B), indicating that the Board has voted to remove a Director without cause pursuant to Section 7.11(a)(i)(B), the EC shall without

deliberation consent to such removal, and the EC Administration shall provide notice to the Secretary of such consent.

ARTICLE 7 BOARD OF DIRECTORS

Section 7.1. COMPOSITION OF THE BOARD

The ICANN Board of Directors ("**Board**") shall consist of sixteen voting directors ("**Directors**"). In addition, four non-voting liaisons ("**Liaisons**") shall be appointed for the purposes set forth in Section 7.9. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the Board.

Section 7.2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIR AND VICE-CHAIR

(a) As of the effective date of the amendment and restatement of these Bylaws on 1 October 2016, the EC shall be the sole designator of ICANN and shall designate, within the meaning of Section 5220 of the CCC, all Directors except for the President ex officio. The EC shall notify promptly the Secretary in writing of the following designations:

(i) Eight Directors nominated by the Nominating Committee to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seats 1 through 8.

(ii) Two Directors nominated by the ASO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 9 and Seat 10.

(iii) Two Directors nominated by the ccNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 11 and Seat 12.

(iv) Two Directors nominated by the GNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 13 and Seat 14.

(v) One Director nominated by the At-Large Community to be designated as Directors by the EC. This seat on the Board is referred to in these Bylaws as Seat 15.

In addition to the Directors designated by the EC, the President shall serve ex officio as a Director. The seat held by the President on the Board is referred to in these Bylaws as Seat 16.

(b) In carrying out its responsibilities to nominate the Directors for Seats 1 through 8 for designation by the EC, the Nominating Committee shall ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. At no time when it makes its nomination shall the Nominating Committee nominate a Director to fill any vacancy or expired term whose designation would cause the total number of Directors (not including the President) from countries in any one Geographic Region to exceed five; and the Nominating Committee shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN Geographic Region ("**Diversity Calculation**"). For purposes of this Section 7.2(b), if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("**Domicile**"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this Section 7.2(b), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(c) In carrying out their responsibilities to nominate Directors for Seats 9 through 15 for designation by the EC, the Supporting Organizations and the At-Large Community shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. The Supporting Organizations shall ensure that, at any given time, no two Directors nominated by a Supporting Organization are citizens from the same country or of countries located in the same Geographic Region. For purposes of this Section 7.2(c), if any candidate for Director maintains citizenship or Domicile of more than one country, that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Supporting Organization or the At-Large Community, as applicable, to use for nomination purposes. For purposes of this Section 7.2(c), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(d) The Board shall annually elect a Chair and a Vice-Chair from among the Directors, not to include the President.

(e) The EC shall designate each person nominated as a Director by the Nominating Committee, the ASO, the ccNSO, the GNSO and the At-Large Community in accordance with this Section 7.2.

(f) As a condition to sitting on the Board, each Director other than the President ex officio shall sign a pre-service letter pursuant to which such Director:

(i) acknowledges and agrees to the EC's right to remove the Director at any time and for any reason following the processes set forth in these Bylaws;

(ii) acknowledges and agrees that serving as a Director shall not establish any employment or other relationship (whether to ICANN, the EC, any body entitled to nominate a Director, or any of their agents) that provides any due process rights related to termination of service as a Director; and

(iii) conditionally and irrevocably resigns as a Director automatically effective upon communication to the Director or, in the case of Board recall, communication to the Board of a final determination of removal following the processes set forth in these Bylaws.

Section 7.3.CRITERIA FOR NOMINATION OF DIRECTORS

Directors shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

(b) Persons with an understanding of ICANN's Mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;

(c) Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section 7.3;

(d) Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

(e) Persons who are able to work and communicate in written and spoken English.

Section 7.4. ADDITIONAL QUALIFICATIONS

(a) Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

(b) No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or Liaison to the Board. If such a person is identified by, or presents themselves to, the Supporting Organization Council or the At-Large Community for consideration for nomination to serve as a Director, the person shall not thereafter participate in any discussion of, or vote by, the Supporting Organization Council or the committee designated by the At-Large Community relating to the nomination of Directors by the Council or At-Large Community, until the Council or committee(s) specified by the At-Large Community has nominated the full complement of Directors it is responsible for nominating. In the event that a person serving in any capacity on a Supporting Organization Council is considered for nomination to serve as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's nomination process. In the event that a person serving in any capacity on the At-Large Advisory Committee is identified as or accepts a nomination to be considered for nomination by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the At-Large Community's nomination process.

(c) Persons serving in any capacity on the Nominating Committee shall be ineligible for nomination or designation to positions on the Board as provided by Section 8.8.

(d) No person who serves on the EC Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC Administration and as a Director or Liaison to the Board.

Section 7.5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the nomination of Directors by the Nominating Committee, each Supporting Organization and the At-Large Community shall comply with all applicable diversity provisions of these

Bylaws or of any memorandum of understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no Geographic Region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "**Geographic Region**": (a) Europe; (b) Asia/Australia/Pacific; (c) Latin America/Caribbean islands; (d) Africa; and (e) North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section 7.5 shall be reviewed by the Board from time to time (and in any event at least once every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 7.6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN. Each Director shall be responsible for disclosing to ICANN any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the CCC. In addition, each Director shall disclose to ICANN any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CCC. The Board shall adopt policies specifically addressing Director, Officer, EC and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7.7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the EC, the Nominating Committee, Supporting Organization or Advisory Committee that nominated them, as applicable, their employers, or any other organizations or constituencies.

Section 7.8. TERMS OF DIRECTORS

(a) The regular term of office of Director Seats 1 through 15 shall begin as follows:

- (i) The regular terms of Seats 1 through 3 shall begin at the conclusion of each ICANN annual meeting every third year after 2003;

(ii) The regular terms of Seats 4 through 6 shall begin at the conclusion of each ICANN annual meeting every third year after 2004;

(iii) The regular terms of Seats 7 and 8 shall begin at the conclusion of each ICANN annual meeting every third year after 2005;

(iv) The terms of Seats 9 and 12 shall begin at the conclusion of each ICANN annual meeting every third year after 2015;

(v) The terms of Seats 10 and 13 shall begin at the conclusion of each ICANN annual meeting every third year after 2013; and

(vi) The terms of Seats 11, 14 and 15 shall begin at the conclusion of each ICANN annual meeting every third year after 2014.

(b) Each Director holding any of Seats 1 through 15, including a Director nominated and designated to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been designated and qualified or until that Director resigns or is removed in accordance with these Bylaws. For the avoidance of doubt, the new governance provisions effective as of the amendment and restatement of these Bylaws on 1 October 2016 shall not have the effect of shortening or terminating the terms of any Directors serving at the time of the amendment and restatement.

(c) At least two months before the commencement of each annual meeting, the Nominating Committee shall give the EC Administration (with a copy to the Decisional Participants and Secretary) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(d) At least six months before the date specified for the commencement of the term as specified in Section 7.8(a)(iv) through Section 7.8(a)(vi) above, any Supporting Organization or the At-Large Community entitled to nominate a Director for a Seat with a term beginning that year shall give the EC Administration (with a copy to the Secretary and the Decisional Participants) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(e) No Director may serve more than three consecutive terms. For these

purposes, a person designated to fill a vacancy in a term shall not be deemed to have served that term.

(f) The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 7.9. NON-VOTING LIAISONS

(a) The non-voting Liaisons shall include:

- (i) One appointed by the Governmental Advisory Committee;
- (ii) One appointed by the Root Server System Advisory Committee established by Section 12.2(c);
- (iii) One appointed by the Security and Stability Advisory Committee established by Section 12.2(b); and
- (iv) One appointed by the Internet Engineering Task Force.

(b) The Liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a Liaison shall give the Secretary written notice of its appointment.

(c) Each Liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the Liaison resigns or is removed in accordance with these Bylaws.

(d) The Liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section 7.9(d) for the purpose of consulting with their respective committee or organization.

Section 7.10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CCC, any Director or Liaison may resign at any

time by giving written notice thereof to the Chair of the Board, the President, the Secretary, or the Board. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

(a) Directors

(i) Any Director designated by the EC may be removed without cause:

(A) by the EC pursuant to and in compliance with procedures in Section 3.1 or Section 3.2 of Annex D, as applicable, or

(B) following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that (x) each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director; and (y) such removal shall not be effective until the Secretary has provided notice to the EC Administration of the Board's removal vote and the requirements of Section 6.4 have been met.

(ii) The Board may remove any Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 through 5239 of the CCC, and in the case of such removal, the Secretary shall promptly notify the EC Administration in writing, with a copy to the body that nominated such Director, and shall promptly post such notification to the Website. The vacancies created by such removal shall be filled in accordance with Section 7.12(a).

(iii) All Directors (other than the President) may be removed at the same time by the EC by the EC Administration delivering an EC Board Recall Notice to the Secretary pursuant to and in compliance with Section 3.3 of Annex D. The vacancies created by such removal shall be filled by the EC in accordance with Section 7.12(b).

(b) With the exception of the Liaison appointed by the Governmental Advisory Committee, any Liaison may be removed following notice to that Liaison and to the organization which selected that Liaison, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison

following such notice. The vacancies created by such removal shall be filled in accordance with Section 7.12. The Board may request the Governmental Advisory Committee to consider the replacement of the Governmental Advisory Committee Liaison if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 7.12. VACANCIES

(a) This Section 7.12(a) shall apply to Board vacancies other than those occurring by recall of all Directors (other than the President). A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation, or removal of any Director or Interim Director (as defined in Section 7.12(b)), or if the authorized number of Directors is increased. Vacancies occurring in Seats 1 through 15 shall be filled by the EC after nomination as provided in Section 7.2 and Articles 8 through 12. A vacancy in Seat 16 shall be filled as provided in Article 15. A Director designated by the EC to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been designated and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

(b) This Section 7.12(b) shall apply to Board vacancies occurring when all Directors (other than the President) are recalled as provided by Section 7.11(a) (iii). Concurrently with delivery of any EC Board Recall Notice (as defined in Section 3.3(f) of Annex D), the EC Administration shall provide written notice of the EC's designation of individuals to fill such vacancies (each such individual, an "**Interim Director**") to the Decisional Participants and to the Secretary, who shall cause such notice to be promptly posted to the Website. An Interim Director must meet the criteria specified in Section 7.3, Section 7.4 and Section 7.5, as applicable. An Interim Director shall hold office until the EC designates the Interim Director's successor in accordance with Section 7.12(a), and the successor's designation shall occur within 120 days of the Interim Director's designation. For avoidance of doubt, persons designated as Interim Directors may be eligible for designation as Directors as well.

(c) The organizations selecting the Liaisons identified in Section 7.9 are responsible for determining the existence of, and filling, any vacancies in those positions. Such organizations shall give the Secretary written notice of their appointments to fill any such vacancies, subject to the requirements set forth in Section 7.4, as applicable.

Section 7.13. ANNUAL MEETINGS

Annual meetings of ICANN shall be held for the purpose of electing Officers and

for the transaction of such other business as may come before the meeting. Each annual meeting of ICANN shall be held at the principal office of ICANN, or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 7.14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN.

Section 7.15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the Directors, by the Chair of the Board or the President. A call for a special meeting shall be made by the Secretary. Special meetings shall be held at the principal office of ICANN unless otherwise specified in the notice of the meeting.

Section 7.16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 7.17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 7.18. ACTIONS BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Directors and Liaisons may participate in a meeting of the Board or Board Committee (as defined in Section 14.1) through use of (a) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (b) electronic video screen communication or other communication equipment; provided that (i) all Directors participating in such a meeting can speak to and hear one another, (ii) all Directors are provided the means of fully participating in all matters before the Board or Board Committee, and (iii) ICANN adopts and implements means of verifying that (A) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board or Board Committee are taken or cast only by Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section 7.18 constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone.

Section 7.19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 7.20. ELECTRONIC MAIL

If permitted by applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN shall take such steps as it deems appropriate under the circumstances to

assure itself that communications by electronic mail are authentic.

Section 7.21. BOARD RIGHTS OF INSPECTION

(a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN.

(b) ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 7.22. COMPENSATION

(a) Except for the President of ICANN, who serves ex officio as a Director, each of the Directors shall be entitled to receive compensation for his or her services as a Director. The President shall receive only his or her compensation for service as President and shall not receive additional compensation for service as a Director.

(b) If the Board determines to offer a compensation arrangement to one or more Directors (other than the President) for services to ICANN as Directors, the Board shall follow the process that is calculated to pay an amount for service as a Director that is not an excess benefit under the standards set forth in Section 4958 of the Internal Revenue Code of 1986, as amended (the "**Code**").

(c) As part of the process, the Board shall retain an Independent Valuation Expert (as defined in Section 7.22(g)(i)) to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion (as defined in Section 7.22(g)(ii)) from such expert regarding the ranges of Reasonable Compensation (as defined in Section 7.22(g)(iii)) for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Board Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

(d) After having reviewed the Independent Valuation Expert's Reasoned Written Opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

(e) The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

(f) In addition to authorizing payment of compensation for services as Directors as set forth in this Section 7.22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by Liaisons performing their duties as Directors or Liaisons.

(g) As used in this Section 7.22, the following terms shall have the following meanings:

(i) An "**Independent Valuation Expert**" means a person retained by ICANN to value compensation arrangements that: (A) holds itself out to the public as a compensation consultant; (B) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN; (C) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (D) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (E) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (A) through (D) of this definition.

(ii) A "**Reasoned Written Opinion**" means a written opinion of a valuation expert who meets the requirements of Section 7.22(g)(i)(A) through (D). To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(iii) "**Reasonable Compensation**" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

(h) Each of the Liaisons, with the exception of the Governmental Advisory Committee Liaison, shall be entitled to receive compensation for his or her

services as a Liaison. If the Board determines to offer a compensation arrangement to one or more Liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 7.23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

Section 7.24 INTERIM BOARD

Except in circumstances in which urgent decisions are needed to protect the security, stability or resilience of the DNS or to the extent necessary to comply with its fiduciary obligations under applicable law, a Board that consists of a majority or more of Interim Directors (an "**Interim Board**") shall (a) consult with the chairs of the Supporting Organizations and Advisory Committees before making major decisions and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section 2.3 of Annex D) prior to taking any action that would, if implemented, materially change ICANN's strategy, policies or management, including replacement of the then-serving President. Interim Directors shall be entitled to compensation as provided in this Article 7.

Section 7.25 COMMUNICATION OF DESIGNATION

Upon its receipt of nominations as provided in Articles 7 through 12, the EC Administration, on behalf of the EC, shall promptly notify the Secretary of the EC's designation of individuals to fill seats on the Board. ICANN shall post all such designations promptly to the Website.

ARTICLE 8 NOMINATING COMMITTEE

Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN ("**Nominating Committee**"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in

accordance with the articles of incorporation and bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

- (a) A non-voting Chair, appointed by the Board;
- (b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;
- (c) A non-voting liaison appointed by the Root Server System Advisory Committee established by Section 12.2(c);
- (d) A non-voting liaison appointed by the Security and Stability Advisory Committee established by Section 12.2(b);
- (e) A non-voting liaison appointed by the Governmental Advisory Committee;
- (f) Five voting delegates selected by the At-Large Advisory Committee established by Section 12.2(d);
- (g) Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization established by Article 11, as follows:

- (i) One delegate from the Registries Stakeholder Group;
- (ii) One delegate from the Registrars Stakeholder Group;
- (iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;
- (iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));
- (v) One delegate from the Intellectual Property Constituency; and
- (vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

(h) One voting delegate each selected by the following entities:

(i) The Council of the Country Code Names Supporting Organization established by Section 10.3;

(ii) The Council of the Address Supporting Organization established by Section 9.2; and

(iii) The Internet Engineering Task Force.

(i) A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 8.3. TERMS

(a) Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.

(b) The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.

(c) Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.

(d) It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.

(e) Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant

pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

(f) The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 8.4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN Nominating Committee shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;

(b) Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;

(c) Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;

(d) Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;

(e) Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

(f) Persons who are able to work and communicate in written and spoken English.

Section 8.5. DIVERSITY

In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the Board (and such other bodies), and seek to ensure that the persons it nominates to serve as Director and selects shall, to the extent feasible and consistent with the other criteria required to be

applied by Section 8.4, be guided by Section 1.2(b)(ii).

Section 8.6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 8.7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board or any other ICANN body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 8.9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 8.2.

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

Section 9.1. DESCRIPTION

(a) The Address Supporting Organization ("**Address Supporting Organization**" or "**ASO**") shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

(b) The ASO shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN and the Number Resource Organization ("**NRO**"), an organization of the existing RIRs.

Section 9.2. ADDRESS COUNCIL

(a) The ASO shall have an Address Council, consisting of the members of the NRO Number Council.

(b) The Address Council shall nominate individuals to fill Seats 9 and 10 on the Board. Notification of the Address Council's nominations shall be given by the Address Council in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 10.1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization ("ccNSO"), which shall be responsible for:

(a) developing and recommending to the Board global policies relating to country-code top-level domains;

(b) Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs;

(c) Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN;

(d) Nominating individuals to fill Seats 11 and 12 on the Board; and

(e) Other responsibilities of the ccNSO as set forth in these Bylaws.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to Section 10.4(j) and Section 10.4(k). However, the ccNSO may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

Section 10.2. ORGANIZATION

The ccNSO shall consist of (a) ccTLD managers that have agreed in writing to be members of the ccNSO (see Section 10.4(b)) and (b) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

Section 10.3. ccNSO COUNCIL

(a) The ccNSO Council shall consist of three ccNSO Council members selected by the ccNSO members within each of ICANN's Geographic Regions in the manner described in Section 10.4(g) through Section 10.4(i); (ii) three ccNSO Council members selected by the ICANN Nominating Committee; (iii) liaisons as described in Section 10.3(b); and (iv) observers as described in Section 10.3(c).

(b) There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (i) the Governmental Advisory Committee; (ii) the At-Large Advisory Committee; and (iii) each of the Regional Organizations described in Section 10.5. These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

(c) The ccNSO Council may agree with the Council of any other ICANN Supporting Organization to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO Council at any time by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

(d) (i) the regular term of each ccNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the third ICANN annual meeting thereafter; (ii) the regular terms of the three ccNSO Council members selected by the ccNSO members within each ICANN Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (iii) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

(e) A ccNSO Council member may resign at any time by giving written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

(f) ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO Council.

(g) A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, with a notification copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in Section 10.4(g) through (i).

(h) The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in Section 10.4(f)) and to manage the development of policy recommendations in accordance with Section 10.6(a). The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.

(i) The ccNSO Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's nominations shall be given by the ccNSO Council Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(j) The ccNSO Council shall select from among its members the ccNSO Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. The term of office of the ccNSO Council Chair and any Vice Chair(s) shall be as specified by the ccNSO Council at or before the time the selection is made. The ccNSO Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

(k) The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.

(l) Except as provided by Section 10.3(i) and Section 10.3(j), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in Section 10.3(n). Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

(m) Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO Council shall be provided to each ccNSO Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

(n) Members of the ccNSO Council may participate in a meeting of the ccNSO Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (i) all ccNSO Council members participating in the meeting can speak to and hear one another, (ii) all ccNSO Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO Council, and (iii) there is a reasonable means of verifying the identity of ccNSO Council members participating in the meeting and their votes. A majority of the ccNSO Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO Council members present at any meeting at which there is a quorum shall be actions of the ccNSO Council, unless otherwise provided in these Bylaws. The ccNSO Council shall transmit minutes of its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 10.4. MEMBERSHIP

(a) The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in Section

10.4(b) shall be entitled to be members of the ccNSO. For purposes of this Article 10, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain, or under any later variant, for that country-code top-level domain.

(b) Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. The application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (i) to adhere to rules of the ccNSO, including membership rules, (ii) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (ii) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (A) adhere to rules of the ccNSO, including membership rules, (B) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (C) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

(c) Neither membership in the ccNSO nor membership in any Regional Organization described in Section 10.5 shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.

(d) The Geographic Regions of ccTLDs shall be as described in Section 7.5. For purposes of this Article 10, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.

(e) Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager. In the absence of such a designation, the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA database.

(f) There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

(g) The ccNSO Council members selected by the ccNSO members from each Geographic Region (see Section 10.3(a)(i)) shall be selected through nomination, and if necessary election, by the ccNSO members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.

(h) Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.

(i) If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.

(j) Subject to Section 10.4(k), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO to the Board, and (iv) are adopted by the Board as policies, provided that such policies

do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

(k) A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (i) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)), and (ii) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (A) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

Section 10.5. REGIONAL ORGANIZATIONS

The ccNSO Council may designate a Regional Organization for each ICANN Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO Council and shall be subject to review according to procedures established by the Board.

Section 10.6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

(a) The scope of the ccNSO's policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

(b) In developing global policies within the scope of the ccNSO and

recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process ("ccPDP"). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 10.7. STAFF SUPPORT AND FUNDING

(a) Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may designate, at ccNSO expense, another person to serve as ccNSO Staff Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.

(b) Upon request of the ccNSO Council, ICANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by ccNSO participants for travel to any meeting of the ccNSO or for any other purpose. The ccNSO Council may make provision, at ccNSO expense, for administrative and operational support in addition or as an alternative to support provided by ICANN.

(c) The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in Section 10.7(a) and Section 10.7(b), as approved by the ccNSO members.

(d) Written notices given to the Secretary under this Article 10 shall be permanently retained, and shall be made available for review by the ccNSO Council on request. The Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative, and which shall be posted on the Website.

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

Section 11.1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (the "**Generic Names Supporting Organization**" or "**GNSO**", and collectively with the ASO and ccNSO, the "**Supporting Organizations**")), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO as set forth in these Bylaws.

Section 11.2. ORGANIZATION

The GNSO shall consist of:

- (a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;
- (b) Four Stakeholder Groups organized within Houses as described in Section 11.5;
- (c) Two Houses within the GNSO Council as described in Section 11.3(h);
- (d) A GNSO Council responsible for managing the policy development process of the GNSO, as described in Section 11.3; and
- (e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

Section 11.3. GNSO COUNCIL

(a) Subject to Section 11.5, the GNSO Council shall consist of:

- (i) three representatives selected from the Registries Stakeholder Group;
- (ii) three representatives selected from the Registrars Stakeholder Group;
- (iii) six representatives selected from the Commercial Stakeholder Group;
- (iv) six representatives selected from the Non-Commercial Stakeholder Group; and
- (v) three representatives selected by the ICANN Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee appointee voting representative shall be assigned to each House (as described in Section 11.3(h)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO Council

at the same time.

Stakeholder Groups should, in their charters, ensure their representation on the GNSO Council is as diverse as possible and practicable, including considerations of geography, GNSO Constituency, sector, ability and gender.

There may also be liaisons to the GNSO Council from other ICANN Supporting Organizations and/or Advisory Committees, from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO Council.

(b) The regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO Operating Procedures.

(c) A vacancy on the GNSO Council shall be deemed to exist in the case of the

death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO Council member selected by the Nominating Committee may be removed for cause: (i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or (ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 11.3(h)). Such removal shall be subject to reversal by the ICANN Board on appeal by the affected GNSO Council member.

(d) The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "**GNSO Operating Procedures**") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in Section 11.6.

(e) No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO Council at any given time.

(f) The GNSO shall nominate by written ballot or by action at a meeting individuals to fill Seats 13 and 14 on the Board. Each of the two voting Houses of the GNSO, as described in Section 11.3(h), shall make a nomination to fill one of two Board seats, as outlined below; any such nomination must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

(i) the Contracted Parties House (as described in Section 11.3(h)(i)) shall select a representative to fill Seat 13; and

(ii) the Non-Contracted Parties House (as described in Section 11.3(h)(ii)) shall select a representative to fill Seat 14.

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat nominations shall be given by the GNSO Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(g) The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies, but not longer than one year. Each House (as described in Section 11.3(h)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.

(h) Except as otherwise required in these Bylaws, for voting purposes, the GNSO Council (see Section 11.3(a)) shall be organized into a bicameral House structure as described below:

(i) the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN Nominating Committee for a total of seven voting members; and

(ii) the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO Council.

(i) Except as otherwise specified in these Bylaws, Annex A, Annex A-1 or Annex A-2 hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:

(i) Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

- (ii) Initiate a Policy Development Process ("**PDP**") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

- (iii) Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority (as defined in Section 11.3(i)(xix)).

- (iv) Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

- (v) Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.

- (vi) Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under (iv) or (v) above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.

- (vii) Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in favor of termination.

- (viii) Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

- (ix) Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority,

- (x) Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

- (xi) Modification of Approved PDP Recommendation: Prior to Final Approval by the Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.

- (xii) Initiation of an Expedited Policy Development Process ("**EPDP**"):
requires an affirmative vote of a GNSO Supermajority.

- (xiii) Approve an EPDP Team Charter: requires an affirmative vote of a

GNSO Supermajority.

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xvi) Initiation of a GNSO Guidance Process ("**GGP**"): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO Supermajority.

(xviii) Approval of GGP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xix) A "**GNSO Supermajority**" shall mean: (A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

(j) The voting thresholds described below shall apply to the following GNSO actions as a Decisional Participant in the Empowered Community. For any action not listed, the default threshold for the GNSO to act as a Decisional Participant in the Empowered community requires a simple majority vote of each House:

(i) Amendment of PTI Articles of Incorporation as contemplated in Section 16.2: requires an affirmative vote of a GNSO Supermajority.

(ii) GNSO Council Inspection Request as contemplated in Section 22.7: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iii) GNSO Council Inspection Remedy, as contemplated in Section 22.7 - e, and Stakeholder Group / Constituency Inspection Remedy, as contemplated in Section 22.7 – e(ii) and e(iii), for an inspection requested by the GNSO as a Decisional Participant in the Empowered Community: requires an

affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iv) Amendments to Fundamental Bylaws and Article Amendments as contemplated by Section 25.2 of the Bylaws, Asset Sales, as contemplated by Article 26 of the Bylaws, amendments to ICANN Articles of Incorporation: requires an affirmative vote of a GNSO Supermajority.

(v) Approval of a Nominating Committee Director Removal Petition as contemplated in Annex D, Article 3, Section 3.1(b) and support for a petition submitted by a Petitioning Decisional Participant as contemplated in Section 3.2(d): requires an affirmative vote of a GNSO Supermajority.

(vi) Approval of a Nominating Committee Director Removal Supported Petition as contemplated in Annex D, Article 3, Section 3.1(f): requires an affirmative vote of a GNSO Supermajority.

(vii) Approval of a petition to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(a): requires an affirmative vote of at least three-fourths (3/4) of the House that appointed that Director.

(viii) Approval of a petition notice to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(f): requires an affirmative vote of at least three-fourths (3/4) of the GNSO Council and at least three-fourths (3/4) of the House that appointed that Director.

(ix) Approval of a Board Recall Petition as contemplated in Annex D, Article 3, Section 3.3(b) and support for another Petitioning Decisional Participant: requires an affirmative vote of a GNSO Supermajority.

(x) Approval of a Board Recall Supported Petition as contemplated in Annex D, Article 3, Section 3.3(e): requires an affirmative vote of a GNSO Supermajority.

Section 11.4. STAFF SUPPORT AND FUNDING

(a) A member of the ICANN staff shall be assigned to support the GNSO, whose work on substantive matters shall be assigned by the Chair of the GNSO Council, and shall be designated as the GNSO Staff Manager ("**Staff Manager**").

(b) ICANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any

meeting of the GNSO or for any other purpose. ICANN may, at its discretion, fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 11.5. STAKEHOLDER GROUPS

(a) The following "**Stakeholder Groups**" are hereby recognized as representative of a specific group of one or more "**Constituencies**" or interest groups:

(i) Registries Stakeholder Group representing all gTLD registries under contract to ICANN;

(ii) Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN;

(iii) Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet ("**Commercial Stakeholder Group**"), which includes the Business Constituency ("**Business Constituency**"), Intellectual Property Constituency ("**Intellectual Property Constituency**") and the Internet Service Providers and Connectivity Providers Constituency ("**Internet Service Providers and Connectivity Providers Constituency**"); and

(iv) Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

(b) Each Stakeholder Group is assigned a specific number of GNSO Council seats in accordance with Section 11.3(a).

(c) Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

(d) Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:

(i) A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities;

(ii) A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;

(iii) A recommendation for organizational placement within a particular Stakeholder Group; and

(iv) A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

(e) The Board may create new Constituencies as described in Section 11.5(c) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 11.6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 11.3(d).

ARTICLE 12 ADVISORY COMMITTEES

Section 12.1. GENERAL

The Board may create one or more "Advisory Committees" in addition to those set forth in this Article 12. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also

include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

Section 12.2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

(a) Governmental Advisory Committee

(i) The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

(ii) Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.

(iii) The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.

(iv) The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.

(v) Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Governmental Advisory Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.

(vi) The Governmental Advisory Committee shall annually appoint one Liaison to the Board, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

(vii) The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.

(viii) The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of the Supporting Organizations or Advisory Committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

(ix) The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC Consensus Advice**"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

(xi) If GAC Consensus Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

(b) Security and Stability Advisory Committee

(i) The role of the Security and Stability Advisory Committee ("**Security and Stability Advisory Committee**" or "**SSAC**") is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

(A) To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The SSAC shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.

(B) To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The SSAC shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

(C) To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC (as defined in Section 12.2(c)(i)), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The SSAC shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

(D) To report periodically to the Board on its activities.

(E) To make policy recommendations to the ICANN community and Board.

(ii) The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointment or re-appointment each year. The Board shall also have the power to remove SSAC appointees as recommended by or in consultation

with the SSAC.

(iii) The SSAC shall annually appoint a Liaison to the Board according to Section 7.9.

(c) Root Server System Advisory Committee

(i) The role of the Root Server System Advisory Committee ("**Root Server System Advisory Committee**" or "**RSSAC**") is to advise the ICANN community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

(A) Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The RSSAC shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.

(B) Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.

(C) Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

(D) Respond to requests for information or opinions from the Board.

(E) Report periodically to the Board on its activities.

(F) Make policy recommendations to the ICANN community and Board.

(ii) The RSSAC shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.

(A) RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC chairs shall provide recommendations to the Board regarding appointments to the RSSAC. If

the Board declines to appoint a person nominated by the RSSAC, then it will provide the rationale for its decision. The RSSAC chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointment or re-appointment each year. The Board shall also have the power to remove RSSAC appointees as recommended by or in consultation with the RSSAC.

(B) The RSSAC shall recommend the appointment of the chairs to the Board following a nomination process that it devises and documents.

(iii) The RSSAC shall annually appoint a Liaison to the Board according to Section 7.9.

(d) At-Large Advisory Committee

(i) The At-Large Advisory Committee ("**At-Large Advisory Committee**" or "**ALAC**") is the primary organizational home within ICANN for individual Internet users. The role of the ALAC shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate. The ALAC, which plays an important role in ICANN's accountability mechanisms, also coordinates some of ICANN's outreach to individual Internet users.

(ii) The ALAC shall consist of (A) two members selected by each of the Regional At-Large Organizations ("**RALOs**") established according to Section 12.2(d)(vii), and (B) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 7.5.

(iii) The regular terms of members of the ALAC shall be as follows:

(A) The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.

(B) The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-numbered year.

(C) The terms of three of the members selected by the Nominating

Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

(D) The regular term of each member shall end at the conclusion of the second ICANN annual meeting after the term began.

(iv) The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the ALAC.

(v) The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region) to the Nominating Committee.

(vi) The At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.

(vii) There shall be one RALO for each Geographic Region established according to Section 7.5. Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures ("**At-Large Structures**").

(viii) Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to Section 12.2(d)(ix). If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

(ix) Membership in the At-Large Community

(A) The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on

recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.

(B) The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

(C) Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.

(D) To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.

(E) Once the criteria and standards have been established as provided in this Section 12.2(d)(ix), the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.

(F) Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its rules of procedure, save always that any changes made to the rules of procedure in respect of an At-Large Structure applications shall be subject to review by the RALOs and by the Board.

(G) Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.

(H) On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

(x) The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

(A) Nominating individuals to fill Seat 15 on the Board. Notification of the At-

Large Community's nomination shall be given by the ALAC Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(B) Keeping the community of individual Internet users informed about the significant news from ICANN;

(C) Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;

(D) Promoting outreach activities in the community of individual Internet users;

(E) Developing and maintaining on-going information and education programs, regarding ICANN and its work;

(F) Establishing an outreach strategy about ICANN issues in each RALO's Geographic Region;

(G) Participating in the ICANN policy development processes and providing input and advice that accurately reflects the views of individual Internet users;

(H) Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

(I) Offering Internet-based mechanisms that enable discussions among members of At-Large Structures; and

(xi) Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.

Section 12.3. PROCEDURES

Each Advisory Committee shall determine its own rules of procedure and quorum requirements; provided that each Advisory Committee shall ensure that the advice provided to the Board by such Advisory Committee is communicated in a clear and unambiguous written statement, including the rationale for such advice. The Board will respond in a timely manner to formal advice from all Advisory

Committees explaining what action it took and the rationale for doing so.

Section 12.4. TERM OF OFFICE

The chair and each member of an Advisory Committee shall serve until his or her successor is appointed, or until such Advisory Committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the Advisory Committee.

Section 12.5. VACANCIES

Vacancies on any Advisory Committee shall be filled in the same manner as provided in the case of original appointments.

Section 12.6. COMPENSATION

Advisory Committee members shall receive no compensation for their services as a member of such Advisory Committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by Advisory Committee members, including Directors, performing their duties as Advisory Committee members.

ARTICLE 13 OTHER ADVISORY MECHANISMS

Section 13.1. EXTERNAL EXPERT ADVICE

(a) Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN. In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

(b) Types of Expert Advisory Panels

(i) On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 13.1(c) shall apply.

(ii) In addition, in accordance with Section 13.1(c), the Board may refer

issues of public policy pertinent to matters within ICANN's Mission to a multinational governmental or treaty organization.

(c) Process for Seeking Advice: Public Policy Matters

(i) The Governmental Advisory Committee may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.

(ii) In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.

(iii) The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee, with the suggestion that the request be transmitted by the Governmental Advisory Committee to the multinational governmental or treaty organization.

(d) Process for Seeking and Advice: Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 13.1(b)(i) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

(e) Receipt of Expert Advice and its Effect. External advice pursuant to this Section 13.1 shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.

(f) Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 13.2. TECHNICAL LIAISON GROUP

(a) Purpose. The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group ("**TLG**") shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities.

(b) TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board ("**IAB**").

(c) Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

(i) In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

(ii) As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's Mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

(d) TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or

structures within the TLG for the development of technical standards or for any other purpose.

(e) Technical Work with the IETF. The TLG shall have no involvement with ICANN's work for the Internet Engineering Task Force (IETF), Internet Research Task Force, or the Internet Architecture Board (IAB), as described in the IETF-ICANN Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000 and any supplemental agreements thereto.

(f) Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN's activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN when ICANN does not ask a specific TLG organization directly.

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

Section 14.1. BOARD COMMITTEES

The Board may establish one or more committees of the Board (each, a "**Board Committee**"), which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board; provided, that a Liaison may be appointed as a liaison to a Committee of the Board consistent with their non-voting capacity. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all Directors; provided, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all Directors.

Section 14.2. POWERS OF BOARD COMMITTEES

(a) The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

(i) The filling of vacancies on the Board or on any committee;

- (ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
- (iii) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (iv) The appointment of committees of the Board or the members thereof;
- (v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CCC;
- (vi) The approval of the ICANN Budget or IANA Budget required by Section 22.4 or the Operating Plan or Strategic Plan required by Section 22.5; or
- (vii) The compensation of any Officer described in Article 15.

(b) The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings of committees shall be governed by the provisions of Article 7 applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 14.3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE 15 OFFICERS

Section 15.1. OFFICERS

The officers of ICANN (each, an "**Officer**") shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN.

Section 15.2. ELECTION OF OFFICERS

The officers of ICANN shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chair of the Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 15.3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all Directors. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 15.4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio Director, and shall have all the same rights and privileges of any Director. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 15.5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 15.6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("**CFO**") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated

for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of the ICANN Budget, the IANA Budget and Operating Plan. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

Section 15.7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 15.8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 15.9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN.

ARTICLE 16 POST-TRANSITION IANA ENTITY

Section 16.1. DESCRIPTION

ICANN shall maintain as a separate legal entity a California nonprofit public benefit corporation (["**PTI**"]) for the purpose of providing IANA services, including providing IANA naming function services pursuant to the IANA Naming Function Contract, as well as other services as determined by ICANN in coordination with the direct and indirect customers of the IANA functions. ICANN shall at all times be the sole member of PTI as that term is defined in Section 5056 of the CCC ("**Member**"). For the purposes of these Bylaws, the "IANA naming function" does not include the Internet Protocol numbers and Autonomous System numbers

services (as contemplated by Section 1.1(a)(iii)), the protocol ports and parameters services and the root zone maintainer function.

Section 16.2. PTI Governance

(a) ICANN, in its capacity as the sole Member of PTI, shall elect the directors of PTI in accordance with the articles of incorporation and bylaws of PTI and have all other powers of a sole Member under the CCC except as otherwise provided in these Bylaws.

(b) No amendment or modification of the articles of incorporation of PTI shall be effective unless approved by the EC (pursuant to the procedures applicable to Articles Amendments described in Section 25.2, as if such Article Amendment referenced therein refers to an amendment of PTI's articles of incorporation).

(c) ICANN shall not amend or modify the bylaws of PTI in a manner that would effect any of the matters set forth in clauses (i) through (xiv) below (a "**PTI Bylaw Amendment**") if such PTI Bylaw Amendment has been rejected by the EC pursuant to the procedures described in Section 16.2(e):

(i) any change to the corporate form of PTI to an entity that is not a California nonprofit public benefit corporation organized under the CCC or any successor statute;

(ii) any change in the corporate mission of PTI that is materially inconsistent with ICANN's Mission as set forth in these Bylaws;

(iii) any change to the status of PTI as a corporation with members;

(iv) any change in the rights of ICANN as the sole Member of PTI, including voting, classes of membership, rights, privileges, preferences, restrictions and conditions;

(v) any change that would grant rights to any person or entity (other than ICANN) with respect to PTI as designators or otherwise to: (A) elect or designate directors of PTI; or (B) approve any amendments to the articles of incorporation or bylaws of PTI;

(vi) any change in the number of directors of the board of directors of PTI (the "**PTI Board**");

(vii) any changes in the allocation of directors on the PTI Board between independent directors and employees of ICANN or employees of PTI or to

the definition of "independent" (as used in PTI's bylaws) for purposes of determining whether a director of PTI is independent;

(viii) the creation of any committee of the PTI Board with the power to exercise the authority of the PTI Board;

(ix) any change in the procedures for nominating independent PTI directors;

(x) the creation of classes of PTI directors or PTI directors with different terms or voting rights;

(xi) any change in PTI Board quorum requirements or voting requirements;

(xii) any change to the powers and responsibilities of the PTI Board or the PTI officers;

(xiii) any change to the rights to exculpation and indemnification that is adverse to the exculpated or indemnified party, including with respect to advancement of expenses and insurance, provided to directors, officers, employees or other agents of PTI; or

(xiv) any change to the requirements to amend the articles of incorporation or bylaws of PTI.

(d) ICANN shall not take any of the following actions (together with the PTI Bylaw Amendments, "**PTI Governance Actions**") if such PTI Governance Action has been rejected by the EC pursuant to the procedures described in Section 16.2(e).

(i) Any resignation by ICANN as sole Member of PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN of its membership in PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN of any right arising from its membership in PTI.

(ii) Any sale, transfer or other disposition of PTI's assets, other than (A) in the ordinary course of PTI's business, (B) in connection with an IANA Naming Function Separation Process (as defined in Section 19.1(a)) that has been approved in accordance with Article 19 or (C) the disposition of obsolete, damaged, redundant or unused assets.

(iii) Any merger, consolidation, sale or reorganization of PTI.

(iv) Any dissolution, liquidation or winding-up of the business and affairs of PTI or the commencement of any other voluntary bankruptcy proceeding of PTI.

(e) Promptly after the Board approves a PTI Governance Action (a "**PTI Governance Action Approval**"), the Secretary shall provide a notice of the Board's decision to the EC Administration and the Decisional Participants ("**Board Notice**"), which Board Notice shall enclose a copy of the PTI Governance Action that is the subject of the PTI Governance Action Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A PTI Governance Action shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant (as defined in Section 2.2(c)(i) of Annex D) to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice (as defined in Section 2.2(c)(ii) of Annex D) is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(b) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following

the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(ii) A PTI Governance Action that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(iii) Following receipt of an EC Rejection Notice relating to a PTI Governance Action, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the PTI Governance Action in determining whether or not to develop a new PTI Governance Action and the substance of such new PTI Governance Action, which shall be subject to the procedures of this Section 16.2.

Section 16.3. IANA NAMING FUNCTION CONTRACT

(a) On or prior to 1 October 2016, ICANN shall enter into a contract with PTI for the performance of the IANA naming function (as it may be amended or modified, the "IANA Naming Function Contract") and a related statement of work (the "IANA Naming Function SOW"). Except as to implement any modification, waiver or amendment to the IANA Naming Function Contract or IANA Naming Function SOW related to an IFR Recommendation or Special IFR Recommendation approved pursuant to Section 18.6 or an SCWG Recommendation approved pursuant to Section 19.4 (which, for the avoidance of doubt, shall not be subject to this Section 16.3(a)), ICANN shall not agree to modify, amend or waive any

Material Terms (as defined below) of the IANA Naming Function Contract or the IANA Naming Function SOW if a majority of each of the ccNSO and GNSO Councils reject the proposed modification, amendment or waiver. The following are the "**Material Terms**" of the IANA Naming Function Contract and IANA Naming Function SOW:

- (i) The parties to the IANA Naming Function Contract and IANA Naming Function SOW;
- (ii) The initial term and renewal provisions of the IANA Naming Function Contract and IANA Naming Function SOW;
- (iii) The manner in which the IANA Naming Function Contract or IANA Naming Function SOW may be terminated;
- (iv) The mechanisms that are available to enforce the IANA Naming Function Contract or IANA Naming Function SOW;
- (v) The role and responsibilities of the CSC (as defined in Section 17.1), escalation mechanisms and/or the IFR (as defined in Section 18.1);
- (vi) The IANA Naming Function Contract's provisions requiring that fees charged by PTI be based on direct costs and resources incurred by PTI;
- (vii) The IANA Naming Function Contract's prohibition against subcontracting;
- (viii) The availability of the IRP as a point of escalation for claims of PTI's failure to meet defined service level expectations;
- (ix) The IANA Naming Function Contract's audit requirements; and
- (x) The requirements related to ICANN funding of PTI.

(b) ICANN shall enforce its rights under the IANA Naming Function Contract and the IANA Naming Function SOW.

ARTICLE 17 CUSTOMER STANDING COMMITTEE

Section 17.1. DESCRIPTION

ICANN shall establish a Customer Standing Committee ("**CSC**") to monitor PTI's

performance under the IANA Naming Function Contract and IANA Naming Function SOW.

The mission of the CSC is to ensure continued satisfactory performance of the IANA naming function for the direct customers of the naming services. The direct customers of the naming services are top-level domain registry operators as well as root server operators and other non-root zone functions.

The CSC will achieve this mission through regular monitoring of the performance of the IANA naming function against the IANA Naming Function Contract and IANA Naming Function SOW and through mechanisms to engage with PTI to remedy identified areas of concern.

The CSC is not authorized to initiate a change in PTI through a Special IFR (as defined in Section 18.1), but may escalate a failure to correct an identified deficiency to the ccNSO and GNSO, which might then decide to take further action using consultation and escalation processes, which may include a Special IFR. The ccNSO and GNSO may address matters escalated by the CSC, pursuant to their operating rules and procedures.

Section 17.2. COMPOSITION, APPOINTMENT, TERM AND REMOVAL

(a) The CSC shall consist of:

- (i) Two individuals representing gTLD registry operators appointed by the Registries Stakeholder Group;
- (ii) Two individuals representing ccTLD registry operators appointed by the ccNSO; and
- (iii) One individual liaison appointed by PTI,

each appointed in accordance with the rules and procedures of the appointing organization; provided that such individuals should have direct experience and knowledge of the IANA naming function.

(b) If so determined by the ccNSO and GNSO, the CSC may, but is not required to, include one additional member: an individual representing top-level domain registry operators that are not considered a ccTLD or gTLD, who shall be appointed by the ccNSO and the GNSO. Such representative shall be required to

submit a letter of support from the registry operator it represents.

(c) Each of the following organizations may also appoint one liaison to the CSC in accordance with the rules and procedures of the appointing organization: (i) GNSO (from the Registrars Stakeholder Group or the Non-Contracted Parties House), (ii) ALAC, (iii) either the NRO or ASO (as determined by the ASO), (iv) GAC, (v) RSSAC, (vi) SSAC and (vii) any other Supporting Organization or Advisory Committee established under these Bylaws.

(d) The GNSO and ccNSO shall approve the initial proposed members and liaisons of the CSC, and thereafter, the ccNSO and GNSO shall approve each annual slate of members and liaisons being recommended for a new term.

(e) The CSC members and liaisons shall select from among the CSC members who will serve as the CSC's liaison to the IFRT (as defined in Section 18.1) and any Separation Cross-Community Working Group ("**SCWG**").

(f) Any CSC member or liaison may be removed and replaced at any time and for any reason or no reason by the organization that appointed such member or liaison.

(g) In addition, the Chair of the CSC may recommend that a CSC member or liaison be removed by the organization that appointed such member or liaison, upon any of the following: (i) (A) for not attending without sufficient cause a minimum of nine CSC meetings in a one-year period (or at least 75% of all CSC meetings in a one-year period if less than nine meetings were held in such one-year period) or (B) if such member or liaison has been absent for more than two consecutive meetings without sufficient cause; or (ii) for grossly inappropriate behavior.

(h) A vacancy on the CSC shall be deemed to exist in the event of the death, resignation or removal of any CSC member or liaison. Vacancies shall be filled by the organization(s) that appointed such CSC member or liaison. The appointing organization(s) shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the Chair of the CSC. The organization(s) responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 17.3.CSC CHARTER; PERIODIC REVIEW

(a) The CSC shall act in accordance with its charter (the "**CSC Charter**").

(b) The effectiveness of the CSC shall be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review

will be determined by the ccNSO and GNSO and the findings of the review will be published on the Website.

(c) The CSC Charter shall be reviewed by a committee of representatives from the ccNSO and the Registries Stakeholder Group selected by such organizations. This review shall commence one year after the first meeting of the CSC. Thereafter, the CSC Charter shall be reviewed by such committee of representatives from the ccNSO and the Registries Stakeholder Group selected by such organizations at the request of the CSC, ccNSO, GNSO, the Board and/or the PTI Board and/or by an IFRT in connection with an IFR.

(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the ccNSO and GNSO Councils pursuant to each such organizations' procedures. Prior to any action by the ccNSO and GNSO, any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN. Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the Bylaws shall control.

Section 17.4. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the CSC to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the CSC.

ARTICLE 18 IANA NAMING FUNCTION REVIEWS

Section 18.1. IANA NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an "**IFR**") of PTI's performance of the IANA naming function against the contractual requirements set forth in the IANA Naming Function Contract and the IANA Naming Function SOW to be carried out by an IANA Function Review Team ("**IFRT**") established in accordance with Article 18, as follows:

(a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below ("**Periodic IFRs**"); and

(b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.12 below ("**Special IFRs**").

Section 18.2. FREQUENCY OF PERIODIC IFRS

- (a) The first Periodic IFR shall be convened no later than [1 October 2018].
- (b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.
- (c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (ii) a GNSO Supermajority. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.

Section 18.3. IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

- (a) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN community, and determine whether to make any recommendations with respect to PTI's performance;
- (b) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract and IANA Naming Function SOW;
- (c) Review the IANA Naming Function SOW and determine whether to recommend any amendments to the IANA Naming Function Contract and IANA Naming Function SOW to account for the needs of the direct customers of the naming services and/or the community at large;
- (d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;
- (e) Review and evaluate the performance and effectiveness of the EC with respect to actions taken by the EC, if any, pursuant to Section 16.2, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;
- (f) Review and evaluate the performance of the IANA naming function according to established service level expectations during the IFR period being reviewed and

compared to the immediately preceding Periodic IFR period;

(g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;

(h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN);

(i) Consider input from the CSC and the community on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;

(j) Identify process or other areas for improvement in the performance of the IANA naming function under the IANA Naming Function Contract and IANA Naming Function SOW and the performance of the CSC and the EC as it relates to oversight of PTI; and

(k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA Naming Function Contract and IANA Naming Function SOW.

Section 18.4. IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

(a) Reports provided by PTI pursuant to the IANA Naming Function Contract and/or IANA Naming Function SOW during the IFR period being reviewed, any portion of which may be redacted pursuant to the Confidential Disclosure Framework set forth in the Operating Standards in accordance with Section 4.6(a)(vi);

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things, public comment periods, input provided at in-person sessions during ICANN meetings, responses to public surveys related to PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in consultation with ICANN (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA Naming Function Contract or the IANA Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to Section 18.3.

Section 18.5. IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in Section 18.3 and comply with this Section 18.5.

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO.

(d) Notwithstanding anything herein to the contrary, the IFRT shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA Naming Function Contract or the IANA Naming Function SOW, including, without limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN.

Section 18.6. Recommendations to Amend the IANA Naming Function contract, iana naming function SOW or CSC charter

(a) The IFRT may recommend, among other things to the extent reasonably related to the IFR responsibilities set forth in Section 18.3, amendments to the IANA Naming Function Contract, IANA Naming Function SOW and/or the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA Naming Function Contract, IANA Naming Function SOW or CSC Charter is proposed:

- (i) Consult with the Board (such consultation to be conducted in parallel with other processes set forth in this Section 18.6(a)) and PTI;
- (ii) Consult with the CSC;
- (iii) Conduct a public input session for ccTLD and gTLD registry operators; and
- (iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN.

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA Naming Function Contract or IANA Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "**IFR Recommendation**"), each of the following occurs:

- (i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;
- (ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the IFR Recommendation; and
- (iii) The EC has not rejected the Board's approval of the IFR Recommendation pursuant to and in compliance with Section 18.6(d).

(c) If the Board (x) rejects an IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.6(b)(i) or (y) does not resolve to either accept or reject an IFR Recommendation within 45 days of the

later of (1) the date that the condition in Section 18.6(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.6(b)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable IFR Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum (as defined in Section 2.3(a) of Annex D), which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants (as defined in Section 2.2(d)(i) of Annex D) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the IFR Recommendation or approve the IFR Recommendation (either, a "**Post-Forum IFR Recommendation Decision**").

(A) If the Board resolves to approve the IFR Recommendation, such IFR Recommendation will be subject to Section 18.6(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the IFR Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an IFR Recommendation (an "**IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall

enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IFR Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IFR Recommendation Decision.

(ii) An IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) For the avoidance of doubt, Section 18.6(d) shall not apply when the Board acts in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.

(f) Timelines for implementing any amendments to the IANA Naming Function Contract or IANA Naming Function SOW shall be reasonably agreed between the IFRT, ICANN and PTI.

(g) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;

(b) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in making its appointment;

(c) Two representatives appointed by the Registries Stakeholder Group;

(d) One representative appointed by the Registrars Stakeholder Group;

(e) One representative appointed by the Commercial Stakeholder Group;

(f) One representative appointed by the Non-Commercial Stakeholder Group;

(g) One representative appointed by the GAC;

(h) One representative appointed by the SSAC;

(i) One representative appointed by the RSSAC;

(j) One representative appointed by the ALAC;

(k) One liaison appointed by the CSC;

(l) One liaison who may be appointed by the ASO; and

(m) One liaison who may be appointed by the IAB.

(n) The IFRT shall also include an unlimited number of non-member, non-liaison participants.

(o) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8. MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

(a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.

(b) Members, liaisons and participants of the IFRT shall disclose to ICANN and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.

(c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN Geographic Region, and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region.

(d) The IFRT shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (c)-(f) of Section 18.7 and one appointed by the ccNSO from one of the members appointed pursuant to clauses (a)-(b) of Section 18.7.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN.

(f) Liaisons to the IFRT are not members of or entitled to vote on any matters before the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote.

(h) Removal and Replacement of IFRT Members and Liaisons

(i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.

(ii) A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 18.9. MEETINGS

(a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority may disagree, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT shall be the action of the IFRT.

(b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.

(c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10. COMMUNITY REVIEWS AND REPORTS

(a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN and through discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN.

(c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT.

Section 18.12. SPECIAL IFRS

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (a "**PTI Performance Issue**"), following the satisfaction of each of the following conditions:

(i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;

(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;

(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and

(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

(i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA naming function performance by PTI and how to resolve the PTI Performance Issue;

(ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and

(iii) Each recommendation of the IFRT relating to the Special IFR, including but not limited to any recommendation to initiate an IANA Naming Function Separation Process, must be related to remediating the PTI Performance Issue or other issue with PTI's performance that is related to the IFRT responsibilities set forth in Section 18.3, shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue or other relevant issue with PTI's performance.

(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

(i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the Special IFR Recommendation; and

(iii) The EC has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

(d) If the Board (x) rejects a Special IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.12(c)(i) or (y) does not resolve to either accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable Special IFR Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the Special IFR Recommendation or approve the Special IFR Recommendation (either, a "**Post-Forum Special IFR Recommendation Decision**").

(A) If the Board resolves to approve the Special IFR Recommendation, such Special IFR Recommendation will be subject to Section 18.6(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the Special IFR Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum Special IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(e) Promptly after the Board approves a Special IFR Recommendation (a "**Special IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such Special IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the

Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Special IFR Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Special IFR Recommendation Decision.

(ii) A Special IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(f) For the avoidance of doubt, Section 18.12(e) shall not apply when the Board acts in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that an IANA Naming Function Separation Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

Section 19.1. ESTABLISHING AN SCWG

(a) An "**IANA Naming Function Separation Process**" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA naming function instead of PTI

("IANA Naming Function RFP"), the selection of an IANA naming function operator other than PTI, termination or non-renewal of the IANA Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN.

(b) The Board shall establish an SCWG if each of the following occurs:

(i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as applicable, has recommended that an IANA Naming Function Separation Process is necessary and has recommended the creation of an SCWG (an "**SCWG Creation Recommendation**");

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Creation Recommendation. A determination by the Board to not approve an SCWG Creation Recommendation, where such creation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and

(iv) The EC has not rejected the Board's approval of the SCWG Creation Recommendation pursuant to and in compliance with Section 19.1(d).

(c) If the Board (x) rejects an SCWG Creation Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.1(b)(ii) or (y) does not resolve to either accept or reject an SCWG Creation Recommendation within 45 days of the later of (1) the date that the condition in Section 19.1(b)(ii) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.1(b)(iii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Creation Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional

Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Creation Recommendation or approve the SCWG Creation Recommendation (either, a "**Post-Forum SCWG Creation Recommendation Decision**").

(A) If the Board resolves to approve the SCWG Creation Recommendation, such SCWG Creation Recommendation will be subject to Section 19.1(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Creation Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum SCWG Creation Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Creation Recommendation (an "**SCWG Creation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Creation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Creation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Creation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Creation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Creation Decision.

(ii) An SCWG Creation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

Section 19.2. SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR or Periodic IFR, as applicable, identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA Naming Function RFP, the

SCWG shall:

(i) Develop IANA Naming Function RFP guidelines and requirements for the performance of the IANA naming function, in a manner consistent with ICANN's publicly available procurement guidelines (as in effect immediately prior to the formation of the SCWG); and

(ii) Solicit input from ICANN as well as the global Internet community (through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN) on requirements to plan and participate in the IANA Naming Function RFP process.

(c) If an SCWG Recommendation (as defined in Section 19.4(b)) to issue the IANA Naming Function RFP is approved pursuant to Section 19.4(b) and the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), the SCWG, in consultation with ICANN, shall:

(i) Issue the IANA Naming Function RFP;

(ii) Review responses from interested candidates to the IANA Naming Function RFP, which may be received from PTI and/or any other entity or person; and

(iii) Recommend the entity that ICANN should contract with to perform the IANA naming function.

(d) If the SCWG recommends an IANA Naming Function Separation Process other than the issuance of an IANA Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA Naming Function Separation Process.

Section 19.3. COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN) and may recommend discussions during

ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN shall promptly post the SCWG's final report on the Website.

Section 19.4. SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in Section 19.2 and comply with this Section 19.4.

(b) ICANN shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

(i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Recommendation. A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.4(b)(i), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and

(iii) The EC has not rejected the Board's approval of the SCWG Recommendation pursuant to and in compliance with Section 19.4(d).

(c) If the Board (x) rejects an SCWG Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.4(b)(i) or (y) does not resolve to either accept or reject an SCWG Recommendation within 45 days of the later of (1) the date that the condition in Section 19.4(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.4(b)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Recommendation or approve the SCWG Recommendation (either, a "**Post-Forum SCWG Recommendation Decision**").

(A) If the Board resolves to approve the SCWG Recommendation, such SCWG Recommendation will be subject to Section 19.4(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum SCWG Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Recommendation (an "**SCWG Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Recommendation Decision.

(ii) An SCWG Recommendation Decision that has been rejected by the EC

pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) ICANN shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA naming function as ICANN's independent contractor. ICANN shall not be authorized to raise fees from any TLD registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA naming function, including those relating to the operating costs of the successor operator.

(f) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA naming function is approved pursuant to Section 19.4(b) and (ii) the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), ICANN shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation.

(g) As promptly as practical following an SCWG Recommendation Decision becoming final in accordance with this Section 19.4, ICANN shall take all steps reasonably necessary to effect such SCWG Recommendation Decision as soon as practicable.

Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;

(ii) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the

regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD and CENTR) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

(v) One representative appointed by the Commercial Stakeholder Group;

(vi) One representative appointed by the Non-Commercial Stakeholder Group;

(vii) One representative appointed by the GAC;

(viii) One representative appointed by the SSAC;

(ix) One representative appointed by the RSSAC;

(x) One representative appointed by the ALAC;

(xi) One liaison appointed by the CSC;

(xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;

(xiii) One liaison who may be appointed by the ASO;

(xiv) One liaison who may be appointed by the IAB; and

(xv) One liaison who may be appointed by the Board.

(xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v) that the candidate understands the time necessary to participate in the

SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

(i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN Geographic Region, and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region;

(ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and

(iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN shall select an ICANN staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN and the SCWG and PTI. Communications between the SCWG and the ICANN and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 19.7. MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority may disagree, but most agree.

(b) Any members of the SCWG not in favor of an action may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the

guidelines and procedures applicable to ICANN Cross Community Working Groups that will be publicly available and may be amended from time to time.

Section 19.8. ADMINISTRATIVE SUPPORT

ICANN shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

Section 19.9. CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency.

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 20.1. INDEMNIFICATION GENERALLY

ICANN shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article 20, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of the EC, the EC Administration, any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article 20.

Section 20.2. INDEMNIFICATION WITH RESPECT TO DIRECTOR REMOVAL

If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC Administration is a party or is threatened to be made a party (as a party or witness) (a "**Director Removal Proceeding**"), ICANN shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person reasonably believed to be in ICANN's best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by ICANN. ICANN shall not be obligated to indemnify such person against any settlement of a Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN's sole indemnification obligation with respect to the subject matter set forth in this Section 20.2.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.

Section 21.2. DEPOSITS

All funds of ICANN not otherwise employed shall be deposited from time to time to

the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 21.3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.

Section 21.4. LOANS

No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.

Section 21.5. NOTICES

All notices to be given to the EC Administration, the Decisional Participants, or the Secretary pursuant to any provision of these Bylaws shall be given either (a) in writing at the address of the appropriate party as set forth below or (b) via electronic mail as provided below, unless that party has given a notice of change of postal or email address, as provided in this Section 21.5. Any change in the contact information for notice below will be given by the party within 30 days of such change. Any notice required by these Bylaws will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three days. In the event other means of notice become practically achievable, such as notice via a secure website, the EC Administration, the Decisional Participants, and ICANN will work together to implement such notice means.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Email: []

Attention: Secretary

If to a Decisional Participant or the EC Administration, addressed to the contact information available at [insert Website reference].

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

Section 22.1. ACCOUNTING

The fiscal year end of ICANN shall be determined by the Board.

Section 22.2. AUDIT

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 22.3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement, a description of any payments made by ICANN to Directors (including reimbursements of expenses) and a description of ICANN's progress towards the obligations imposed under the Bylaws as revised on 1 October 2016 and the Operating Plan and Strategic Plan. ICANN shall cause the annual report and the annual statement of certain transactions as required by the CCC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

Section 22.4. BUDGETS

(a) ICANN Budget

(i) In furtherance of its Commitment to transparent and accountable budgeting processes, at least forty-five (45) days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed annual operating plan and budget of ICANN for the next fiscal year (the "ICANN Budget"), which shall be posted on the

Website. The ICANN Budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item.

(ii) Prior to approval of the ICANN Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the ICANN Budget development process, and comply with the requirements of this Section 22.4(a).

(iii) Prior to approval of the ICANN Budget by the Board, a draft of the ICANN Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the ICANN Budget and may direct ICANN Staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an ICANN Budget (an "**ICANN Budget Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the ICANN Budget that is the subject of the ICANN Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An ICANN Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date (as defined in Section 2.2(a) of Annex D) relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An ICANN Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an ICANN Budget, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the ICANN Budget in determining the substance of such new ICANN Budget, which shall be subject to the procedures of this Section 22.4(a).

(ix) If an ICANN Budget has not come into full force and effect pursuant to this Section 22.4(a) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex E hereto ("**Caretaker ICANN Budget**"), which Caretaker ICANN Budget shall be effective until such time as an ICANN Budget has been effectively approved by the Board and not rejected by the EC pursuant to this Section 22.4(a).

(b) IANA Budget

(i) At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual operating plan and budget of PTI and the IANA department, which budget shall include itemization of the direct costs for ICANN's IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN's IANA department for the next fiscal year (the "**IANA Budget**"), which shall be posted on the Website. Separately and in addition to the general ICANN planning process, ICANN shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI's performance of the IANA functions for the next fiscal year ("**PTI Budget**"). ICANN shall require PTI to consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, the IAB and RIRs, during the PTI Budget development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN shall require PTI to submit the PTI Budget to ICANN as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN Budget.

(ii) Prior to approval of the IANA Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs, during the IANA Budget development process, and comply with the requirements of this Section 22.4(b).

(iii) Prior to approval of the IANA Budget by the Board, a draft of the IANA Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the IANA Budget and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an IANA Budget (an "**IANA Budget Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IANA Budget that is the subject of the IANA Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants,

on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An IANA Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An IANA Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an IANA Budget, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the IANA Budget in determining the substance of such new IANA Budget, which shall be subject to the procedures of this Section 22.4(b).

(ix) If an IANA Budget has not come into full force and effect pursuant to this Section 22.4(b) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex F hereto ("**Caretaker IANA Budget**"), which Caretaker IANA Budget shall be effective until such time as an IANA Budget has been effectively approved by the Board and not rejected by the EC pursuant to this Section 22.4(b).

(c) If an IANA Budget does not receive an EC Rejection Notice but an ICANN Budget receives an EC Rejection Notice, any subsequent revised ICANN Budget shall not alter the expenditures allocated for the IANA Budget.

(d) If an ICANN Budget does not receive an EC Rejection Notice but an IANA Budget receives an EC Rejection Notice, any subsequent revised IANA Budget shall, once approved, be deemed to automatically modify the ICANN Budget in a manner determined by the Board without any further right of the EC to reject the ICANN Budget.

(e) Under all circumstances, the Board will have the ability to make out-of-budget funding decisions for unforeseen expenses necessary to maintaining ICANN's Mission or to fulfilling ICANN's pre-existing legal obligations and protecting ICANN from harm or waste.

(f) To maintain ongoing operational excellence and financial stability of the IANA functions (so long as they are performed by ICANN or pursuant to contract with ICANN) and PTI, ICANN shall be required to plan for and allocate funds to ICANN's performance of the IANA functions and to PTI, as applicable, that are sufficient to cover future expenses and contingencies to ensure that the performance of those IANA functions and PTI in the future are not interrupted due to lack of funding.

(g) The ICANN Budget and the IANA Budget shall be published on the Website.

Section 22.5. PLANS

(a) Operating Plan

(i) At least 45 days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed operating plan of ICANN for the next five fiscal years (the "**Operating Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Operating Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Operating Plan development process, and comply with the requirements of this Section 22.5(a).

(iii) Prior to approval of the Operating Plan by the Board, a draft of the Operating Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Operating Plan and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an Operating Plan (an "**Operating Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Operating Plan that is the subject of the Operating Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An Operating Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in

which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An Operating Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an Operating Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Operating Plan in determining the substance of such new Operating Plan, which shall be subject to the procedures of this Section 22.5(a).

(b) Strategic Plan

(i) At least 45 days prior to the commencement of each five fiscal year period, with the first such period covering fiscal years 2021 through 2025, ICANN staff shall prepare and submit to the Board a proposed strategic plan of ICANN for the next five fiscal years (the "**Strategic Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Strategic Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Strategic Plan development process, and comply with the requirements of this Section 22.5(b).

(iii) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Strategic Plan and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves a Strategic Plan (a "**Strategic Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Strategic Plan that is the subject of the Strategic Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) A Strategic Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the 28th day following the

Rejection Action Board Notification Date relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) A Strategic Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to a Strategic Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Strategic Plan in determining the substance of such new Strategic Plan, which shall be subject to the procedures of this Section 22.5(b).

Section 22.6. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by

ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

Section 22.7. INSPECTION

(a) A Decisional Participant (the "**Inspecting Decisional Participant**") may request to inspect the accounting books and records of ICANN, as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC. The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect ("**Inspection Request**"). Any Inspection Request must be limited to the accounting books and records of ICANN relevant to the operation of ICANN as a whole, and shall not extend to the underlying sources of such accounting books or records or to documents only relevant to a small or isolated aspect of ICANN's operations or that relate to the minutiae of ICANN's financial records or details of its management and administration (the "**Permitted Scope**"). Unless ICANN declines such request (as provided below), ICANN shall make the records requested under an Inspection Request available for inspection by such Inspecting Decisional Participant within 30 days of the date the Inspection Request is received by the Secretary or as soon as reasonably practicable thereafter. All materials and information made available by ICANN for inspection pursuant to an Inspection Request may only be used by the Inspecting Decisional Participant for purposes reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC. ICANN shall post all Inspection Requests to the Website.

(b) ICANN may decline an Inspection Request on the basis that such Inspection Request (i) is motivated by a Decisional Participant's financial, commercial or political interests, or those of one or more of its constituents, (ii) relates to documents that are not reasonably related to the purpose specified in the Inspection Request or the Inspecting Decisional Participant's interest as a Decisional Participant in the EC, (iii) requests identical records provided in a prior request of such Decisional Participant, (iv) is not within the Permitted Scope, (v) relates to personnel records, (vi) relates to documents or communications covered by attorney-client privilege, work product doctrine or other legal privilege or (vii) relates to documents or communications that ICANN may not make available

under applicable law because such documents or communications contain confidential information that ICANN is required to protect. If an Inspection Request is overly broad, ICANN may request a revised Inspection Request from the Inspecting Decisional Participant.

(c) Any such inspections shall be conducted at the times and locations reasonably determined by ICANN and shall not be conducted in a manner that unreasonably interferes with ICANN's operations. All such inspections shall be subject to reasonable procedures established by ICANN, including, without limitation, the number of individuals authorized to conduct any such inspection on behalf of the Inspecting Decisional Participant. ICANN may require the inspectors to sign a non-disclosure agreement. The Inspecting Decisional Participant may, at its own cost, copy or otherwise reproduce or make a record of materials inspected. ICANN may redact or determine not to provide requested materials on the same basis that such information is of a category or type described in Section 22.7(b), in which case ICANN will provide the Inspecting Decisional Participant a written rationale for such redactions or determination.

(d) The inspection rights provided to the Decisional Participants pursuant to this Section 22.7 are granted to the Decisional Participants and are not granted or available to any other person or entity. Notwithstanding the foregoing, nothing in this Section 22.7 shall be construed as limiting the accessibility of ICANN's document information disclosure policy ("**DIDP**").

(e) If the Inspecting Decisional Participant believes that ICANN has violated the provisions of this Section 22.7, the Inspecting Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with Section 4.2, (iii) initiate the Independent Review Process in accordance with Section 4.3, or (iv) petition the EC to initiate (A) a Community IRP pursuant to Section 4.2 of Annex D or (B) a Board Recall Process pursuant to Section 3.3 of Annex D. Any determination by the Ombudsman is not binding on ICANN staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.

Section 22.8. INDEPENDENT INVESTIGATION

If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible allegation that ICANN has committed fraud or that there has been a gross mismanagement of ICANN's resources, ICANN shall retain a third-party,

independent firm to investigate such alleged fraudulent activity or gross mismanagement. ICANN shall post all such certifications to the Website. The independent firm shall issue a report to the Board. The Board shall consider the recommendations and findings set forth in such report. Such report shall be posted on the Website, which may be in a redacted form as determined by the Board, in order to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential, in which case ICANN will provide the Decisional Participants that submitted the certification a written rationale for such redactions.

ARTICLE 23 MEMBERS

ICANN shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term "member" in these Bylaws, in any ICANN document, or in any action of the Board or staff. For the avoidance of doubt, the EC is not a member of ICANN.

ARTICLE 24 OFFICES AND SEAL

Section 24.1. OFFICES

The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 24.2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 25 AMENDMENTS

Section 25.1. AMENDMENTS TO THE STANDARD BYLAWS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may be altered, amended, or repealed and new Bylaws adopted only upon approval by a two-thirds vote of all Directors and in compliance with the terms of this Section 25.1 (a "**Standard Bylaw Amendment**").

(b) Prior to approval of a Standard Bylaw Amendment by the Board, a draft of the Standard Bylaw Amendment shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Standard Bylaw Amendment and may conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of a Standard Bylaw Amendment ("**Standard Bylaw Amendment Approval**"), the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and the Board's rationale for adopting such amendment, and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 2 of Annex D shall then be followed.

(e) A Standard Bylaw Amendment shall become effective upon the earliest to occur of the following:

(i) (A) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the 30th day following the Rejection Action Board Notification Date relating to such Standard Bylaw Amendment Approval and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(ii) (A) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; or

(iii) (A) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(f) If an EC Rejection Notice is timely delivered by the EC Administration to the Secretary pursuant to and compliance with Section 2.4 of Annex D, the Standard Bylaw Amendment contained in the Board Notice shall be deemed to have been rejected by the EC. A Standard Bylaw Amendment that has been rejected by the EC shall be null and void and shall not become part of these Bylaws, notwithstanding its approval by the Board.

(g) The Secretary shall promptly inform the Board of the receipt and substance of any Rejection Action Petition, Rejection Action Supported Petition or EC Rejection Notice delivered by the Rejection Action Petitioning Decisional Participant or the EC Administration, as applicable, to the Secretary hereunder.

(h) Following receipt of an EC Rejection Notice pertaining to a Standard Bylaw Amendment, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Standard Bylaw Amendment in determining whether or not to develop a new Standard Bylaw Amendment and the substance of such new Standard Bylaw Amendment, which shall be subject to the procedures of this Section 25.1.

Section 25.2. AMENDMENTS TO THE FUNDAMENTAL BYLAWS AND ARTICLES OF INCORPORATION

(a) Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and this Article 25 are each a "**Fundamental Bylaw**" and, collectively, are the "**Fundamental Bylaws**".

(b) Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the Articles of Incorporation may be altered, amended, or repealed (a "**Fundamental Bylaw Amendment**" or an "**Articles Amendment**"), only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Section 25.2.

(c) Prior to approval of a Fundamental Bylaw Amendment, or an Articles Amendment by the Board, a draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(d) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(e) Within seven days after the Board's approval of a Fundamental Bylaw Amendment or Articles Amendment, as applicable, the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(f) If the EC Administration timely delivers an EC Approval Notice (as defined in Section 1.4(b) of Annex D), the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed approved by the EC, and, as applicable, (i) such Fundamental Bylaw Amendment shall be in full force and effect as part of these Bylaws as of the date immediately following the Secretary's receipt of the EC Approval Notice; or (ii) the Secretary shall cause such Articles Amendment promptly to be certified by the appropriate officers of ICANN and filed with the California Secretary of State. In the event of such approval, neither the Fundamental Bylaw Amendment nor the Articles Amendment shall be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(g) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, the Fundamental Bylaw Amendment shall not be part of these Bylaws and the Articles Amendment shall not be filed with the Secretary of State.

(h) If a Fundamental Bylaw Amendment or Articles Amendment, as applicable, is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to develop a new Fundamental Bylaws Amendment or Articles Amendment, as applicable, and the substance thereof, which shall be subject to the procedures of this Section 25.2.

Section 25.3. AMENDMENTS RESULTING FROM A POLICY DEVELOPMENT PROCESS

The Board shall not combine an amendment of these Bylaws that was the result of a policy development process of a Supporting Organization (a "**PDP Amendment**") with any other amendment. The Board shall indicate in the applicable Board Notice whether such amendment is a PDP Amendment.

Section 25.4. OTHER AMENDMENTS

For the avoidance of doubt, these Bylaws can only be amended as set forth in this Article 25. Neither the EC, the Decisional Participants, the Supporting Organizations, the Advisory Committees nor any other entity or person shall have the power to directly propose amendments to these Bylaws.

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN'S ASSETS

(a) ICANN may consummate a transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets (an "**Asset Sale**") only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Article 26.

(b) Prior to approval of an Asset Sale by the Board, a draft of the definitive Asset Sale agreement (an "**Asset Sale Agreement**"), shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Asset Sale Agreement, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of an Asset Sale the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the Asset Sale

Agreement and (ii) post the Board Notice on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(e) If the EC Administration timely delivers an EC Approval Notice for the Asset Sale pursuant to and in compliance with the procedures and requirements of Section 1.4(b) of Annex D, the Asset Sale set forth in the Board Notice shall be deemed approved by the EC, and the Asset Sale may be consummated by ICANN, but only under the terms set forth in the Asset Sale Agreement. In the event of such approval, the Asset Sale shall not be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(f) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Asset Sale set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, ICANN shall not consummate the Asset Sale.

(g) If an Asset Sale is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to consider a new Asset Sale, and the substance thereof, which shall be subject to the procedures of this Article 26.

ARTICLE 27 TRANSITION ARTICLE

Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN Accountability ("**CCWG-Accountability**") was established pursuant to a charter dated 3 November 2014 ("**CCWG-Accountability Charter**"). The CCWG-Accountability Charter was subsequently adopted by the GNSO, ALAC, ccNSO, GAC, ASO and SSAC ("**CCWG Chartering Organizations**"). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("**CCWG-Accountability Final Report**") that the below matters be reviewed and developed following the adoption date of these Bylaws ("**Work Stream 2 Matters**"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

(i) Improvements to ICANN's standards for diversity at all levels;

(ii) ICANN staff accountability;

(iii) Supporting Organization and Advisory Committee accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;

(iv) Improvements to ICANN's transparency, focusing on enhancements to ICANN's existing DIDP, transparency of ICANN's interactions with governments, improvements to ICANN's whistleblower policy and transparency of Board deliberations;

(v) Developing and clarifying the FOI-HR (as defined in Section 27.2);

(vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability;

(vii) Considering enhancements to the Ombudsman's role and function;

(viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and

(ix) Reviewing the CEP (as set forth in Section 4.3).

(c) As provided in the CCWG-Accountability Charter and the Board's 2014.10.16.16 resolution, the Board shall consider consensus-based recommendations from the CCWG-Accountability on Work Stream 2 Matters ("**Work Stream 2 Recommendations**") with the same process and criteria it committed to using to consider the CCWG-Accountability recommendations in the CCWG-Accountability Final Report ("**Work Stream 1 Recommendations**"). For the avoidance of doubt, that process and criteria includes:

(i) All Work Stream 2 Recommendations must further the following principles:

(A) Support and enhance the multistakeholder model;

(B) Maintain the security, stability and resiliency of the DNS;

(C) Meet the needs and expectations of the global customers and partners of the IANA services;

(D) Maintain the openness of the Internet; and

(E) Not result in ICANN becoming a government-led or an inter-governmental organization.

(ii) If the Board determines, by a vote of a two-thirds majority of the Board, that it is not in the global public interest to implement a Work Stream 2 Recommendation, it must initiate a dialogue with the CCWG-Accountability.

(iii) The Board shall provide detailed rationale to accompany the initiation of dialogue. The Board and the CCWG-Accountability shall mutually agree upon the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. Discussions shall be held in good faith and in a timely and efficient manner in an effort to find a mutually acceptable solution.

(iv) The CCWG-Accountability shall have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG-Accountability shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.

If a Work Stream 2 Recommendation is modified by the CCWG-Accountability, the CCWG-Accountability shall submit the modified Work Stream 2 Recommendation to the Board for further consideration along with detailed rationale on how the modification addresses the concerns raised by the Board.

(v) If, after the CCWG-Accountability modifies a Work Stream 2 Recommendation, the Board still believes it is not in the global public interest to implement the Work Stream 2 Recommendation, the Board may, by a vote of a two-thirds majority of the Board, send the matter back to the CCWG-Accountability for further consideration. The Board shall provide detailed rationale to accompany its action. If the Board determines not to accept a modified version of a Work Stream 2 Recommendation, unless required by its fiduciary obligations, the Board shall not establish an alternative solution on the issue addressed by the Work Stream 2 Recommendation until such time as the CCWG-Accountability and the Board reach agreement.

(d) ICANN shall provide adequate support for work on Work Stream 2 Matters, within budgeting processes and limitations reasonably acceptable to the CCWG-Accountability.

(e) The Work Stream 2 Matters specifically referenced in Section 27.1(b) shall be

the only matters subject to this Section 27.1 and any other accountability enhancements should be developed through ICANN's other procedures.

(f) The outcomes of each Work Stream 2 Matter are not limited and could include a variety of recommendations or no recommendation; provided, however, that any resulting recommendations must directly relate to the matters discussed in Section 27.1(b).

Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.>

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR.

Section 27.3. EXISTING GROUPS AND TASK FORCES

Notwithstanding the adoption or effectiveness of these Bylaws, task forces and other groups in existence prior to the date of these Bylaws shall continue unchanged in membership, scope, and operation unless and until changes are made by ICANN in compliance with the Bylaws.

Section 27.4. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of these Bylaws, all agreements, including employment and consulting agreements, entered into by ICANN shall continue in effect according to their terms.

Annex A: GNSO Policy Development Process

The following process shall govern the GNSO policy development process ("**PDP**") until such time as modifications are recommended to and approved by the Board. The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the

Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party is affected by the issue;
- b. Formal initiation of the Policy Development Process by the Council;
- c. Formation of a Working Group or other designated work method;
- d. Initial Report produced by a Working Group or other designated work method;
- e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;
- f. Council approval of PDP Recommendations contained in the Final Report, by the required thresholds;
- g. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
- h. Board approval of PDP Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO shall maintain a Policy Development Process Manual ("**PDP Manual**") within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a

mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee Request. An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO Council; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (a "**Preliminary Issue Report**"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the request for the Issue Report;
- c. How that party is affected by the issue, if known;
- d. Support for the issue to initiate the PDP, if known;
- e. The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the Mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.
- f. The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the Website for a public comment period that complies with the designated practice for public comment periods within ICANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the

Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

Section 5. **Initiation of the PDP**

The Council may initiate the PDP as follows:

Board Request. If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.

GNSO Council or Advisory Committee Requests: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in Section 11.3(i)(ii) and Section 11.3(i)(iii) in favor of initiating the PDP.

Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

The Council approval process is set forth in Section 11.3(i)(iv) through Section 11.3(vii), as supplemented by the PDP Manual.

Section 8. **Preparation of the Board Report**

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the

Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 10. Implementation of Approved Policies

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation

review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each PDP issue. Such status page will outline the completed and upcoming steps in the PDP process, and contain links to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

Section 12. **Additional Definitions**

"Comment Site", **"Comment Forum"**, **"Comments For a"** and **"Website"** refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO Council.

"Staff Manager" means an ICANN staff person(s) who manages the PDP.

"GNSO Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be feasibly transitioned to these updated procedures, the PDP shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex A-1: GNSO Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO Council invokes the GNSO Expedited Policy Development Process ("**EPDP**"). The GNSO Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially

scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the Board. Where a conflict arises in relation to an EPDP between the PDP Manual (see Annex 2 of the GNSO Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO is outlined in Article 11 of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus Policy; however, in all cases where the GNSO is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. Required Elements of a GNSO Expedited Policy Development Process

The following elements are required at a minimum to develop expedited GNSO policy recommendations, including recommendations that could result in amendments to an existing Consensus Policy, as part of a GNSO Expedited Policy Development Process:

- a. Formal initiation of the GNSO Expedited Policy Development Process by the GNSO Council, including an EPDP scoping document;
- b. Formation of an EPDP Team or other designated work method;
- c. Initial Report produced by an EPDP Team or other designated work method;
- d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;
- e. GNSO Council approval of EPDP Policy Recommendations contained in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;
- f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and
- g. Board approval of EPDP Recommendation(s).

Section 2. Expedited Policy Development Process Manual

The GNSO shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO Policy Development Process Manual (PDP Manual), described in Annex 5 of the GNSO Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The E PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d) .

Section 3. Initiation of the EPDP

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in Section 11.3(i)(xii) of these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C;
2. Origin of issue (e.g. previously completed PDP);
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);
4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO policy issue that had been scoped previously as part of a PDP that was not completed or other similar effort, including relevant supporting information in either case;
5. If not provided as part of item 4, the opinion of the ICANN General Counsel as to whether the issue proposed for consideration is properly within the scope of the Mission, policy process and more specifically the role of the GNSO;
6. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers);

7. Method of operation, if different from GNSO Working Group Guidelines;
8. Decision-making methodology for EPDP mechanism, if different from GNSO Working Group Guidelines;
9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO Council, a Recommendation(s) Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council

(the "Board Statement"); and (ii) submit the Board Statement to the Council.

- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 7. Implementation of Approved Policies

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN staff to work with the GNSO Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

Section 8. Maintenance of Records

Throughout the EPDP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. Applicability

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

Annex A-2: GNSO Guidance Process

The following process shall govern the GNSO guidance process ("**GGP**") until such time as modifications are recommended to and approved by the Board . The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are intended to result in a Consensus Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. Required Elements of a GNSO Guidance Process

The following elements are required at a minimum to develop GNSO guidance:

1. Formal initiation of the GNSO Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

Section 2. GNSO Guidance Process Manual

The GNSO shall maintain a GNSO Guidance Process (GGP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. Initiation of the GGP

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN Board. Initiation of a GGP requires a vote as set forth in Section 11.3(i)(xvi) in favor of initiating the GGP. In the case of a GGP requested by the Board, a GGP will automatically be initiated unless the GNSO Council votes against the initiation of a GGP as set forth in Section 11.3(i)(xvii).

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG, DT, individual volunteers)
5. Method of operation, if different from GNSO Working Group Guidelines
6. Decision-making methodology for GGP mechanism, if different from GNSO Working Group Guidelines
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Section 11.3(xviii) as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any GGP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO Guidance recommendation(s) adopted by a GNSO Supermajority Vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN.

Section 7. **Implementation of Approved GNSO Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the GNSO Guidance. If deemed necessary, the Board may direct ICANN Staff to work with the GNSO Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. Maintenance of Records

Throughout the GGP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. Additional Definitions

"**Comment Site**", "**Comment Forum**", "**Comments Fora**" and "**Website**" refer to one or more websites designated by ICANN on which notifications and comments regarding the GGP will be posted.

"**GGP Staff Manager**" means an ICANN staff person(s) who manages the GGP.

Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

- a. *Council.* The ccNSO Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board.* The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO.* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "**Manager Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
 - 1) The issue is within the scope of the Mission;
 - 2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

- f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein ("**PDP Time Line**").
- g. g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be

taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

- b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

- a. In favor of convening a task force, it shall do so in accordance with Item 7 below.
- b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Line set out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Section 10.5) to appoint two individuals to participate in the task force (the "**Representatives**"). Additionally, the Council may appoint up to three advisors (the "**Advisors**") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

- c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

6. Public Notification of Initiation of the PDP and Comment Period

After initiation of the PDP, ICANN shall post a notification of such action to the Website and to the other ICANN Supporting Organizations and Advisory Committees. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "**Comment Report**") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "**Charter**") within the time designated in the PDP Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and

3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

c. Appointment of Task Force Chair. The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. Collection of Information.

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "**Regional Statement**") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

- (i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;
- (ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;
- (iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- (iv) A statement of the position on the issue of any ccNSO members that are not

members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("**Preliminary Task Force Report**") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "**Task Force Report**") and post it on the Website and to the other ICANN Supporting Organizations and Advisory Committees. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "**Final Report**". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.
- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

10. Council Deliberation

- a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.
- b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.
- c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "**Council Recommendation**"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "**Members Report**"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation;

- b. The Final Report submitted to the Council; and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed if at least 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO Recommendation being made in accordance with Item 13 incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "**Board Report**"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more

than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "**Supplemental Recommendation**"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13 . In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.
4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("**Supplemental Board Statement**").
5. In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO

Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;
- b. PDP Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in Section 10.6(b) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the

complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

Within a TLD two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database ("**Data Entry Function**") and
2. Maintaining and ensuring upkeep of name-servers for the TLD ("**Name Server Function**").

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

- a. under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.
- b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF)

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers

Policy role: IETF, RSSAC (ICANN)

Executive role: Root Server System Operators

Accountability role: RSSAC (ICANN)

Level 2: ccTLD Registry Name Servers in respect to interoperability

Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized

Executive role: ccTLD Manager

Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers

Policy role: ccTLD Manager, IETF (RFC)

Executive role: Registrant

Accountability role: ccTLD Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry

Policy role: ccNSO Policy Development Process (ICANN)

Executive role: ICANN (IANA)

Accountability role: ICANN community, ccTLD Managers, (national authorities in some cases)

Level 2: ccTLD Registry

Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure

Executive role: ccTLD Manager

Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels

Policy role: Registrant

Executive role: Registrant

Accountability role: Registrant, users of lower-level domain names

ANNEX D: EC MECHANISM

ARTICLE 1 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO APPROVE APPROVAL ACTIONS

Section 1.1. APPROVAL ACTIONS

The processes set forth in this Article 1 shall govern the escalation procedures for the EC's exercise of its right to approve the following (each, an "**Approval Action**") under the Bylaws:

- a. Fundamental Bylaw Amendments, as contemplated by Section 25.2 of the Bylaws;
- b. Articles Amendments, as contemplated by Section 25.2 of the Bylaws; and
- c. Asset Sales, as contemplated by Article 26 of the Bylaws.

Section 1.2. APPROVAL PROCESS

Following the delivery of a Board Notice for an Approval Action ("**Approval Action Board Notice**") by the Secretary to the EC Administration and the Decisional Participants (which delivery date shall be referred to herein as the "**Approval Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Approval Action Board Notice. Any Approval Action Board Notice relating to a Fundamental Bylaw Amendment or Articles Amendment shall include a statement, if applicable, that the Fundamental Bylaw Amendment or Articles Amendment, as applicable, is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Fundamental Bylaw Amendment or Articles Amendment subject to the Approval Action Board Notice that implements such PDP (as applicable, a "**PDP Fundamental Bylaw Statement**" or "**PDP Articles Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Fundamental Bylaw Amendment or Articles Amendment, as applicable (as applicable, the "**Fundamental Bylaw Amendment PDP Decisional Participant**" or "**Articles Amendment PDP Decisional Participant**"). The process set forth in this Section 1.2 of this Annex D as it relates to a particular Approval Action is referred to herein as the "**Approval Process**."

Section 1.3. APPROVAL ACTION COMMUNITY FORUM

- a. ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Approval Action (an "**Approval Action Community Forum**").
- b. If the EC Administration requests a publicly-available conference call by providing a notice to the Secretary, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Approval Action Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.
- c. The Approval Action Community Forum shall be convened and concluded during the period beginning upon the Approval Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date ("**Approval Action Community Forum Period**"). If the EC Administration requests that the Approval Action Community Forum be held during the next scheduled ICANN public meeting, the Approval Action Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the EC Administration. If the Approval Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date, the Approval Action Community Forum Period for the Approval Action shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.
- d. The Approval Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Approval Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Approval Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Approval Action Community Forum, which ICANN shall promptly post on the Website.
- e. The EC Administration shall manage and moderate the Approval Action Community Forum in a fair and neutral manner.
- f. ICANN and any Supporting Organization or Advisory Committee (including

Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Approval Action prior to the convening of and during the Approval Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

- g. ICANN staff and Directors representing the Board are expected to attend the Approval Action Community Forum in order to address any questions or concerns regarding the Approval Action.
- h. For the avoidance of doubt, the Approval Action Community Forum is not a decisional body.
- i. During the Approval Action Community Forum Period, an additional one or two Community Forums may be held at the discretion of the Board or the EC Administration. If the Board decides to hold an additional one or two Approval Action Community Forums, it shall provide a rationale for such decision, which rationale ICANN shall promptly post on the Website.
- j. ICANN will provide support services for the Approval Action Community Forum and shall promptly post on the Website a public record of the Approval Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Approval Action Community Forum.

Section 1.4. DECISION WHETHER TO APPROVE AN APPROVAL ACTION

(a) Following the expiration of the Approval Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Approval Action Community Forum Period (such period, the "**Approval Action Decision Period**"), with respect to each Approval Action, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Approval Action, (ii) objects to such Approval Action or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Approval Action), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Approval Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Approval Action Decision Period).

(b) The EC Administration shall, within twenty-four (24) hours of the expiration of

the Approval Action Decision Period, deliver a written notice ("**EC Approval Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 1 of this Annex D, the EC has approved the Approval Action if:

(i) The Approval Action does not relate to a Fundamental Bylaw Amendment or Articles Amendment and is (A) supported by three or more Decisional Participants and (B) not objected to by more than one Decisional Participant;

(ii) The Approval Action relates to a Fundamental Bylaw Amendment and is (A) supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP Decisional Participant if the Board Notice included a PDP Fundamental Bylaw Statement) and (B) not objected to by more than one Decisional Participant; or

(iii) The Approval Action relates to an Articles Amendment and is (A) supported by three or more Decisional Participants (including the Articles Amendment PDP Decisional Participant if the Board Notice included a PDP Articles Statement) and (B) not objected to by more than one Decisional Participant.

(c) If the Approval Action does not obtain the support required by Section 1.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Approval Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver to the Secretary a notice certifying that the Approval Process has been terminated with respect to the Approval Action ("**Approval Process Termination Notice**").

(d) ICANN shall promptly post to the Website any (i) Approval Action Board Notice, (ii) EC Approval Notice, (iii) Approval Process Termination Notice, (iv) written explanation provided by the EC Administration related to any of the foregoing, and (v) other notices the Secretary receives under this Article 1.

ARTICLE 2 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REJECT SPECIFIED ACTIONS

Section 2.1. Rejection Actions

The processes set forth in this Article 2 shall govern the escalation procedures for the EC's exercise of its right to reject the following (each, a "**Rejection Action**")

under the Bylaws:

- a. PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;
- b. IFR Recommendation Decisions, as contemplated by Section 18.6(d) of the Bylaws;
- c. Special IFR Recommendation Decisions, as contemplated by Section 18.12(e) of the Bylaws;
- d. SCWG Creation Decisions, as contemplated by Section 19.1(d) of the Bylaws;
- e. SCWG Recommendation Decisions, as contemplated by Section 19.4(d) of the Bylaws;
- f. ICANN Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;
- g. IANA Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;
- h. Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;
- i. Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws; and
- j. Standard Bylaw Amendments, as contemplated by Section 25.1(e) of the Bylaws.

Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS

(a) Following the delivery of a Board Notice for a Rejection Action ("**Rejection Action Board Notice**") by the Secretary to the EC Administration and Decisional Participants (which delivery date shall be referred to herein as the "**Rejection Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "**Rejection Process**."

(b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to reject the Rejection Action and initiate the Rejection Process (a "**Rejection Action Petition**").

(c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.

(i) If, in accordance with the requirements of Section 2.2(c) of this Annex D, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC Administration, the other Decisional Participants and the Secretary written notice ("**Rejection Action Petition Notice**") of such acceptance (such Decisional Participant, the "**Rejection Action Petitioning Decisional Participant**"), and ICANN shall promptly post such Rejection Action Petition Notice on the Website. The Rejection Action Petition Notice shall also include:

(A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN Budget, an IANA Budget, an Operating Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC Administration unless the rationale set forth in the Rejection Action Petition Notice is based on one or more significant issues that were specifically raised in the applicable public comment period(s) relating to perceived inconsistencies with the Mission, purpose and role set forth in ICANN's Articles of Incorporation and Bylaws, the global public interest, the needs of ICANN's stakeholders, financial stability, or other matter of concern to the community; and

(B) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement, if applicable, that the Standard Bylaw Amendment is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP ("**PDP Standard Bylaw Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Standard Bylaw Amendment ("**Standard Bylaw Amendment PDP Decisional Participant**").

The Rejection Process shall thereafter continue pursuant to Section 2.2(d) of this Annex D.

(ii) If the EC Administration has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection

Action Petition Period, the Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("**Rejection Process Termination Notice**"). ICANN shall promptly post such Rejection Process Termination Notice on the Website.

(d) Following the delivery of a Rejection Action Petition Notice to the EC Administration pursuant to Section 2.2(c)(i) of this Annex D, the Rejection Action Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection Action Petition. The Rejection Action Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Rejection Action Supporting Decisional Participant**") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "**Rejection Action Petition Support Period**"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Rejection Action Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant, and ICANN shall promptly post such Rejection Action Supported Petition on the Website. Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition, and ICANN shall promptly post each such notice on the Website. Such Rejection Action Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;

(C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant and/or the Rejection Action Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;

(D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community Forum during the next scheduled ICANN public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN Budget or IANA Budget as described in Section 2.3(c) of this Annex D; and

(E) a PDP Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action.

(ii) The Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice, which ICANN shall promptly post on the Website, if:

(A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or

(B) where the Rejection Action Supported Petition includes a PDP Standard Bylaw Statement, the Standard Bylaw Amendment PDP Decisional Participant is not (x) the Rejection Action Petitioning Decisional Participant or (y) one of the Rejection Action Supporting Decisional Participants.

Section 2.3. REJECTION ACTION COMMUNITY FORUM

- a. If the EC Administration receives a Rejection Action Supported Petition under Section 2.2(d) of this Annex D during the Rejection Action Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties

may discuss the Rejection Action Supported Petition ("**Rejection Action Community Forum**"). If the EC Administration receives more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed at the same Rejection Action Community Forum.

- b. If a publicly-available conference call has been requested in a Rejection Action Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Rejection Action Community Forum relating to that Rejection Action Supported Petition, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. If a conference call has been requested in relation to more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed during the same conference call.
- c. The Rejection Action Community Forum shall be convened and concluded during the period beginning upon the expiration of the Rejection Action Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("**Rejection Action Community Forum Period**") unless all Rejection Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget) on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget may only be held at a scheduled ICANN public meeting if such Rejection Action Community Forum occurs during the Rejection Action Community Forum Period,

without any extension of such Rejection Action Community Forum Period.

- d. The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Rejection Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Rejection Action Community Forum, which ICANN shall promptly post on the Website.
- e. The EC Administration shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.
- f. ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Rejection Action Supported Petition prior to the convening of and during the Rejection Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.
- g. ICANN staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN Budget, IANA Budget or Operating Plan) and Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.
- h. If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for an applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action

Supporting Decisional Participant(s).

- i. During the Rejection Action Community Forum Period, an additional one or two Rejection Action Community Forums may be held at the discretion of a Rejection Action Petitioning Decisional Participant and a related Rejection Action Supporting Decisional Participant, or the EC Administration.
- j. ICANN will provide support services for the Rejection Action Community Forum and shall promptly post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Rejection Action Community Forum.

Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION

(a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "**Rejection Action Decision Period**"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (ii) objects to such Rejection Action Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Rejection Action Decision Period).

(b) The EC Administration, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 2 of Annex D, the EC has resolved to reject the Rejection Action if (after accounting for any adjustments to the below as required by the GAC Carve-out pursuant to Section 3.6(e) of the Bylaws if the Rejection Action Supported Petition included a GAC Consensus Statement):

- (i) A Rejection Action Supported Petition relating to a Rejection Action other

than a Standard Bylaw Amendment is (A) supported by four or more Decisional Participants and (B) not objected to by more than one Decisional Participant; or

(ii) A Rejection Action Supported Petition relating to a Standard Bylaw Amendment that is (A) supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP Decisional Participant if the Rejection Action Supported Petition included a PDP Standard Bylaw Statement) and (B) not objected to by more than one Decisional Participant.

(c) If no Rejection Action Supported Petition obtains the support required by Section 2.4(b)(i) or (ii) of this Annex D, as applicable, the Rejection Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, deliver to the Secretary a Rejection Process Termination Notice.

(d) ICANN shall promptly post to the Website any (i) Rejection Action Board Notice, (ii) Rejection Action Petition, (iii) Rejection Action Petition Notice, (iv) Rejection Action Supported Petition, (v) EC Rejection Notice and the written explanation provided by the EC Administration as to why the EC has chosen to reject the Rejection Action, (vi) Rejection Process Termination Notice, and (vii) other notices the Secretary receives under this Article 2.

ARTICLE 3 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REMOVE DIRECTORS AND RECALL THE BOARD

Section 3.1. NOMINATING COMMITTEE DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove a Director holding Seats 1 through 8 and initiate the Nominating Committee Director Removal Process ("**Nominating Committee Director Removal Petition**"). Each Nominating Committee Director Removal Petition shall set forth the rationale upon which such individual seeks to remove such Director. The process set forth in this Section 3.1 of Annex D is referred to herein as the "**Nominating Committee Director Removal Process.**"

(b) During the period beginning on the date that the Decisional Participant received the Nominating Committee Director Removal Petition (such date of receipt, the "**Nominating Committee Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Nominating Committee

Director Removal Petition Date (as it relates to a particular Director, the "**Nominating Committee Director Removal Petition Period**"), the Decisional Participant that has received a Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Petitioned Decisional Participant**") shall either accept or reject such Nominating Committee Director Removal Petition; provided that a Nominating Committee Director Removal Petitioned Decisional Participant shall not accept a Nominating Committee Director Removal Petition if, during the same term, the Director who is the subject of such Nominating Committee Director Removal Petition had previously been subject to a Nominating Committee Director Removal Petition that led to a Nominating Committee Director Removal Community Forum (as discussed in Section 3.1(e) of this Annex D).

(c) During the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Petitioned Decisional Participant shall invite the Director subject to the Nominating Committee Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the Nominating Committee Director Removal Petition and the Nominating Committee Director Removal Petitioned Decisional Participant's representative on the EC Administration. The Nominating Committee Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the Nominating Committee Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Nominating Committee Director Removal Petitioned Decisional Participant shall not accept the Nominating Committee Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.1(b) of this Annex D, a Nominating Committee Director Removal Petitioned Decisional Participant accepts a Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Period (such Decisional Participant, the "**Nominating Committee Director Removal Petitioning Decisional Participant**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall, within twenty-four (24) hours of its acceptance of the Nominating Committee Director Removal Petition, provide written notice ("**Nominating Committee Director Removal Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. The Nominating Committee Director Removal Petition Notice shall include the rationale upon which removal of the affected

Director is sought. The Nominating Committee Director Removal Process shall thereafter continue pursuant to Section 3.1(d) of this Annex D.

(ii) If the EC Administration has not received a Nominating Committee Director Removal Petition Notice pursuant to Section 3.1(c)(i) of this Annex D during the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Process shall automatically be terminated with respect to the applicable Nominating Committee Director Removal Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Period, deliver to the Secretary a notice certifying that the Nominating Committee Director Removal Process has been terminated with respect to the applicable Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Process Termination Notice**").

(d) Following the delivery of a Nominating Committee Director Removal Petition Notice to the EC Administration by a Nominating Committee Director Removal Petitioning Decisional Participant pursuant to Section 3.1(c)(i) of this Annex D, the Nominating Committee Director Removal Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Nominating Committee Director Removal Petition. The Nominating Committee Director Removal Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Nominating Committee Director Removal Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Nominating Committee Director Removal Supporting Decisional Participant**") during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Nominating Committee Director Removal Petition Period (the "**Nominating Committee Director Removal Petition Support Period**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Nominating Committee Director Removal Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Nominating Committee Director Removal Supporting Decisional Participant. Each Nominating Committee Director Removal Supporting Decisional Participant

shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Nominating Committee Director Removal Petition. Such Nominating Committee Director Removal Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Nominating Committee Director Removal Petitioning Decisional Participant who shall act as a liaison with respect to the Nominating Committee Director Removal Supported Petition;

(C) a statement as to whether or not the Nominating Committee Director Removal Petitioning Decisional Participant and/or the Nominating Committee Director Removal Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Nominating Committee Director Removal Community Forum (as defined in Section 3.1(e) of this Annex D) for the community to discuss the Nominating Committee Director Removal Supported Petition; and

(D) a statement as to whether the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant have determined to hold the Nominating Committee Director Removal Community Forum during the next scheduled ICANN public meeting.

The Nominating Committee Director Removal Process shall thereafter continue for such Nominating Committee Director Removal Petition pursuant to Section 3.1(e) of this Annex D.

(ii) The Nominating Committee Director Removal Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Support Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice if the Nominating Committee Director Removal Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Support Period.

(e) If the EC Administration receives a Nominating Committee Director Removal Supported Petition under Section 3.1(d) of this Annex D during the Nominating Committee Director Removal Petition Support Period, ICANN shall, at the

direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Nominating Committee Director Removal Supported Petition ("**Nominating Committee Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in a Nominating Committee Director Removal Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Nominating Committee Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability.

(ii) The Nominating Committee Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period ("**Nominating Committee Director Removal Community Forum Period**") unless the Nominating Committee Director Removal Supported Petition requested that the Nominating Committee Director Removal Community Forum be held during the next scheduled ICANN public meeting, in which case the Nominating Committee Director Removal Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s); provided, that, the date and time of any Nominating Committee Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability. If the Nominating Committee Director Removal Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period, the Nominating Committee Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Nominating Committee Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Nominating Committee Director Removal Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Nominating Committee Director Removal Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the Nominating Committee Director Removal Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Nominating Committee Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Nominating Committee Director Removal Petitioning Decisional Participant or the Nominating Committee Director Removal Supporting Decisional Participant, nor the individual who initiated the Nominating Committee Director Removal Petition, shall be permitted to participate in the management or moderation of the Nominating Committee Director Removal Community Forum.

(v) The Director subject to the Nominating Committee Director Removal Supported Petition, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Nominating Committee Director Removal Supported Petition prior to the convening of and during the Nominating Committee Director Removal Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) The Director who is the subject of the Nominating Committee Director Removal Supported Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the Nominating Committee Director Removal Community Forum in order to address the issues raised in the Nominating Committee Director Removal Supported Petition.

(vii) If the Nominating Committee Director Removal Petitioning Decisional Participant and each of the Nominating Committee Director Removal Supporting Decisional Participants for an applicable Nominating Committee Director Removal Supported Petition agree before, during or after the Nominating Committee Director Removal Community Forum that the issue

raised in such Nominating Committee Director Removal Supported Petition has been resolved, such Nominating Committee Director Removal Supported Petition shall be deemed withdrawn and the Nominating Committee Director Removal Process with respect to such Nominating Committee Director Removal Supported Petition will be terminated. If a Nominating Committee Director Removal Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Nominating Committee Director Removal Supported Petition, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. For the avoidance of doubt, the Nominating Committee Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s).

(viii) During the Nominating Committee Director Removal Community Forum Period, an additional one or two Nominating Committee Director Removal Community Forums may be held at the discretion of a Nominating Committee Director Removal Petitioning Decisional Participant and a related Nominating Committee Director Removal Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Nominating Committee Director Removal Community Forum and shall promptly post on the Website a public record of the Nominating Committee Director Removal Community Forum as well as all written submissions of the Director who is the subject of the Nominating Committee Director Removal Supported Petition, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Nominating Committee Director Removal Community Forum.

(f) Following the expiration of the Nominating Committee Director Removal Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period (such period, the "**Nominating Committee Director Removal Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Nominating Committee Director Removal Supported Petition, (ii) objects to such Nominating Committee Director Removal Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Nominating

Committee Director Removal Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Nominating Committee Director Removal Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Nominating Committee Director Removal Decision Period).

(g) The EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver a written notice ("**Nominating Committee Director Removal Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of Section 3.1 of this Annex D, the EC has approved of the removal of the Director who is subject to the Nominating Committee Director Removal Process if the Nominating Committee Director Removal Supported Petition is (i) supported by three or more Decisional Participants and (ii) not objected to by more than one Decisional Participant.

(h) Upon the Secretary's receipt of a Nominating Committee Director Removal Notice, the Director subject to such Nominating Committee Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(i) If the Nominating Committee Director Removal Supported Petition does not obtain the support required by Section 3.1(g) of this Annex D, the Nominating Committee Director Removal Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. The Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(j) If neither a Nominating Committee Director Removal Notice nor a Nominating Committee Director Removal Process Termination Notice are received by the Secretary prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period, the Nominating Committee Director Removal Process shall automatically terminate and the Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and shall not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(k) Notwithstanding anything in this Section 3.1 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of a Nominating Committee Director Removal Process ceases to be a Director, the Nominating Committee Director Removal Process for such Director shall automatically terminate without any further action of ICANN or the EC Administration.

(l) ICANN shall promptly post to the Website any (i) Nominating Committee Director Removal Petition, (ii) Nominating Committee Director Removal Petition Notice, (iii) Nominating Committee Director Removal Supported Petition, (iv) Nominating Committee Director Removal Notice and the written explanation provided by the EC Administration as to why the EC has chosen to remove the relevant Director, (v) Nominating Committee Director Removal Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.1.

Section 3.2. SO/AC DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to the ASO, ccNSO, GNSO or At-Large Community (as applicable, the "**Applicable Decisional Participant**") seeking to remove a Director who was nominated by that Supporting Organization or the At-Large Community in accordance with Section 7.2(a) of the Bylaws, and initiate the SO/AC Director Removal Process ("**SO/AC Director Removal Petition**"). The process set forth in this Section 3.2 of this Annex D is referred to herein as the "**SO/AC Director Removal Process**."

(b) During the period beginning on the date that the Applicable Decisional Participant received the SO/AC Director Removal Petition (such date of receipt, the "**SO/AC Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the SO/AC Director Removal Petition Date (as it relates to a particular Director, the "**SO/AC Director Removal Petition Period**"), the Applicable Decisional Participant shall either accept or reject such SO/AC Director Removal Petition pursuant to the internal procedures of the Applicable Decisional Participant for the SO/AC Director Removal Petition; provided that the Applicable Decisional Participant shall not accept an SO/AC Director Removal Petition if, during the same term, the Director who is the subject of such SO/AC Director Removal Petition had previously been subject to an SO/AC Director Removal Petition that led to an SO/AC Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D).

(c) During the SO/AC Director Removal Petition Period, the Applicable Decisional

Participant shall invite the Director subject to the SO/AC Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the SO/AC Director Removal Petition and the Applicable Decisional Participant's representative on the EC Administration. The SO/AC Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the SO/AC Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Applicable Decisional Participant shall not accept the SO/AC Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.2(b), the Applicable Decisional Participant accepts an SO/AC Director Removal Petition during the SO/AC Director Removal Petition Period, the Applicable Decisional Participant shall, within twenty-four (24) hours of the Applicable Decisional Participant's acceptance of the SO/AC Director Removal Petition, provide written notice ("**SO/AC Director Removal Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. Such SO/AC Director Removal Petition Notice shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Applicable Decisional Participant who shall act as a liaison with respect to the SO/AC Director Removal Petition Notice;

(C) a statement as to whether or not the Applicable Decisional Participant requests that ICANN organize a publicly-available conference call prior to the SO/AC Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D) for the community to discuss the SO/AC Director Removal Petition; and

(D) a statement as to whether the Applicable Decisional Participant has determined to hold the SO/AC Director Removal Community Forum during the next scheduled ICANN public meeting.

The SO/AC Director Removal Process shall thereafter continue for such SO/AC Director Removal Petition pursuant to Section 3.2(d) of this Annex D.

(ii) If the EC Administration has not received an SO/AC Director Removal

Petition Notice pursuant to Section 3.2(c)(i) during the SO/AC Director Removal Petition Period, the SO/AC Director Removal Process shall automatically be terminated with respect to the applicable SO/AC Director Removal Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the SO/AC Director Removal Petition Period, deliver to the Secretary a notice certifying that the SO/AC Director Removal Process has been terminated with respect to the applicable SO/AC Director Removal Petition ("**SO/AC Director Removal Process Termination Notice**").

(d) If the EC Administration receives an SO/AC Director Removal Petition Notice under Section 3.2(c) of this Annex D during the SO/AC Director Removal Petition Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the SO/AC Director Removal Petition Notice ("**SO/AC Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in an SO/AC Director Removal Petition Notice, ICANN shall, at the direction of the EC Administration, schedule such call prior to any SO/AC Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the SO/AC Director Removal Petition Notice regarding his or her availability.

(ii) The SO/AC Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the SO/AC Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Petition Period ("**SO/AC Director Removal Community Forum Period**") unless the SO/AC Director Removal Petition Notice requested that the SO/AC Director Removal Community Forum be held during the next scheduled ICANN public meeting, in which case the SO/AC Director Removal Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Applicable Decisional Participant; provided, that the date and time of any SO/AC Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the

SO/AC Director Removal Petition Notice regarding his or her availability. If the SO/AC Director Removal Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Petition Period, the SO/AC Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The SO/AC Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the SO/AC Director Removal Community Forum is held during an ICANN public meeting, face-to-face meetings. If the SO/AC Director Removal Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the SO/AC Director Removal Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the SO/AC Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Applicable Decisional Participant, nor the individual who initiated the SO/AC Director Removal Petition, shall be permitted to participate in the management or moderation of the SO/AC Director Removal Community Forum.

(v) The Director subject to the SO/AC Director Removal Petition Notice, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the SO/AC Director Removal Petition Notice prior to the convening of and during the SO/AC Director Removal Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) The Director who is the subject of the SO/AC Director Removal Petition Notice and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the SO/AC Director Removal Community Forum in order to address the issues raised in the SO/AC Director Removal Petition Notice.

(vii) If the Applicable Decisional Participant agrees before, during or after the SO/AC Director Removal Community Forum that the issue raised in

such SO/AC Director Removal Petition Notice has been resolved, such SO/AC Director Removal Petition Notice shall be deemed withdrawn and the SO/AC Director Removal Process with respect to such SO/AC Director Removal Petition Notice will be terminated. If an SO/AC Director Removal Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the SO/AC Director Removal Petition Notice, deliver to the Secretary an SO/AC Director Removal Process Termination Notice. For the avoidance of doubt, the SO/AC Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Applicable Decisional Participant.

(viii) During the SO/AC Director Removal Community Forum Period, an additional one or two SO/AC Director Removal Community Forums may be held at the discretion of the Applicable Decisional Participant or the EC Administration.

(ix) ICANN will provide support services for the SO/AC Director Removal Community Forum and shall promptly post on the Website a public record of the SO/AC Director Removal Community Forum as well as all written submissions of the Director who is the subject of the SO/AC Director Removal Petition Notice, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the SO/AC Director Removal Community Forum.

(e) Following the expiration of the SO/AC Director Removal Community Forum Period, ICANN shall, at the request of the EC Administration, issue a request for comments and recommendations from the community, which shall be delivered to the Secretary for prompt posting on the Website along with a means for comments and recommendations to be submitted to ICANN on behalf of the EC Administration. This comment period shall remain open until 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the request for comments and recommendations was posted on the Website (the "**SO/AC Director Removal Comment Period**"). ICANN shall promptly post on the Website all comments and recommendations received by ICANN during the SO/AC Director Removal Comment Period.

(f) Following the expiration of the SO/AC Director Removal Comment Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Comment Period (such period, the "**SO/AC Director Removal Decision Period**"), the Applicable Decisional Participant shall inform the EC Administration

in writing as to whether the Applicable Decisional Participant has support for the SO/AC Director Removal Petition Notice within the Applicable Decisional Participant of a three-quarters majority as determined pursuant to the internal procedures of the Applicable Decisional Participant ("**SO/AC Director Removal Notice**"). The Applicable Decisional Participant shall, within twenty-four (24) hours of obtaining such support, deliver the SO/AC Director Removal Notice to the EC Administration, the other Decisional Participants and Secretary, and ICANN shall, at the direction of the Applicable Decisional Participant, concurrently post on the Website an explanation provided by the Applicable Decisional Participant as to why the Applicable Decisional Participant has chosen to remove the affected Director. Upon the Secretary's receipt of the SO/AC Director Removal Notice from the EC Administration, the Director subject to such SO/AC Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(g) If the SO/AC Director Removal Petition Notice does not obtain the support required by Section 3.2(f) of this Annex D, the SO/AC Director Removal Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the failure to obtain such support, deliver to the Secretary an SO/AC Director Removal Process Termination Notice. The Director who was subject to the SO/AC Director Removal Process shall remain on the Board and shall not be subject to the SO/AC Director Removal Process for the remainder of the Director's current term.

(h) If neither an SO/AC Director Removal Notice nor an SO/AC Director Removal Process Termination Notice are received by the Secretary prior to the expiration of the SO/AC Director Removal Decision Period, the SO/AC Director Removal Process shall automatically terminate and the Director who was subject to the SO/AC Director Removal Process shall remain on the Board and shall not be subject to the SO/AC Director Removal Process for the remainder of the Director's current term.

(i) Notwithstanding anything in this Section 3.2 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of an SO/AC Director Removal Process ceases to be a Director, the SO/AC Director Removal Process for such Director shall automatically terminate without any further action of ICANN or the EC Administration.

(j) ICANN shall promptly post to the Website any (i) SO/AC Director Removal Petition, (ii) SO/AC Director Removal Petition Notice, (iii) SO/AC Director Removal Notice and the written explanation provided by the EC Administration as to why the EC has chosen to remove the relevant Director, (iv) SO/AC Director Removal Process Termination Notice, and (v) other notices the Secretary receives under

this Section 3.2.

Section 3.3. BOARD RECALL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove all Directors (other than the President) at the same time and initiate the Board Recall Process ("**Board Recall Petition**"), provided that a Board Recall Petition cannot be submitted solely on the basis of a matter decided by a Community IRP if (i) such Community IRP was initiated in connection with the Board's implementation of GAC Consensus Advice and (ii) the EC did not prevail in such Community IRP. Each Board Recall Petition shall include a rationale setting forth the reasons why such individual seeks to recall the Board. The process set forth in this Section 3.3 of this Annex D is referred to herein as the "**Board Recall Process**."

(b) A Decisional Participant that has received a Board Recall Petition shall either accept or reject such Board Recall Petition during the period beginning on the date the Decisional Participant received the Board Recall Petition ("**Board Recall Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Board Recall Petition Date (the "**Board Recall Petition Period**").

(i) If, in accordance with Section 3.3(b) of this Annex D, a Decisional Participant accepts a Board Recall Petition during the Board Recall Petition Period (such Decisional Participant, the "**Board Recall Petitioning Decisional Participant**"), the Board Recall Petitioning Decisional Participant shall, within twenty-four (24) hours of the expiration of its acceptance of the Board Recall Petition, provide written notice ("**Board Recall Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. The Board Recall Petition Notice shall include the rationale upon which removal of the Board is sought. The Board Recall Process shall thereafter continue pursuant to Section 3.3(c) of this Annex D.

(ii) If the EC Administration has not received a Board Recall Petition Notice pursuant to Section 3.3(b)(i) of this Annex D during the Board Recall Petition Period, the Board Recall Process shall automatically be terminated with respect to the Board Recall Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Period, deliver to the Secretary a notice certifying that the Board Recall Process has been terminated with respect to the Board Recall Petition

("Board Recall Process Termination Notice").

(c) Following the delivery of a Board Recall Petition Notice to the EC Administration by a Board Recall Petitioning Decisional Participant pursuant to Section 3.3(b)(i) of this Annex D, the Board Recall Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Board Recall Petition. The Board Recall Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Board Recall Petitioning Decisional Participant obtains the support of at least two other Decisional Participants (each, a "**Board Recall Supporting Decisional Participant**") during the period beginning upon the expiration of the Board Recall Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Board Recall Petition Period (the "**Board Recall Petition Support Period**"), the Board Recall Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Board Recall Supported Petition**") within twenty-four hours of receiving the support of at least two Board Recall Supporting Decisional Participants. Each Board Recall Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Board Recall Petition. Such Board Recall Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Board Recall Petitioning Decisional Participant who shall act as a liaison with respect to the Board Recall Supported Petition;

(C) a statement as to whether or not the Board Recall Petitioning Decisional Participant and/or the Board Recall Supporting Decisional Participants requests that ICANN organize a publicly-available conference call prior to the Board Recall Community Forum (as defined in Section 3.3(d) of this Annex D) for the community to discuss the Board Recall Supported Petition; and

(D) a statement as to whether the Board Recall Petitioning Decisional

Participant and the Board Recall Supporting Decisional Participants have determined to hold the Board Recall Community Forum during the next scheduled ICANN public meeting.

The Board Recall Process shall thereafter continue for such Board Recall Supported Petition pursuant to Section 3.3(d) of this Annex D.

(ii) The Board Recall Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Support Period, deliver to the Secretary a Board Recall Process Termination Notice if the Board Recall Petitioning Decisional Participant is unable to obtain the support of at least two other Decisional Participants for its Board Recall Petition during the Board Recall Petition Support Period.

(d) If the EC Administration receives a Board Recall Supported Petition under Section 3.3(c) of this Annex D during the Board Recall Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Board Recall Supported Petition ("**Board Recall Community Forum**").

(i) If a publicly-available conference call has been requested in a Board Recall Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Board Recall Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Board regarding the availability of the Directors.

(ii) The Board Recall Community Forum shall be convened and concluded during the period beginning upon the expiration of the Board Recall Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Petition Support Period ("**Board Recall Community Forum Period**") unless the Board Recall Supported Petition requested that the Board Recall Community Forum be held during the next scheduled ICANN public meeting, in which case the Board Recall Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Board Recall Petitioning Decisional Participant and

the Board Recall Supporting Decisional Participants; provided, that, the date and time of any Board Recall Community Forum shall be determined after consultation with the Board regarding the availability of the Directors. If the Board Recall Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Petition Support Period, the Board Recall Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Board Recall Community Forum shall have at least one face-to-face meeting and may also be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects. If the Board Recall Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the Board Recall Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Board Recall Community Forum in a fair and neutral manner; provided that no individual from the Board Recall Petitioning Decisional Participant or a Board Recall Supporting Decisional Participant, nor the individual who initiated the Board Recall Petition, shall be permitted to participate in the management or moderation of the Board Recall Community Forum.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Board Recall Supported Petition prior to the convening of and during the Board Recall Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and the full Board are expected to attend the Board Recall Community Forum in order to address the issues raised in the Board Recall Supported Petition.

(vii) If the Board Recall Petitioning Decisional Participant and each of the Board Recall Supporting Decisional Participants for the Board Recall Supported Petition agree before, during or after the Board Recall Community Forum that the issue raised in such Board Recall Supported Petition has been resolved, such Board Recall Supported Petition shall be

deemed withdrawn and the Board Recall Process with respect to such Board Recall Supported Petition will be terminated. If a Board Recall Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Board Recall Supported Petition, deliver to the Secretary a Board Recall Process Termination Notice. For the avoidance of doubt, the Board Recall Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants.

(viii) During the Board Recall Community Forum Period, an additional one or two Board Recall Community Forums may be held at the discretion of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants, or the EC Administration.

(ix) ICANN will provide support services for the Board Recall Community Forum and shall promptly post on the Website a public record of the Board Recall Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Board Recall Community Forum.

(e) Following the expiration of the Board Recall Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Community Forum Period (such period, the "**Board Recall Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Board Recall Supported Petition, (ii) objects to such Board Recall Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Board Recall Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to expiration of the Board Recall Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Board Recall Decision Period).

(f) The EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver a written notice ("**EC Board Recall Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 3.3 of this Annex D, the EC has

resolved to remove all Directors (other than the President) if (after accounting for any adjustments to the below as required by the GAC Carve-out pursuant to Section 3.6(e) of the Bylaws if an IRP Panel found that, in implementing GAC Consensus Advice, the Board acted inconsistently with the Articles or Bylaws) a Board Recall Supported Petition (i) is supported by four or more Decisional Participants, and (ii) is not objected to by more than one Decisional Participant.

(g) Upon the Secretary's receipt of an EC Board Recall Notice, all Directors (other than the President) shall be effectively removed from office and shall no longer be Directors and such vacancies shall be filled in accordance with Section 7.12 of the Bylaws.

(h) If the Board Recall Supported Petition does not obtain the support required by Section 3.3(f) of this Annex D, the Board Recall Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver to the Secretary a Board Recall Process Termination Notice. All Directors shall remain on the Board.

(i) If neither an EC Board Recall Notice nor a Board Recall Process Termination Notice are received by the Secretary prior to the expiration of the Board Recall Decision Period, the Board Recall Process shall automatically terminate and all Directors shall remain on the Board.

(j) ICANN shall promptly post to the Website any (i) Board Recall Petition, (ii) Board Recall Petition Notice, (iii) Board Recall Supported Petition, (iv) EC Board Recall Notice and the written explanation provided by the EC Administration as to why the EC has chosen to recall the Board, (v) Board Recall Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.3.

Article 4 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO INITIATE MEDIATION, A COMMUNITY IRP OR RECONSIDERATION REQUEST

Section 4.1. MEDIATION INITIATION

(a) If the Board refuses or fails to comply with a decision by the EC delivered to the Secretary pursuant to an EC Approval Notice, EC Rejection Notice, Nominating Committee Director Removal Notice, SO/AC Director Removal Notice or EC Board Recall Notice pursuant to and in compliance with Article 1, Article 2 or Article 3 of this Annex D, or rejects or otherwise does not take action that is consistent with a final IFR Recommendation, Special IFR Recommendation, SCWG Creation Recommendation or SCWG Recommendation, as applicable (each, an "**EC Decision**"), the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC

Decision during the applicable decision period may request that the EC initiate mediation with the Board in relation to that EC Decision as contemplated by Section 4.7 of the Bylaws, by delivering a notice to the EC Administration, the Decisional Participants and the Secretary requesting the initiation of a mediation ("**Mediation Initiation Notice**"). ICANN shall promptly post to the Website any Mediation Initiation Notice.

(b) As soon as practicable after receiving a Mediation Initiation Notice, the EC Administration and the Secretary shall initiate mediation, which shall proceed in accordance with Section 4.7 of the Bylaws.

Section 4.2. COMMUNITY IRP

(a) After completion of a mediation under Section 4.7 of the Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a Community IRP (a "**Community IRP Petitioning Decisional Participant**"), as contemplated by Section 4.3 of the Bylaws, by delivering a notice to the EC Administration and the Decisional Participants requesting the initiation of a Community IRP ("**Community IRP Petition**"). The Community IRP Petitioning Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. The process set forth in this Section 4.2 of this Annex D as it relates to a particular Community IRP Petition is referred to herein as the "**Community IRP Initiation Process**."

(b) Following the delivery of a Community IRP Petition to the EC Administration by a Community IRP Petitioning Decisional Participant pursuant to Section 4.2(a) of this Annex D (which delivery date shall be referred to herein as the "**Community IRP Notification Date**"), the Community IRP Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition. The Community IRP Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Community IRP Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community IRP Supporting Decisional Participant**") during the period beginning on the Community IRP Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the Community IRP Notification Date (the "**Community IRP Petition Support Period**"), the Community IRP Petitioning Decisional Participant

shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Community IRP Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community IRP Supporting Decisional Participant. Each Community IRP Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community IRP Petition. Such Community IRP Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community IRP Petitioning Decisional Participant who shall act as a liaison with respect to the Community IRP Supported Petition;

(C) a statement as to whether or not the Community IRP Petitioning Decisional Participant and/or the Community IRP Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Community IRP Community Forum (as defined in Section 4.2(c) of this Annex D) for the community to discuss the Community IRP Supported Petition;

(D) a statement as to whether the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant have determined to hold the Community IRP Community Forum during the next scheduled ICANN public meeting;

(E) where the Community IRP Supported Petition relates to a Fundamental Bylaw Amendment, a PDP Fundamental Bylaw Statement if applicable and, if so, the name of the Fundamental Bylaw Amendment PDP Decisional Participant;

(F) where the Community IRP Supported Petition relates to an Articles Amendment, a PDP Articles Statement if applicable and, if so, the name of the Articles Amendment PDP Decisional Participant;

(G) where the Community IRP Supported Petition relates to a Standard Bylaw Amendment, a PDP Standard Bylaw Statement if applicable and, if so, the name of the Standard Bylaw Amendment PDP Decisional Participant; and

(H) where the Community IRP Supported Petition relates to a policy recommendation of a cross community working group chartered by more than one Supporting Organization ("**CCWG Policy Recommendation**"), a

statement citing the specific CCWG Policy Recommendation and related provision in the Community IRP Supported Petition ("**CCWG Policy Recommendation Statement**"), and, if so, the name of any Supporting Organization that is a Decisional Participant that approved the CCWG Policy Recommendation ("**CCWG Policy Recommendation Decisional Participant**").

The Community IRP Initiation Process shall thereafter continue for such Community IRP Supported Petition pursuant to Section 4.2(c) of this Annex D.

(ii) The Community IRP Initiation Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Petition Support Period, deliver to the Secretary a notice certifying that the Community IRP Initiation Process has been terminated with respect to the Community IRP included in the Community IRP Petition ("**Community IRP Termination Notice**") if:

(A) no Community IRP Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Community IRP Petition during the Community IRP Petition Support Period;

(B) where the Community IRP Supported Petition includes a PDP Fundamental Bylaw Statement, the Fundamental Bylaw Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(C) where the Community IRP Supported Petition includes a PDP Articles Statement, the Articles Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(D) where the Community IRP Supported Petition includes a PDP Standard Bylaw Statement, the Standard Bylaw Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants; or

(E) where the Community IRP Supported Petition includes a CCWG Policy Recommendation Statement, the CCWG Policy Recommendation Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants.

(c) If the EC Administration receives a Community IRP Supported Petition under Section 4.2(b) of this Annex D during the Community IRP Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community IRP Supported Petition ("**Community IRP Community Forum**").

(i) If a publicly-available conference call has been requested in a Community IRP Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Community IRP Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

(ii) The Community IRP Community Forum shall be convened and concluded during the period beginning on the expiration of the Community IRP Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community IRP Petition Support Period ("**Community IRP Community Forum Period**") unless the Community IRP Supported Petition requested that the Community IRP Community Forum be held during the next scheduled ICANN public meeting, in which case the Community IRP Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s). If the Community IRP Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community IRP Petition Support Period, the Community IRP Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Community IRP Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects and/or, only if the Community IRP Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Community IRP Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Community IRP Community Forum, which

ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Community IRP Community Forum in a fair and neutral manner.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Community IRP Supported Petition prior to the convening of and during the Community IRP Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and Directors representing the Board are expected to attend the Community IRP Community Forum in order to discuss the Community IRP Supported Petition.

(vii) If the Community IRP Petitioning Decisional Participant and each of the Community IRP Supporting Decisional Participants for the Community IRP Supported Petition agree before, during or after a Community IRP Community Forum that the issue raised in such Community IRP Supported Petition has been resolved, such Community IRP Supported Petition shall be deemed withdrawn and the Community IRP Initiation Process with respect to such Community IRP Supported Petition will be terminated. If a Community IRP Initiation Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community IRP Supported Petition, deliver to the Secretary a Community IRP Termination Notice. For the avoidance of doubt, the Community IRP Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s).

(viii) During the Community IRP Community Forum Period, an additional one or two Community IRP Community Forums may be held at the discretion of a Community IRP Petitioning Decisional Participant and a related Community IRP Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Community IRP Community Forum and shall promptly post on the Website a public record of the Community IRP Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Community IRP Community Forum.

(d) Following the expiration of the Community IRP Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Community IRP Community Forum Period (such period, the "**Community IRP Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Community IRP Supported Petition, (ii) objects to such Community IRP Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community IRP Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Community IRP Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Community IRP Decision Period).

(e) The EC Administration, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, shall promptly deliver a written notice ("**EC Community IRP Initiation Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.2 of this Annex D, the EC has resolved to accept the Community IRP Supported Petition if:

(i) A Community IRP Supported Petition that does not include a PDP Fundamental Bylaw Statement, a PDP Articles Statement, a PDP Standard Bylaw Statement or a CCWG Policy Recommendation Statement (A) is supported by three or more Decisional Participants, and (B) is not objected to by more than one Decisional Participant;

(ii) A Community IRP Supported Petition that (A) includes a PDP Fundamental Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iii) A Community IRP Supported Petition that (A) includes a PDP Articles Statement, (B) is supported by three or more Decisional Participants (including the Articles Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iv) A Community IRP Supported Petition that (A) includes a PDP Standard Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant; or

(v) A Community IRP Supported Petition that (A) includes a CCWG Policy Recommendation Statement, (B) is supported by three or more Decisional Participants (including the CCWG Policy Recommendation Decisional Participant), and (C) is not objected to by more than one Decisional Participant.

(f) If the Community IRP Supported Petition does not obtain the support required by Section 4.2(e) of this Annex D, the Community IRP Initiation Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, deliver to the Secretary a Community IRP Termination Notice.

(g) ICANN shall promptly post to the Website any (i) Community IRP Petition, (ii) Community IRP Supported Petition, (iii) EC Community IRP Initiation Notice, (iv) Community IRP Termination Notice, (v) written explanation provided by the EC Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.2.

Section 4.3. COMMUNITY RECONSIDERATION REQUEST

(a) Any Decisional Participant may request that the EC initiate a Reconsideration Request (a "**Community Reconsideration Petitioning Decisional Participant**"), as contemplated by Section 4.2(b) of the Bylaws, by delivering a notice to the EC Administration and the other Decisional Participants, with a copy to the Secretary for ICANN to promptly post on the Website, requesting the review or reconsideration of an action or inaction of the ICANN Board or staff ("**Community Reconsideration Petition**"). A Community Reconsideration Petition must be delivered within 30 days after the occurrence of any of the conditions set forth in Section 4.2(g)(i)(A), (B) or (C) of the Bylaws. In that instance, the Community Reconsideration Petition must be delivered within 30 days from the initial posting of the rationale. The process set forth in this Section 4.3 of this Annex D as it relates to a particular Community Reconsideration Petition is referred to herein as the "**Community Reconsideration Initiation Process**."

(b) Following the delivery of a Community Reconsideration Petition to the EC Administration by a Community Reconsideration Petitioning Decisional Participant pursuant to Section 4.3(a) of this Annex D (which delivery date shall be referred to herein as the "**Community Reconsideration Notification Date**"), the Community

Reconsideration Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community Reconsideration Petition. The Community Reconsideration Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Community Reconsideration Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community Reconsideration Supporting Decisional Participant**") during the period beginning on the Community Reconsideration Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the Community Reconsideration Notification Date (the "**Community Reconsideration Petition Support Period**"), the Community Reconsideration Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Community Reconsideration Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community Reconsideration Supporting Decisional Participant. Each Community Reconsideration Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community Reconsideration Petition. Such Community Reconsideration Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community Reconsideration Petitioning Decisional Participant who shall act as a liaison with respect to the Community Reconsideration Supported Petition;

(C) a statement as to whether or not the Community Reconsideration Petitioning Decisional Participant and/or the Community Reconsideration Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Community Reconsideration Community Forum (as defined in Section 4.3(c) of this Annex D) for the community to discuss the Community Reconsideration Supported Petition; and

(D) a statement as to whether the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting

Decisional Participant have determined to hold the Community Reconsideration Community Forum during the next scheduled ICANN public meeting.

The Community Reconsideration Initiation Process shall thereafter continue for such Community Reconsideration Supported Petition pursuant to Section 4.3(c) of this Annex D.

(ii) The Community Reconsideration Initiation Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Petition Support Period, deliver to the Secretary a notice certifying that the Community Reconsideration Initiation Process has been terminated with respect to the Reconsideration Request included in the Community Reconsideration Petition ("**Community Reconsideration Termination Notice**") if the Community Reconsideration Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Community Reconsideration Petition during the Community Reconsideration Petition Support Period.

(c) If the EC Administration receives a Community Reconsideration Supported Petition under Section 4.3(b) of this Annex D during the Community Reconsideration Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community Reconsideration Supported Petition ("**Community Reconsideration Community Forum**").

(i) If a publicly-available conference call has been requested in a Community Reconsideration Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Community Reconsideration Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

(ii) The Community Reconsideration Community Forum shall be convened and concluded during the period beginning on the expiration of the Community Reconsideration Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period ("**Community Reconsideration Forum Period**") unless the Community Reconsideration Supported Petition requested that

the Community Reconsideration Community Forum be held during the next scheduled ICANN public meeting, in which case the Community Reconsideration Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s). If the Community Reconsideration Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period, the Community Reconsideration Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Community Reconsideration Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects and/or, only if the Community Reconsideration Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Community Reconsideration Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Community Reconsideration Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Community Reconsideration Community Forum in a fair and neutral manner.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Community Reconsideration Supported Petition prior to the convening of and during the Community Reconsideration Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and Directors representing the Board are expected to attend the Community Reconsideration Community Forum in order to discuss the Community Reconsideration Supported Petition.

(vii) If the Community Reconsideration Petitioning Decisional Participant and each of the Community Reconsideration Supporting Decisional Participants for a Community Reconsideration Supported Petition agree

before, during or after the Community Reconsideration Community Forum that the issue raised in such Community Reconsideration Supported Petition has been resolved, such Community Reconsideration Supported Petition shall be deemed withdrawn and the Community Reconsideration Initiation Process with respect to such Community Reconsideration Supported Petition will be terminated. If a Community Reconsideration Initiation Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community Reconsideration Supported Petition, deliver to the Secretary a Community Reconsideration Termination Notice. For the avoidance of doubt, the Community Reconsideration Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s).

(viii) During the Community Reconsideration Community Forum Period, an additional one or two Community Reconsideration Community Forums may be held at the discretion of a Community Reconsideration Petitioning Decisional Participant and a related Community Reconsideration Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Community Reconsideration Community Forum and shall promptly post on the Website a public record of the Community Reconsideration Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Community Reconsideration Community Forum.

(d) Following the expiration of the Community Reconsideration Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Community Reconsideration Community Forum Period (such period, the "**Community Reconsideration Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Community Reconsideration Supported Petition, (ii) objects to such Community Reconsideration Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community Reconsideration Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Community

Reconsideration Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Community Reconsideration Decision Period).

(e) If (i) three or more Decisional Participants support the Community Reconsideration Supported Petition and (ii) no more than one Decisional Participant objects to the Community Reconsideration Supported Petition, then the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver a notice to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.3 of this Annex D, the EC has resolved to accept the Community Reconsideration Supported Petition ("**EC Reconsideration Initiation Notice**"). The Reconsideration Request shall then proceed in accordance with Section 4.2 of the Bylaws.

(f) If the Community Reconsideration Supported Petition does not obtain the support required by Section 4.3(e) of this Annex D, the Community Reconsideration Initiation Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver to the Secretary a Community Reconsideration Termination Notice.

(g) ICANN shall promptly post to the Website any (i) Community Reconsideration Petition, (ii) Community Reconsideration Supported Petition, (iii) EC Reconsideration Initiation Notice, (iv) Community Reconsideration Termination Notice, (v) written explanation provided by the EC Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.3.

Annex E: Caretaker ICANN Budget Principles

1. Principles

The caretaker ICANN budget (the "**Caretaker ICANN Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker ICANN Budget Principles**"):

- a. It is based on then-current ICANN operations;
- b. It allows ICANN to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an ICANN Budget by the EC pursuant to the Bylaws;
- c. It allows ICANN to react to emergency situations in a fashion that

preserves the continuation of its operations;

- d. It allows ICANN to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. It enables ICANN to avoid waste of its resources during the rejection period (i.e., the period between when an ICANN Budget is rejected by the EC pursuant to the Bylaws and when an ICANN Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at a materially incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN from initiating activities that remains subject to community consideration (or for which that community consideration has not concluded) with respect to the applicable ICANN Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the ICANN Budget that was rejected by the EC that triggered the need for the Caretaker ICANN Budget.

1. Examples

Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically include:

- i. the functioning of the EC, the Decisional Participants, and any Supporting Organizations or Advisory Committees that are not Decisional Participants;
- ii. the functioning of all redress mechanisms, including without limitation the office of the Ombudsman, the IRP, and mediation;
- iii. employment of staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;
- iv. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) in the normal course of business;
- v. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the

mechanisms to employ such contractors) or vendors as needed in the normal course of business;

vi. operating all existing ICANN offices, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

vii. contracting with vendors as needed in the normal course of business;

viii. conducting ICANN meetings and ICANN intercessional meetings previously contemplated; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the ICANN Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker ICANN Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker ICANN Budget Principles;

iii. entering into new agreements in relation to opening or operating new ICANN locations/offices, unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.

Annex F: Caretaker IANA Budget Principles

1. Principles

The caretaker IANA Budget (the "**Caretaker IANA Budget**") is defined as an

annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker IANA Budget Principles**"):

- a. It is based on then-current operations of the IANA functions;
- b. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA Budget by the EC pursuant to the Bylaws;
- c. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to react to emergency situations in a fashion that preserves the continuation of its operations;
- d. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA Budget is rejected by the EC pursuant to the Bylaws and when an IANA Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would have otherwise need to be restarted at an incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN, in its responsibility to fund the operations of the IANA functions, from initiating activities that remain subject to community consideration (or for which that community consultation has not concluded) with respect to the applicable IANA Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the IANA Budget that was rejected by the EC that triggered the need for the Caretaker IANA Budget.

1. Examples

- a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically include:
 - i. employment of staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) across all locations,

including all related compensation, benefits, social security, pension, and other employment costs;

ii. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) in the normal course of business;

iii. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

iv. operating all existing offices used in the performance of the IANA functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

v. contracting with vendors as needed in the normal course of business;

vi. participating in meetings and conferences previously contemplated;

vii. participating in engagement activities with ICANN's Customer Standing Committee or the customers of the IANA functions;

viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN or its affiliates is a party that relate to the IANA functions; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker IANA Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA Budget Principles;

iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker IANA Budget.

ANNEX G-1

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registrars are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS;
- functional and performance specifications for the provision of registrar services;
- registrar policies reasonably necessary to implement Consensus Policies relating to a gTLD registry;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or
- restrictions on cross-ownership of registry operators and registrars or resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual

property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

- maintenance of and access to accurate and up-to-date information concerning registered names and name servers;
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the registered names sponsored in a TLD by a registrar losing accreditation; and
- the transfer of registration data upon a change in registrar sponsoring one or more registered names.

ANNEX G-2

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registries are:

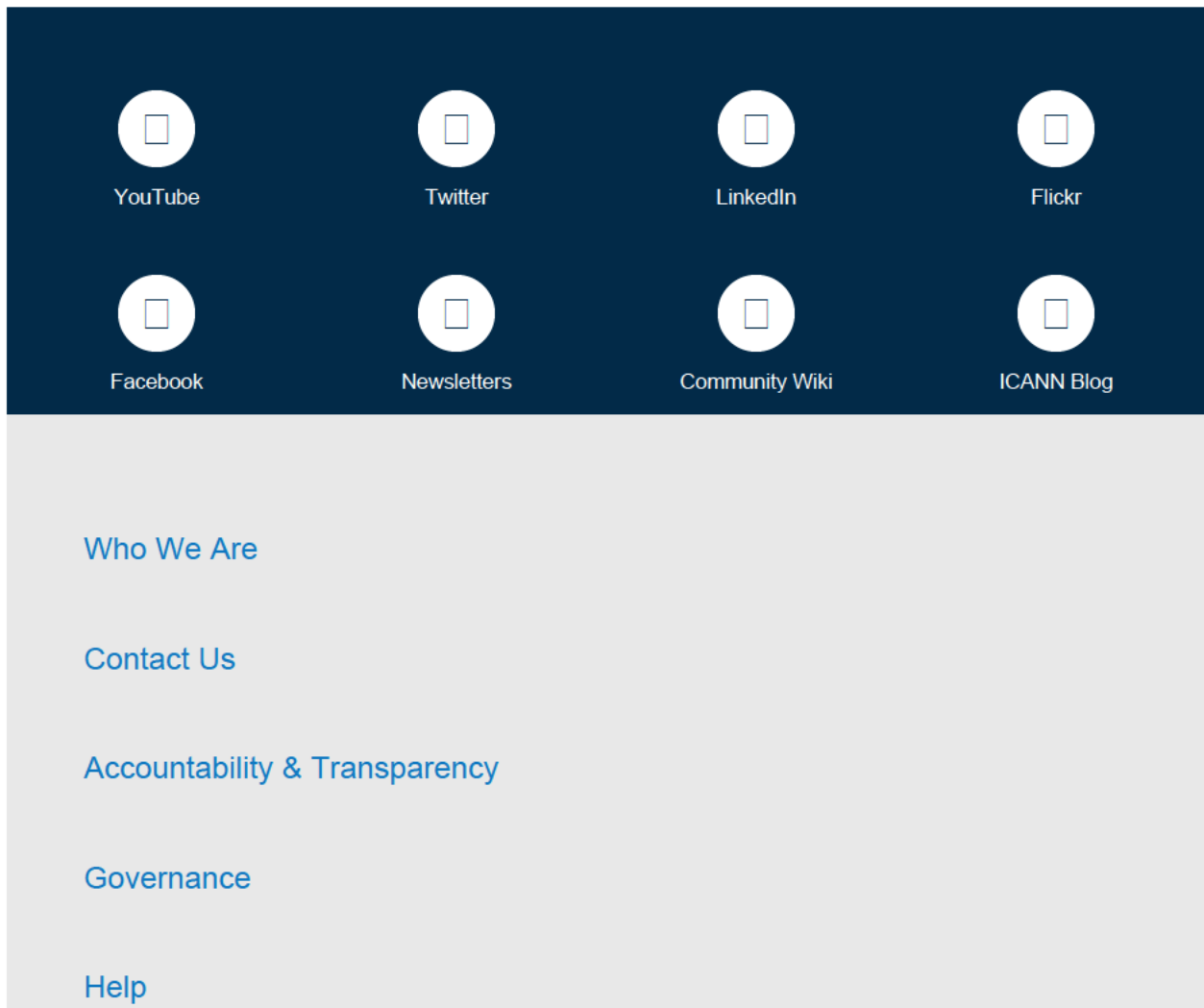
- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS;
- functional and performance specifications for the provision of registry services;
- security and stability of the registry database for a TLD;
- registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;

- reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning domain name registrations; and
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

[1] When "1 October 2016" is used, that signals that the date that will be used is the effective date of the Bylaws.



Data Protection

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EXHIBIT C-2



Resources

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

As approved by the ICANN Board on 9 August 2016, and filed with the California Secretary of State on 3 October 2016

The undersigned certify that:

1. They are the president and the secretary, respectively, of Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:
 - I. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the “**Corporation**”).
 - II. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any future United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article IV hereof, pursue the charitable and public purposes of lessening the burdens of

government and promoting the global public interest in the operational stability of the Internet by carrying out the mission set forth in the bylaws of the Corporation (“**Bylaws**”). Such global public interest may be determined from time to time. Any determination of such global public interest shall be made by the multistakeholder community through an inclusive bottom-up multistakeholder community process.

- III. The Corporation shall operate in a manner consistent with these Articles and its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.
- IV. Notwithstanding any other provision of these Articles:
 - a. The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United States income tax under § 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under § 170(c)(2) of the Code.
 - b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.
 - c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
 - d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.
- V. To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter

in effect, no director of the Corporation shall be personally liable to the Corporation for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this Article V shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.

- VI. Upon the dissolution of the Corporation, the Corporation's assets shall be distributed for one or more of the exempt purposes set forth in Article II hereof and, if possible, to a § 501(c)(3) organization organized and operated exclusively to lessen the burdens of government and promote the global public interest in the operational stability of the Internet, or shall be distributed to a governmental entity for such purposes, or for such other charitable and public purposes that lessen the burdens of government by providing for the operational stability of the Internet. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as such court shall determine, that are organized and operated exclusively for such purposes, unless no such corporation exists, and in such case any assets not disposed of shall be distributed to a § 501(c)(3) corporation chosen by such court.
- VII. Any amendment to these Articles shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community, a California nonprofit association established by the Bylaws (the “**Empowered Community**”), following procedures set forth in Article 25.2 of the Bylaws.
- VIII. Any transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community prior to the consummation of the transaction, following procedures set forth in Article 26 of the Bylaws.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the board of directors.

4. The corporation has no members.

We further declare under penalty of perjury under the laws of the State of

California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: 30 September 2016

Göran Marby, President

John Jeffrey, Secretary



YouTube



Twitter



LinkedIn



Flickr



Facebook



Newsletters



Community Wiki



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[Data Protection](#)

EXHIBIT C-3

gTLD Applicant Guidebook

Version 2012-06-04



4 June 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at <http://gnso.icann.org/issues/new-gtlds>.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gnso.icann.org/issues/new-gtlds/>.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012**. New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012**.

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.

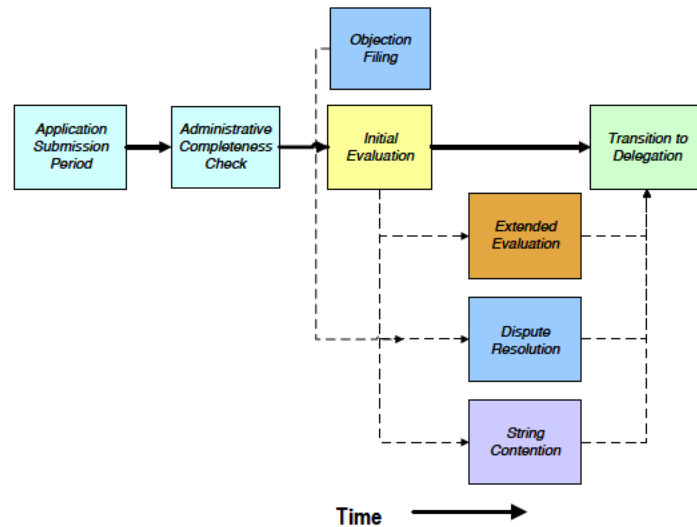


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

1.1.2.3 Comment Period

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as “application comments.”) The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators’ summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. Anyone may submit a comment in a public comment forum.

Comments and the Formal Objection Process: A distinction should be made between application comments, which may be relevant to ICANN’s task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN’s evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may

be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

String Contention: Comments designated for the Community Priority Panel, as relevant to the criteria in Module 4, may be taken into account during a Community Priority Evaluation.

Government Notifications: Governments may provide a notification using the application comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application. A government may elect to use this comment mechanism to provide such a notification, in addition to or as an alternative to the GAC Early Warning procedure described in subsection 1.1.2.4 below.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

General Comments: A general public comment forum will remain open through all stages of the evaluation process, to provide a means for the public to bring forward any other relevant information or issues.

1.1.2.4 GAC Early Warning

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.¹ The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.

Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the date of GAC Early Warning delivery to the applicant.

To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.

1.1.2.5 Initial Evaluation

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications

¹ While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

must pass this step in conjunction with the Initial Evaluation reviews.

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.
2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.

The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500, applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

If batching is required, a secondary time-stamp process will be employed to establish the batches. (Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)

The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process which will occur after the close of the application submission period. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.

If batches are established, ICANN will post updated process information and an estimated timeline.

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.²

1.1.2.6 *Objection Filing*

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 7 months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.5), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.9 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during the objection filing period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures. An applicant wishing to file a formal objection to another application that has been submitted would do so within the objection filing period, following the objection filing procedures in Module 3.

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where

² See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

possible, consult with interested parties to mitigate any concerns in advance.

1.1.2.7 Receipt of GAC Advice on New gTLDs

The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.

If the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.

1.1.2.8 Extended Evaluation

Extended Evaluation is available only to certain applicants that do not pass Initial Evaluation.

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not pass Initial Evaluation and does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An application may be required to enter an Extended Evaluation if one or more proposed registry services raise technical issues that might adversely affect the security or stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such a review is required by the end of the Initial Evaluation period.

Evaluators and any applicable experts consulted will communicate the conclusions resulting from the additional review by the end of the Extended Evaluation period.

At the conclusion of the Extended Evaluation period, ICANN will post summary reports, by panel, from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next relevant stage. If the application does not pass the Extended Evaluation, it will proceed no further.

The Extended Evaluation is expected to be completed for all applications in a period of approximately 5 months, though this timeframe could be increased based on volume. In this event, ICANN will post updated process information and an estimated timeline.

1.1.2.9 Dispute Resolution

Dispute resolution applies only to applicants whose applications are the subject of a formal objection.

Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been submitted to ICANN. Dispute resolution service providers serve as the fora to adjudicate the proceedings based on the subject matter and the needed expertise. Consolidation of objections filed will occur where appropriate, at the discretion of the DRSP.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage. Applicants will be notified by the DRSP(s) of the results of dispute resolution proceedings.

Dispute resolution proceedings, where applicable, are expected to be completed for all applications within approximately a 5-month time frame. In the event that volume is such that this timeframe cannot be accommodated, ICANN will work with the dispute resolution service providers to create processing procedures and post updated timeline information.

1.1.2.10 String Contention

String contention applies only when there is more than one qualified application for the same or similar gTLD strings.

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage. In the absence of resolution by the contending applicants, string contention cases are resolved either through a community priority evaluation (if a community-based applicant elects it) or through an auction.

In the event of contention between applied-for gTLD strings that represent geographic names, the parties may be required to follow a different process to resolve the contention. See subsection 2.2.1.4 of Module 2 for more information.

Groups of applied-for strings that are either identical or similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B requests Extended Evaluation. A third party files an objection to Applicant C’s application, and Applicant C enters the dispute resolution process. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.

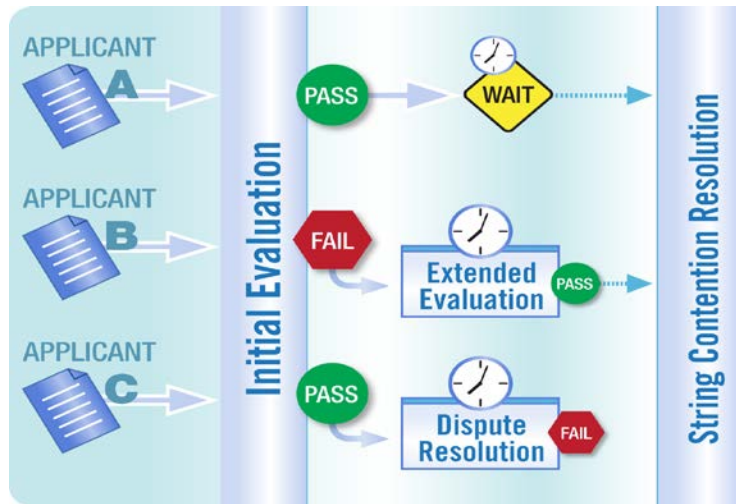


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of the applied-for gTLDs.

String contention resolution for a contention set is estimated to take from 2.5 to 6 months to complete. The time required will vary per case because some contention cases may be resolved in either a community priority evaluation or an auction, while others may require both processes.

1.1.2.11 Transition to Delegation

Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD into the DNS root zone.

It is expected that the transition to delegation steps can be completed in approximately 2 months, though this could take more time depending on the applicant's level of preparedness for the pre-delegation testing and the volume of applications undergoing these steps concurrently.

1.1.3 Lifecycle Timelines

Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately 9 months, as follows:

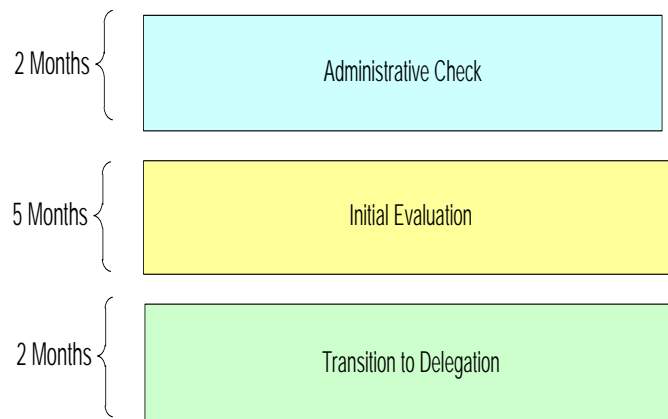


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:

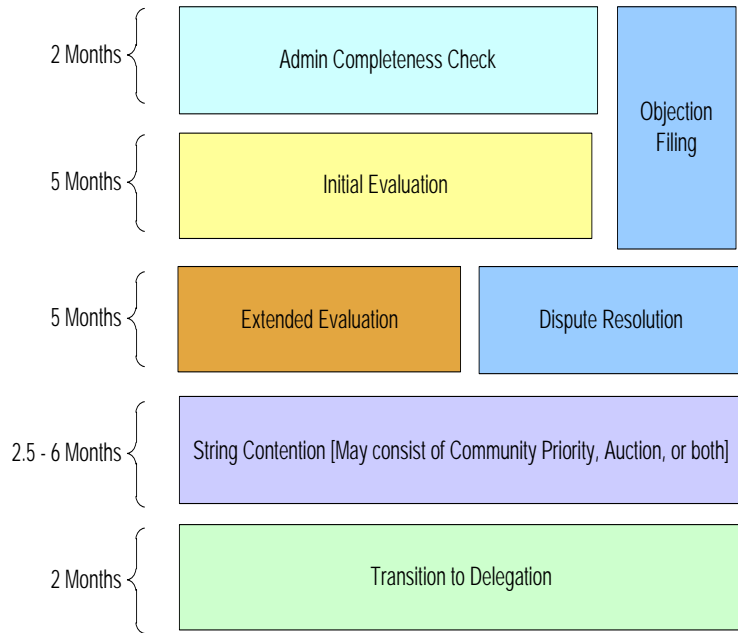


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

The results of application reviews will be made available to the public at various stages in the process, as shown below.

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.

Period	Posting Content
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

1.1.5 Sample Application Scenarios

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows exemplifies various processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number

of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

Scenario 1 – Pass Initial Evaluation, No Objection, No Contention – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD. Most applications are expected to complete the process within this timeframe.

Scenario 2 – Extended Evaluation, No Objection, No Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed

during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 3 – Pass Initial Evaluation, No Objection, Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 5 – Pass Initial Evaluation, Lose Objection – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple objections are filed by one or more objectors with standing for one or more of the four enumerated objection grounds. Each objection is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

Scenario 6 – Fail Initial Evaluation, Applicant Withdraws – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the

application fails Extended Evaluation also. The application does not proceed.

Scenario 8 – Extended Evaluation, Win Objection, Pass Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement, and the application can proceed toward delegation of the applied-for gTLD.

Scenario 9 – Extended Evaluation, Objection, Fail Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

Transition to Delegation – After an application has successfully completed Initial Evaluation, and other stages as applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the steps required in this stage.

1.1.6 Subsequent Application Rounds

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.

It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.

1.2 Information for All Applicants

1.2.1 Eligibility

Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background screening activities.

ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the “crimes of trust” standard sometimes used in the banking and finance industry.

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988³;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)^{4,5};
- j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant

³ <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

⁴ <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

⁵ It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders⁶ may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Background screening information will not be made publicly available by ICANN.

Registrar Cross-Ownership -- ICANN-accredited registrars are eligible to apply for a gTLD. However, all gTLD registries

⁶ http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1.00.html

are required to abide by a Code of Conduct addressing, *inter alia*, non-discriminatory access for all authorized registrars. ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.

Legal Compliance -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

1.2.2 Required Documents

All applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.
2. **Financial statements** – Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

As indicated in the relevant questions, supporting documentation should be submitted in the original language. English translations are not required.

All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.

Some types of supporting documentation are required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.

At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.

Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.

2. **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.
3. **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

1.2.3 Community-Based Designation

All applicants are required to designate whether their application is **community-based**.

1.2.3.1 Definitions

For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-

designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application**. A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

1.2.3.2 Implications of Application Designation

Applicants should understand how their designation as community-based or standard will affect application processing at particular stages, and, if the application is successful, execution of the registry agreement and subsequent obligations as a gTLD registry operator, as described in the following paragraphs.

Objection / Dispute Resolution – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or

declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

String Contention – Resolution of string contention may include one or more components, depending on the composition of the contention set and the elections made by community-based applicants.

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.
- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.
- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

Contract Execution and Post-Delegation – A community-based applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation. Material changes to the contract, including changes to the community-based nature of the gTLD and any associated provisions, may only be made with ICANN's approval. The determination of whether to approve changes requested by the applicant will be at ICANN's discretion. Proposed criteria for approving such changes are the subject of policy discussions.

Community-based applications are intended to be a narrow category, for applications where there are

unambiguous associations among the applicant, the community served, and the applied-for gTLD string. Evaluation of an applicant's designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation. However, any applicant designating its application as community-based will, if the application is approved, be bound by the registry agreement to implement the community-based restrictions it has specified in the application. This is true even if there are no contending applicants.

1.2.3.3 Changes to Application Designation

An applicant may not change its designation as standard or community-based once it has submitted a gTLD application for processing.

1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs

All applicants should be aware that approval of an application and entry into a registry agreement with ICANN do not guarantee that a new gTLD will immediately function throughout the Internet. Past experience indicates that network operators may not immediately fully support new top-level domains, even when these domains have been delegated in the DNS root zone, since third-party software modification may be required and may not happen immediately.

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to assist application providers in the use of current root-zone data.

ICANN encourages applicants to familiarize themselves with these issues and account for them in their startup and launch plans. Successful applicants may find themselves expending considerable efforts working with providers to achieve acceptance of their new top-level domains.

Applicants should review <http://www.icann.org/en/topics/TLD-acceptance/> for background. IDN applicants should also review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

1.2.5 Notice concerning TLD Delegations

ICANN is only able to create TLDs as delegations in the DNS root zone, expressed using NS records with any corresponding DS records and glue records. There is no policy enabling ICANN to place TLDs as other DNS record types (such as A, MX, or DNAME records) in the root zone.

1.2.6 Terms and Conditions

All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this guidebook.

1.2.7 Notice of Changes to Information

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

1.2.8 Voluntary Designation for High Security Zones

An ICANN stakeholder group has considered development of a possible special designation for "High Security Zone Top Level Domains" ("HSTLDs"). The group's Final Report can be found at <http://www.icann.org/en/topics/new-gtlds/hstld-final-report-11mar11-en.pdf>.

The Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

1.2.9 Security and Stability

Root Zone Stability: There has been significant study, analysis, and consultation in preparation for launch of the

New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling and reporting will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS and the root zone system (including the process for delegating TLDs in the root zone). In the event that there is a reported impact in this regard and processing of applications is delayed, the applicants will be notified in an orderly and timely manner.

1.2.10 Resources for Applicant Assistance

A variety of support resources are available to gTLD applicants. Financial assistance will be available to a limited number of eligible applicants. To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form.

To be eligible for consideration, all financial assistance applications must be received by **23:59 UTC 12 April 2012**. Financial assistance applications will be evaluated and scored against pre-established criteria.

In addition, ICANN maintains a webpage as an informational resource for applicants seeking assistance, and organizations offering support.

See <http://newgtlds.icann.org/applicants/candidate-support> for details on these resources.

1.2.11 Updates to the Applicant Guidebook

As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and

changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain names including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-). As described below, IDNs require the insertion of A-labels into the DNS root zone.

1.3.1 IDN-Specific Requirements

An applicant for an IDN string must provide information indicating compliance with the IDNA protocol and other technical requirements. The IDNA protocol and its documentation can be found at <http://icann.org/en/topics/idn/rfcs.htm>.

Applicants must provide applied-for gTLD strings in the form of both a **U-label** (the IDN TLD in local characters) and an **A-label**.

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

A U-label is the Unicode form of an IDN label, which a user expects to see displayed in applications.

For example, using the current IDN test string in Cyrillic script, the U-label is <испытание> and the A-label is <xn--80akhbyknj4f>. An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).⁷

If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see <http://www.icann.org/en/topics/idn/rfcs.htm>), and by active participation in the IDN wiki (see <http://idn.icann.org/>) where some rendering problems are demonstrated.

6. **[Optional]** - Representation of label in phonetic alphabet. The applicant may choose to provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>). Note that this information will not be evaluated or scored. The information, if provided, will be used as a guide to ICANN in responding to inquiries or speaking of the application in public presentations.

⁷ See examples at <http://stupid.domain.name/node/683>

1.3.2 IDN Tables

An IDN table provides the list of characters eligible for registration in domain names according to the registry's policy. It identifies any multiple characters that are considered equivalent for domain name registration purposes ("variant characters"). Variant characters occur where two or more characters can be used interchangeably.

Examples of IDN tables can be found in the Internet Assigned Numbers Authority (IANA) IDN Repository at <http://www.iana.org/procedures/idn-repository.html>.

In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string (the "top level tables"). IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second or lower levels.

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines⁸ and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.
- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

An applicant's IDN tables should help guard against user confusion in the deployment of IDN gTLDs. Applicants are strongly urged to consider specific linguistic and writing system issues that may cause problems when characters are used in domain names, as part of their work of defining variant characters.

⁸ See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>

To avoid user confusion due to differing practices across TLD registries, it is recommended that applicants cooperate with TLD operators that offer domain name registration with the same or visually similar characters.

As an example, languages or scripts are often shared across geographic boundaries. In some cases, this can cause confusion among the users of the corresponding language or script communities. Visual confusion can also exist in some instances between different scripts (for example, Greek, Cyrillic and Latin).

Applicants will be asked to describe the process used in developing the IDN tables submitted. ICANN may compare an applicant's IDN table with IDN tables for the same languages or scripts that already exist in the IANA repository or have been otherwise submitted to ICANN. If there are inconsistencies that have not been explained in the application, ICANN may ask the applicant to detail the rationale for differences. For applicants that wish to conduct and review such comparisons prior to submitting a table to ICANN, a table comparison tool will be available.

ICANN will accept the applicant's IDN tables based on the factors above.

Once the applied-for string has been delegated as a TLD in the root zone, the applicant is required to submit IDN tables for lodging in the IANA Repository of IDN Practices. For additional information, see existing tables at <http://iana.org/domains/idn-tables/>, and submission guidelines at <http://iana.org/procedures/idn-repository.html>.

1.3.3 IDN Variant TLDs

A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.⁹ Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

⁹ The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.

The following scenarios are possible during the gTLD evaluation process:

- a. Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.

Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a "Declared Variants List" that will be available on ICANN's website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at <http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm>.

ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.
- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be

based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.

It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.

1.4 Submitting an Application

Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

Except where expressly provided within the question, all application materials must be submitted in English.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

1.4.1 Accessing the TLD Application System

The TAS site will be accessible from the New gTLD webpage (<http://www.icann.org/en/topics/new-gtld-program.htm>), and will be highlighted in communications regarding the opening of the application submission period. Users of TAS will be expected to agree to a standard set of terms of use

including user rights, obligations, and restrictions in relation to the use of the system.

1.4.1.1 User Registration

TAS user registration (creating a TAS user profile) requires submission of preliminary information, which will be used to validate the identity of the parties involved in the application. An overview of the information collected in the user registration process is below:

No.	Questions
1	Full legal name of Applicant
2	Principal business address
3	Phone number of Applicant
4	Fax number of Applicant
5	Website or URL, if applicable
6	Primary Contact: Name, Title, Address, Phone, Fax, Email
7	Secondary Contact: Name, Title, Address, Phone, Fax, Email
8	Proof of legal establishment
9	Trading, subsidiary, or joint venture information
10	Business ID, Tax ID, VAT registration number, or equivalent of Applicant
11	Applicant background: previous convictions, cybersquatting activities
12	Deposit payment confirmation and payer information

A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or

employee who would be completing the application on behalf of the applicant.

The registration process will require the user to request the desired number of application slots. For example, a user intending to submit five gTLD applications would complete five application slot requests, and the system would assign the user a unique ID number for each of the five applications.

Users will also be required to submit a deposit of USD 5,000 per application slot. This deposit amount will be credited against the evaluation fee for each application. The deposit requirement is in place to help reduce the risk of frivolous access to the online application system.

After completing the registration, TAS users will receive access enabling them to enter the rest of the application information into the system. Application slots will be populated with the registration information provided by the applicant, which may not ordinarily be changed once slots have been assigned.

No new user registrations will be accepted after **23:59 UTC 29 March 2012**.

ICANN will take commercially reasonable steps to protect all applicant data submitted from unauthorized access, but cannot warrant against the malicious acts of third parties who may, through system corruption or other means, gain unauthorized access to such data.

1.4.1.2 Application Form

Having obtained the requested application slots, the applicant will complete the remaining application questions. An overview of the areas and questions contained in the form is shown here:

No.	Application and String Information
12	Payment confirmation for remaining evaluation fee amount
13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable

16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographic name? If geographic, documents of support required
22	Measures for protection of geographic names at second level
23	Registry Services: name and full description of all registry services to be provided
	Technical and Operational Questions (External)
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
30(a)	Security
	Technical and Operational Questions (Internal)
30(b)	Security
31	Technical overview of proposed registry
32	Architecture

33	Database capabilities
34	Geographic diversity
35	DNS service compliance
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
	Financial Questions
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: continued operations instrument

1.4.2 Customer Service during the Application Process

Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents

to answer questions relating to the New gTLD Program, the application process, and TAS.

1.4.3 Backup Application Process

If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

1.5 Fees and Payments

This section describes the fees to be paid by the applicant. Payment instructions are also included here.

1.5.1 gTLD Evaluation Fee

The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by **23:59 UTC 12 April 2012**.

The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.

The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews.

Refunds -- In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested, as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early	80%	USD 148,000

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Warning		
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

Thus, any applicant that has not been successful is eligible for at least a 20% refund of the evaluation fee if it withdraws its application.

An applicant that wishes to withdraw an application must initiate the process through TAS. Withdrawal of an application is final and irrevocable. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN, or any unpaid evaluation fees, will be deducted from the amount paid. Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.

Note on 2000 proof-of-concept round applicants -- Participants in ICANN's proof-of-concept application process in 2000 may be eligible for a credit toward the evaluation fee. The credit is in the amount of USD 86,000 and is subject to:

- submission of documentary proof by the applicant that it is the same entity, a successor in interest to the same entity, or an affiliate of the same entity that applied previously;
- a confirmation that the applicant was not awarded any TLD string pursuant to the 2000 proof-of-concept application pursuant to the 2000 proof-of-concept application round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

1.5.2 Fees Required in Some Cases

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees¹⁰ include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

¹⁰ The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider’s payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider’s procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider’s rules.

The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider’s rules.

ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- **Community Priority Evaluation Fee** – In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel's review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

1.5.3 Payment Methods

Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.¹¹

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider's instructions.

1.5.4 Requesting a Remittance Form

The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.6 Questions about this Applicant Guidebook

For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

¹¹ Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

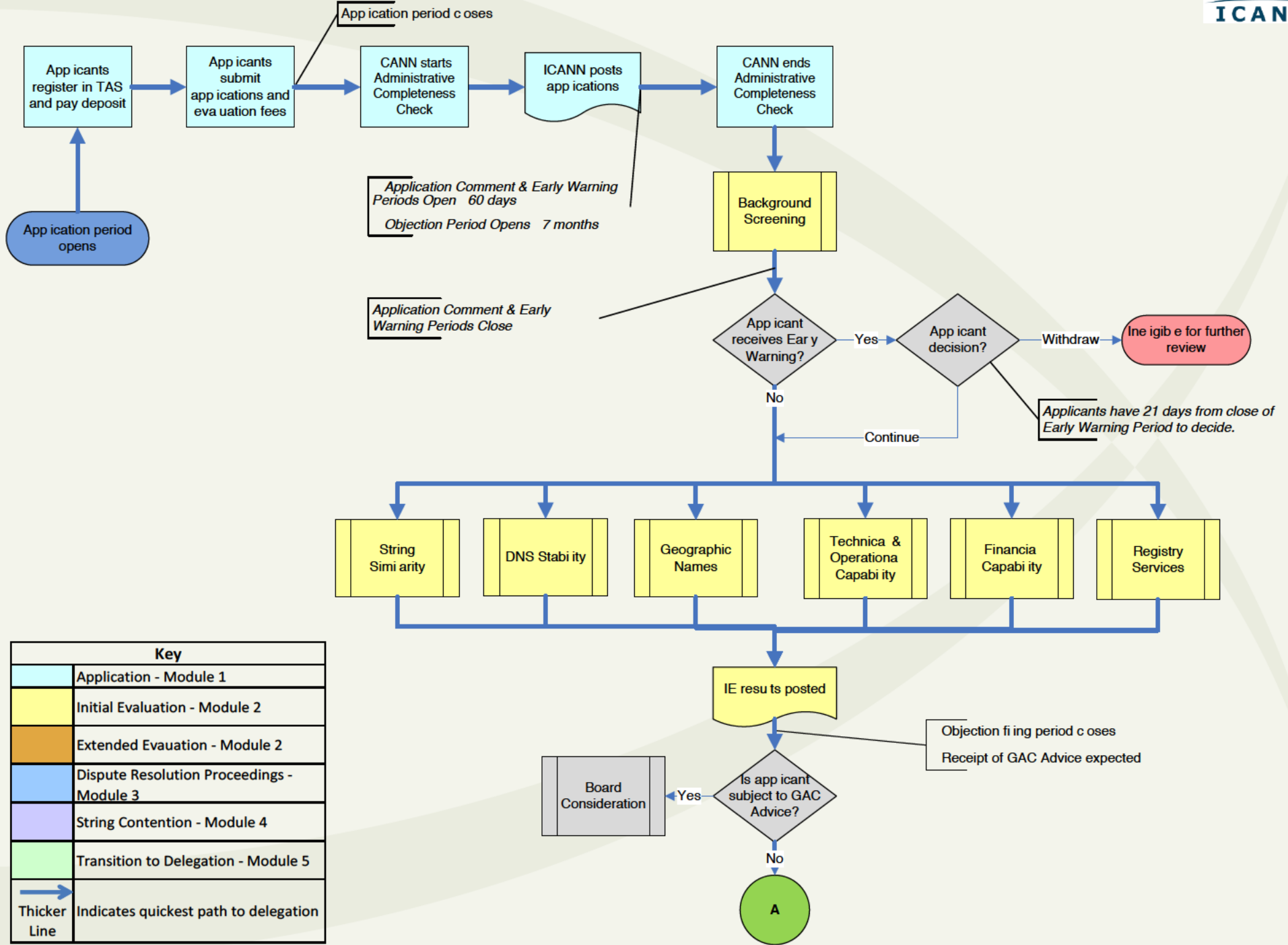
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

Currently, questions may be submitted via <newgtld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

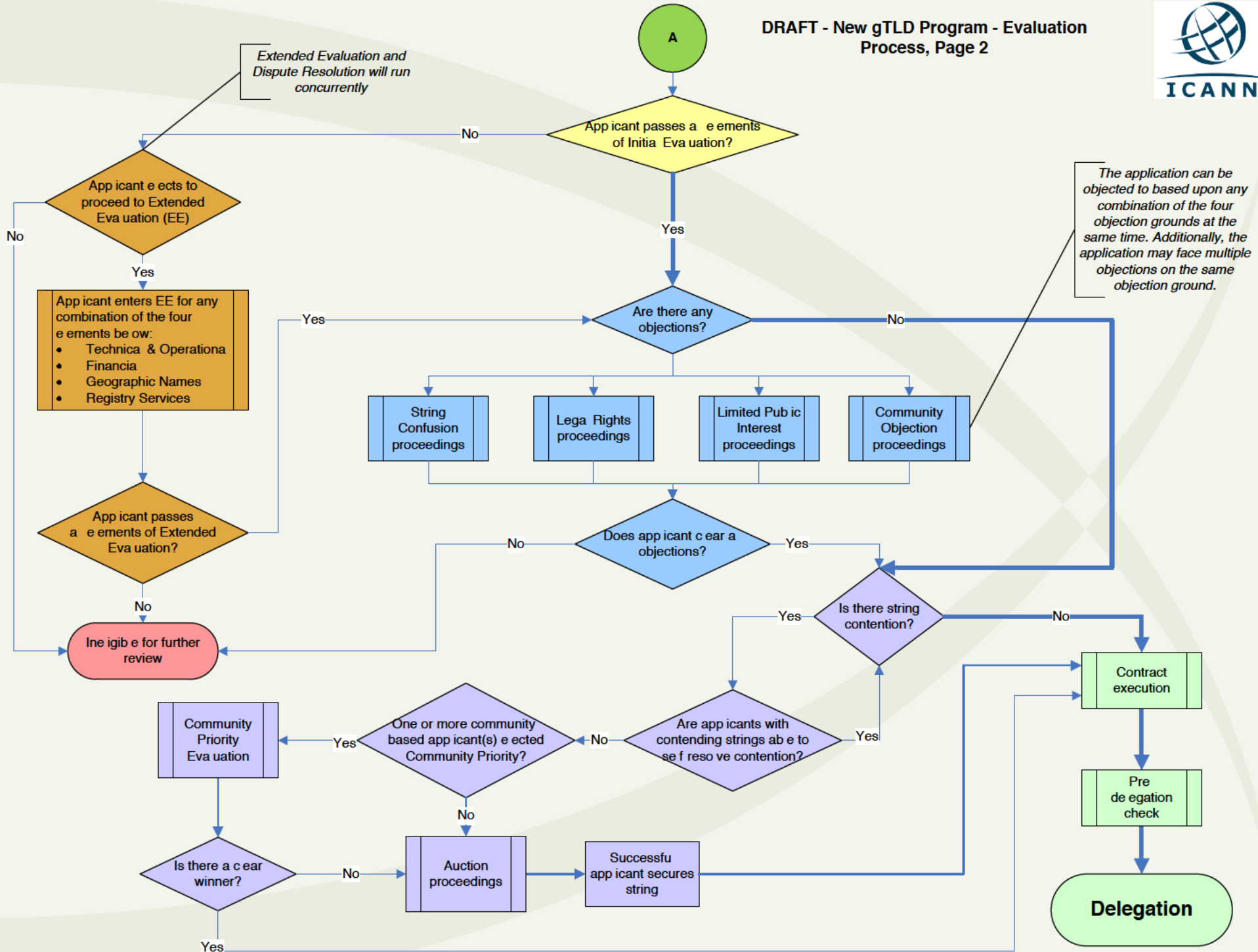
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

DRAFT - New gTLD Program - Evaluation Process



Key	
	Application - Module 1
	Initial Evaluation - Module 2
	Extended Evaluation - Module 2
	Dispute Resolution Proceedings - Module 3
	String Contention - Module 4
	Transition to Delegation - Module 5
	Indicates quickest path to delegation





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 2

4 June 2012

Module 2

Evaluation Procedures

This module describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation. All applicants will undergo an Initial Evaluation and those that do not pass all elements may request Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN assesses an applied-for gTLD string, an applicant's qualifications, and its proposed registry services.

The following assessments are performed in the **Initial Evaluation**:

- String Reviews
 - String similarity
 - Reserved names
 - DNS stability
 - Geographic names
- Applicant Reviews
 - Demonstration of technical and operational capability
 - Demonstration of financial capability
 - Registry services reviews for DNS stability issues

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

Extended Evaluation may be applicable in cases in which an applicant does not pass the Initial Evaluation. See Section 2.3 below.

2.1 Background Screening

Background screening will be conducted in two areas:

- (a) General business diligence and criminal history; and
- (b) History of cybersquatting behavior.

The application must pass both background screening areas to be eligible to proceed. Background screening results are evaluated according to the criteria described in section 1.2.1. Due to the potential sensitive nature of the material, applicant background screening reports will not be published.

The following sections describe the process ICANN will use to perform background screening.

2.1.1 General business diligence and criminal history

Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening. The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.¹

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges. All exchanges require monitoring and disclosure of material information about directors, officers, and other key personnel, including criminal behavior. In totality, these requirements meet or exceed the screening ICANN will perform.

For applicants not listed on one of these exchanges, ICANN will submit identifying information for the entity, officers, directors, and major shareholders to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.1 and return results that match these criteria. Only publicly available information will be used in this inquiry.

ICANN is in discussions with INTERPOL to identify ways in which both organizations can collaborate in background screenings of individuals, entities and their identity documents consistent with both organizations' rules and regulations. Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from

¹ See <http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization>

the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.1.2 History of cybersquatting

ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.2 Initial Evaluation

The Initial Evaluation consists of two types of review. Each type is composed of several elements.

String review: The first review focuses on the applied-for gTLD string to test:

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;
- Whether the applied-for gTLD string might adversely affect DNS security or stability; and
- Whether evidence of requisite government approval is provided in the case of certain geographic names.

Applicant review: The second review focuses on the applicant to test:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.2.1 *String Reviews*

In the Initial Evaluation, ICANN reviews every applied-for gTLD string. Those reviews are described in greater detail in the following subsections.

2.2.1.1 *String Similarity Review*

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 *Reviews Performed*

The String Similarity Panel’s task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
 - Every other single character.
 - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

Similarity to Existing TLDs or Reserved Names – This review involves cross-checking between each applied-for string and the lists of existing TLD strings and Reserved Names to determine whether two strings are so similar to one another that they create a probability of user confusion.

In the simple case in which an applied-for gTLD string is identical to an existing TLD or reserved name, the online application system will not allow the application to be submitted.

Testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. For example, protocols treat equivalent labels as alternative forms of the same label, just as “foo” and “Foo” are treated as alternative forms of the same label (RFC 3490).

All TLDs currently in the root zone can be found at <http://iana.org/domains/root/db/>.

IDN tables that have been submitted to ICANN are available at <http://www.iana.org/domains/idn-tables/>.

Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution before reaching the contention resolution stage.) These contention sets will also be published on ICANN’s website.

Similarity to TLD strings requested as IDN ccTLDs -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings requested in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should a conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take the following approach to resolving the conflict.

If one of the applications has completed its respective process before the other is lodged, that TLD will be delegated. A gTLD application that has successfully completed all relevant evaluation stages, including dispute resolution and string contention, if applicable, and is eligible for entry into a registry agreement will be considered complete, and therefore would not be disqualified by a newly-filed IDN ccTLD request. Similarly, an IDN ccTLD request that has completed evaluation (i.e., is validated) will be considered complete and therefore would not be disqualified by a newly-filed gTLD application.

In the case where neither application has completed its respective process, where the gTLD application does not have the required approval from the relevant government or public authority, a validated request for an IDN ccTLD will prevail and the gTLD application will not be approved. The term “validated” is defined in the IDN ccTLD Fast Track Process Implementation, which can be found at <http://www.icann.org/en/topics/idn>.

In the case where a gTLD applicant has obtained the support or non-objection of the relevant government or public authority, but is eliminated due to contention with a string requested in the IDN ccTLD Fast Track process, a full refund of the evaluation fee is available to the applicant if the gTLD application was submitted prior to the publication of the ccTLD request.

Review of 2-character IDN strings — In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to a) or b) above will not pass this review.

2.2.1.1.2 Review Methodology

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability

that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes.² Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

The algorithm supports the common characters in Arabic, Chinese, Cyrillic, Devanagari, Greek, Japanese, Korean, and Latin scripts. It can also compare strings in different scripts to each other.

The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.³

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

2.2.1.1.3 Outcomes of the String Similarity Review

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation,

² See <http://icann.sword-group.com/algorithm/>

³ In the case where an applicant has listed Declared Variants in its application (see subsection 1.3.3), the panel will perform an analysis of the listed strings to confirm that the strings are variants according to the applicant's IDN table. This analysis may include comparison of applicant IDN tables with other existing tables for the same language or script, and forwarding any questions to the applicant.

and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

An applicant may file a formal objection against another gTLD application on string confusion grounds. Such an objection may, if successful, change the configuration of the preliminary contention sets in that the two applied-for gTLD strings will be considered in direct contention with one another (see Module 4, String Contention Procedures). The objection process will not result in removal of an application from a contention set.

2.2.1.2 *Reserved Names and Other Unavailable Strings*

Certain names are not available as gTLD strings, as detailed in this section.

2.2.1.2.1 *Reserved Names*

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

Top-Level Reserved Names List

<i>AFRNIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

2.2.1.2.2 *Declared Variants*

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names, until such time as variant management solutions are developed and variant TLDs are delegated. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

2.2.1.2.3 *Strings Ineligible for Delegation*

The following names are prohibited from delegation as gTLDs in the initial application round. Future application rounds may differ according to consideration of further policy advice.

These names are not being placed on the Top-Level Reserved Names List, and thus are not part of the string similarity review conducted for names on that list. Refer to subsection 2.2.1.1: where applied-for gTLD strings are reviewed for similarity to existing TLDs and reserved names, the strings listed in this section are not reserved names and accordingly are not incorporated into this review.

Applications for names appearing on the list included in this section will not be approved.

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أولمبي	أولمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح ألابي لصل	لاله ارمح ألابي
ءارمحل اقرولبل	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at <http://www.icann.org/en/committees/security/sac045.pdf>. Some publicly available statistics are also available at <http://stats.l.root-servers.org/>.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

2.2.1.3.1 DNS Stability: String Review Procedure

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

2.2.1.3.2 *String Requirements*

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

Part I -- Technical Requirements for all Labels (Strings) – The technical requirements for top-level domain labels follow.

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
 - 1.1.1 The label must have no more than 63 characters.
 - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)*(RFCs 5890-5894), and any updates thereto. This includes the following:
 - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

- 1.2.2 The label must be a valid IDNA A-label (further restricted as described in Part II below).

Part II -- Requirements for Internationalized Domain Names

– These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
 - 2.1.1 Must be a valid A-label according to IDNA.
 - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).⁴
 - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
 - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
 - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

⁴ It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level

Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.⁵ Note, however, that a two-character IDN string will not be approved if:
 - 3.2.1 It is visually similar to any one-character label (in any script); or
 - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

⁵ Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gns0.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

2.2.1.4.1 Treatment of Country or Territory Names⁶

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator’s delegation information or provisioning services.

2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

2.2.3.3 TLD Zone Contents

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD’s DNS servers.

- NS records and in-balliwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

2.2.3.4 Methodology

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>. This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

2.2.4 Applicant's Withdrawal of an Application

An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

2.3 *Extended Evaluation*

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

2.3.1 *Geographic Names Extended Evaluation*

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 Technical/Operational or Financial Extended Evaluation

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.¹¹ In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

¹¹ <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
 - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
 - Promoter, underwriter, or voting trustee of the Applicant; or
 - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



App cat on s confirmed as comp ete and ready for eva uat on dur ng Adm n strat ve Comp eteness Check

Background Screening
Th rd-party prov der rev ews app cant's background.

Initial Evaluation – String Review

Initial Evaluation – Applicant Review

String Similarity
Str ng S m ar ty Pane rev ews app ed-for str ngs to ensure they are not too s m ar to ex st ng TLDs or Reserved Names.

DNS Stability
A str ngs rev ewed and n extraord nary cases, DNS Stab ty Pane may perform extended rev ew for poss b e techn ca stab ty issues.

Geographic Names
Geograph c Names Pane determ nes f app ed-for str ng s geograph c name requ r ng government support.

Technical and Operational Capability
Techn ca and Operat ona pane rev ews app cant's answers to quest ons and support ng documentat on.

Financial Capability
F nanc a pane rev ews app cant's answers to quest ons and support ng documentat on.

Registry Services
Pre m nary rev ew of app cant's reg stry serv ces and referra to RSTEP for further rev ew dur ng Extended Eva uat on where necessary

Pane compares a app ed-for str ngs and creates content on sets.

Pane conf rms support ng documentat on where requ red.

ICANN w seek to pub sh content on sets pr or to pub cat on of fu IE resu ts.

Does app cant pass a e ements of In ta Eva uat on?

App cant e cts to pursue **Extended Evaluation?**

Extended Eva uat on process

App cant cont nues to subsequent steps.

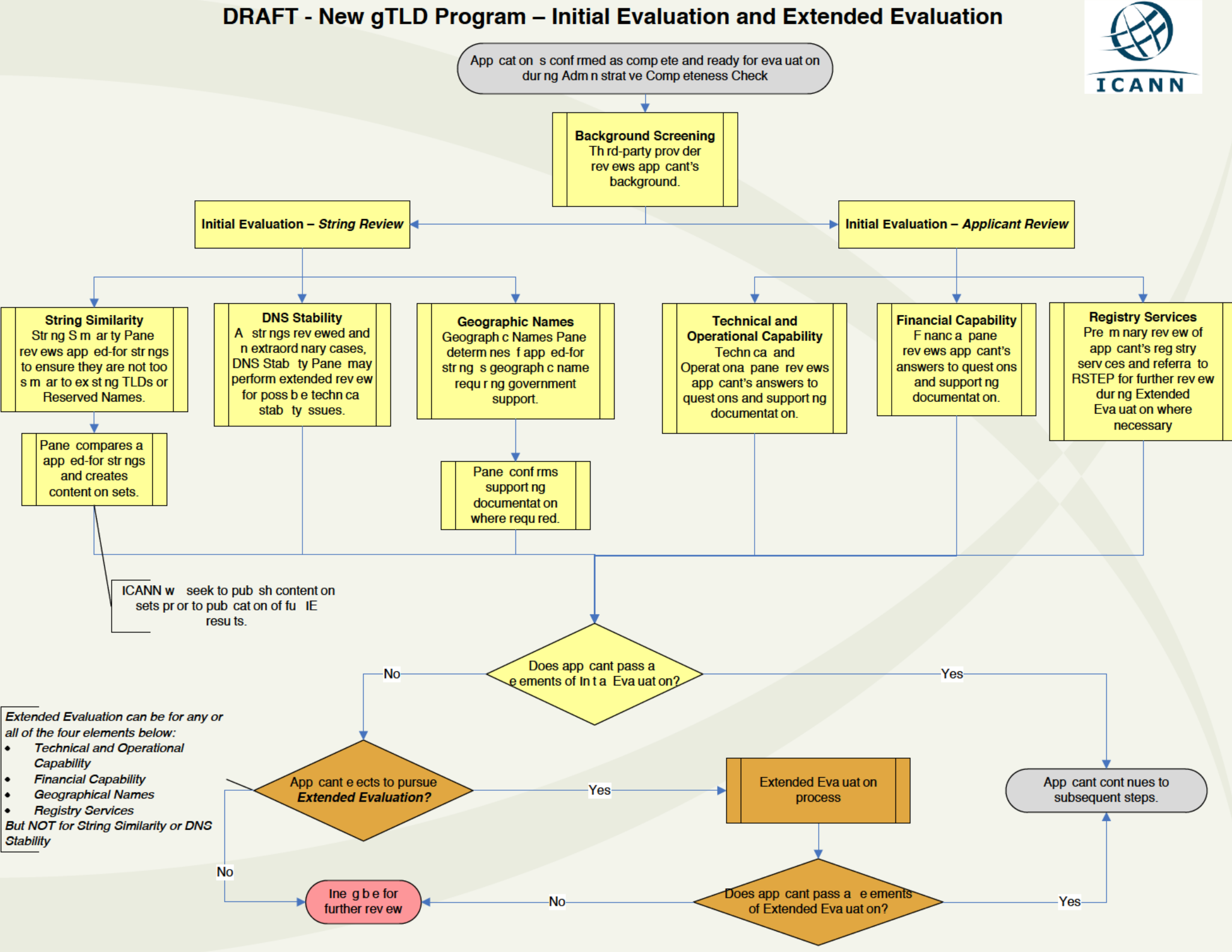
Does app cant pass a e ements of Extended Eva uat on?

Ine g b e for further rev ew

Extended Evaluation can be for any or all of the four elements below:

- *Technical and Operational Capability*
- *Financial Capability*
- *Geographical Names*
- *Registry Services*

But NOT for String Similarity or DNS Stability



Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da Índia
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

Eligibility

Each record in this registry is derived from the following possible properties:

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- ** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
 - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
 - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
 - Providing for funds to continue operations in the event of a registry failure.
 - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
 - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
 - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
 - Adhere to DNS stability and security requirements as described in the technical section, and
 - Provide access to the widest variety of services.

II. Aspects of the Questions Asked in the Application and Evaluation Criteria

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
 - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
 - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
 - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
 - Funding adequately covers technical requirements,
 - Funding covers costs,
 - Risks are identified and addressed, in comparison to other aspects of the plan.

III. Scoring

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
 - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
 - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
 - Scoring a 3 on the continuity criteria, or
 - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				
		(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative; 	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+0066.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44). IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	OPTIONAL. Provide a representation of the label according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space. For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation? ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation? iii. What goals does your proposed gTLD have in terms of user experience? iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above. v. Will your proposed gTLD impose any measures for 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis? ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts). iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans. 			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				The applicant's designation as standard or community-based cannot be changed once the application is submitted.			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language. • How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required. • When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date. • The current estimated size of the community, both as to membership and geographic extent. 		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • Relations to any community organizations. • Relations to the community and its constituent parts/groups. • Accountability mechanisms of the applicant to the community. 			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • Intended registrants in the TLD. • Intended end-users of the TLD. • Related activities the applicant has carried out or intends to carry out in service of this purpose. • Explanation of how the purpose is of a lasting nature. 			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • relationship to the established name, if any, of the community. 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<ul style="list-style-type: none"> relationship to the identification of community members. any connotations the string may have beyond the community. 			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined. Name selection: what types of second-level names may be registered in the gTLD. Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name. Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants. 			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p>Documentation presented in response to this question should be submitted in the original language.</p>			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See the Dot Info Circular at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				must be separately approved according to Specification 5 of the Registry Agreement. That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> A. Receipt of data from registrars concerning registration of domain names and name servers. B. Dissemination of TLD zone files. C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service). D. Internationalized Domain Names, where offered. E. DNS Security Extensions (DNSSEC). <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rsep.html.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> A high-level SRS system description; Representative network diagram(s); Number of servers; Description of interconnectivity with other registry systems; Frequency of synchronization between servers; and Synchronization scheme (e.g., hot standby, cold standby). 	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> a plan for operating a robust and reliable SRS, one of the five critical registry functions; scalability and performance consistent with the overall business approach, and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Details of a well-developed plan to operate a robust and reliable SRS; SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement; SRS is consistent with the technical, operational and financial approach described in the application; and Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the</p>	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the</p>

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		<ul style="list-style-type: none"> • A high-level Whois system description; • Relevant network diagram(s); • IT and infrastructure resources (e.g., servers, switches, routers and other components); • Description of interconnectivity with other registry systems; and • Frequency of synchronization between servers. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Provision for Searchable Whois capabilities; and • A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>application demonstrates compliance with any applicable privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> • explain the various registration states as well as the criteria and procedures that are used to change state; • describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; • clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and • describe resourcing plans for this aspect of the criteria (number and 	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

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		<p>description of personnel roles allocated to this area).</p> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are already on hand or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> • An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; • Policies for handling complaints regarding abuse; • Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as</p>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; (2) Plans are adequately resourced in the planned costs detailed in the financial section; (3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and (4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements. 	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and (2) Measures from at least one additional area to be eligible for 2 points as described in the question. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> (1) An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of well-developed abuse policies and procedures; (3) Plans are sufficient to result in compliance with contractual requirements; (4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>described below.</p> <ul style="list-style-type: none"> • Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> ○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. ○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and ○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. • A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; • Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by 					<p>carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> ○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; ○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and ○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and • A description of resourcing plans for the 	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <ul style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ul style="list-style-type: none"> (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). <p>1 - meets requirements: Response includes</p> <ul style="list-style-type: none"> (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements;

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		<p>initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.)</p> <p>1 - meets requirements: Response includes:</p>

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							(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed; (3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants; (4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and (5) Proposed security measures are commensurate with the nature of the applied-for gTLD string. 0 - fails requirements: Does not meet all the requirements to score 1.
Demonstration of Technical & Operational Capability (Internal)	30	(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to: <ul style="list-style-type: none"> • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response 	N	Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>policies, plans, and processes;</p> <ul style="list-style-type: none"> plans to minimize the risk of unauthorized access to its systems or tampering with registry data; intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates; details for auditing capability on all network access; physical security approach; identification of department or group responsible for the registry's security organization; background checks conducted on security personnel; description of the main security threats to the registry operation that have been identified; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). 					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.</p>	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> ▪ Anticipated TCP / IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans; • List of providers / carriers; and • Resourcing plans for the initial 	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure; any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included; resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</p> <p>(3) Geo-diversity plans are consistent</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		A complete answer is expected to be no more than 5 pages.					with technical, operational, and financial approach as described in the application; and (4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> • Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales. • RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones. • The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). • Demonstrate how the system will 	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</p> <p>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</p>	<p>1 - meets requirements: Response includes:</p> <p>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</p> <p>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</p> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> • Server configuration standard (i.e., planned configuration). • Network addressing and bandwidth for query load and update propagation. • Headroom to meet surges. <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> • How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement. • How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6. • List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html .	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10; (3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	<p>Data Backup Policies & Procedures: provide</p> <ul style="list-style-type: none"> • details of frequency and procedures for backup of data, • hardware, and systems used for backup, data format, • data backup features, • backup testing procedures, • procedures for retrieval of data/rebuild of database, • storage controls and procedures, and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A description of leading practices being or to be followed;</p> <p>(3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</p> <p>(2) compliance with Specification 2 of the Registry Agreement;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p>1 – meets requirements: Response includes</p> <p>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</p> <p>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 – fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • A highly detailed plan that provides for leading practice levels of availability; and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to result in compliance with requirements (Specification 6); (3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a registry

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		<p>that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan. <p>A complete answer is expected to be no more than 10 pages.</p>				<p>understanding of the Registry Transition Processes; and (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> • a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done 	N		0-1	<p>Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>with the results, and with whom results are shared;</p> <ul style="list-style-type: none"> • How test plans are updated (e.g., what triggers an update, change management processes for making updates); • Length of time to restore critical registry functions; • Length of time to restore all operations, inclusive of critical registry functions; and • Length of time to migrate from one site to another. <p>A complete answer is expected to be no more than 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> • a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems. • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Meeting the fault tolerance / monitoring guidelines described • Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) consistency with the commitments made to registrants and registrars regarding system maintenance. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; (2) A high level of availability that allows for the ability to respond to faults through a 24x7 response team. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; (3) Plans are consistent with the technical, operational, and financial approach described in the application; and (4) Demonstrates an adequate level of resources that are on hand,

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							committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and an ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ; An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); Technical plan is consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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	44	<p>OPTIONAL. IDNs:</p> <ul style="list-style-type: none"> State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. Describe how the IDN implementation will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm. Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p> <p>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</p>	0-1	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application; (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and (5) ability to comply with relevant RFCs.</p>	<p>1 - meets requirements for this optional element: Response includes</p> <ol style="list-style-type: none"> Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element; An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations; Evidence of ability to resolve rendering and known IDN issues or spoofing attacks; IDN plans are consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released. <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> the latest available unaudited financial statements; and an explanation as to why audited or independently certified financial statements are not available. <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p>	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history</p>	<p>1 - meets requirements: Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • balance sheet; • income statement; • statement of shareholders equity/partner capital; • cash flow statement, and • letter of auditor or independent certification, if applicable. 				(less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.	
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p>1 - meets requirements:</p> <ol style="list-style-type: none"> (1) Financial projections adequately describe the cost, funding and risks for the application (2) Demonstrates resources and plan for sustainable operations; and (3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported. <p>0 - fails requirements: Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> • the expected operating costs and capital expenditures of setting up and operating the proposed registry; • any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing; • any significant variances between years in any category of expected costs; and • a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an 	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p>	<p>2 - exceeds requirements: Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> (1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant; (2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and (3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</p> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capability section. Costs should include both fixed and variable costs.</p> <p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> • Key components of capital expenditures; • Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and • Costs of outsourcing, if any. 	<p>1 - meets requirements:</p> <p>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described.</p>	<p>2 - exceeds requirements:</p> <p>Response meets all the attributes for a score of 1 and</p> <p>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</p> <p>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and</p> <p>VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> • Executed funding agreements; • A letter of credit; • A commitment letter; or • A bank statement. <p>Funding commitments may be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> • Key components of the funding plan and their key terms; and • Price and number of registrations. 	<p>earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity.</p> <p>1 - meets requirements:</p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning; Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and Describe the measures to mitigate the key risks as described in this question. <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and:</p> <ol style="list-style-type: none"> Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur. <p>1 - meets requirements:</p> <ol style="list-style-type: none"> Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks); Response gives consideration to probability and resource impact of contingencies identified; and If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> how on-going technical requirements will be met; and what alternative funding can be reasonably raised at a later time. <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p>	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>					
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>3 - exceeds requirements: Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure.</p> <p>1 - meets requirements:</p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>		<p>to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Refer to guidelines at http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.</p>			
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a</p>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions. • The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions. • The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument. • The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement. • The LOC must contain at least the following required elements: <ul style="list-style-type: none"> ○ Issuing bank and date of issue. ○ Beneficiary: ICANN / 4676 Admiralty 		<p>this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard & Poor's, and Japan Credit Rating Agency.</p> <p>If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</p> <p>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</p> <p>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</p> <ul style="list-style-type: none"> o Applicant's complete name and address. o LOC identifying number. o Exact amount in USD. o Expiry date. o Address, procedure, and required forms whereby presentation for payment is to be made. o Conditions: <ul style="list-style-type: none"> ▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit. ▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number. ▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument. ▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent. <p>(ii) <u>A deposit into an irrevocable cash escrow account held by a reputable financial institution.</u></p> <ul style="list-style-type: none"> • The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years. • Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met. • The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • The escrow agreement must have a term 		<p>its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>of five years from the delegation of the TLD.</p> <ul style="list-style-type: none"> The funds in the deposit escrow account are not considered to be an asset of ICANN. Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow. The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater. The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application. Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement. 					

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

Line E. Add lines C and D to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe “other” capital expenditures in the *Comments/Notes* box.

Line F. Add lines A through E to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines A, B, C to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines E through G to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines I through K to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines A through F to arrive at the projected net cash flow for line H.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines A and B to arrive at the total sources of funds for line C.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections : **Sample**

In local currency (unless noted otherwise)

Comments / Notes

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
I) Projected Cash Inflows and Outflows					
A) Forecasted registration volume		-	62 000	81 600	105 180
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310 000	448 800	636 339
D) Other cash inflows		-	35 000	48 000	62 000
E) Total Cash Inflows		-	345 000	496 800	698 339
Projected Operating Cash Outflows					
F) Labor:					
i) Marketing Labor		25 000	66 000	72 000	81 000
ii) Customer Support Labor		5 000	68 000	71 000	74 000
iii) Technical Labor		32 000	45 000	47 000	49 000
G) Marketing		40 000	44 000	26 400	31 680
H) Facilities		7 000	10 000	12 000	14 400
I) General & Administrative		14 000	112 000	122 500	136 000
J) Interest and Taxes		27 500	29 000	29 800	30 760
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i) Hot site maintenance		5 000	7 500	7 500	7 500
ii) Partial Registry Functions		32 000	37 500	41 000	43 000
iii) (list type of activities being outsourced)		-	-	-	-
iv) (list type of activities being outsourced)		-	-	-	-
v) (list type of activities being outsourced)		-	-	-	-
vi) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12 200	18 000	21 600	25 920
M) Total Operating Cash Outflows		199 700	437 000	450 800	493 260
N) Projected Net Operating Cash flow	E - M	(199 700)	(92 000)	46 000	205 079
Ia) Break out of Fixed and Variable Operating Cash Outflows					
A) Total Variable Operating Costs		92 000	195 250	198 930	217 416
B) Total Fixed Operating Costs		107 700	241 750	251 870	275 844
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199 700	437 000	450 800	493 260
Ib) Break out of Critical Registry Function Operating Cash Outflows					
A) Operation of SRS		-	5 000	5 500	6 050
B) Provision of Whois		-	6 000	6 600	7 260
C) DNS Resolution for Registered Domain Names		-	7 000	7 700	8 470
D) Registry Data Escrow		-	8 000	8 800	9 680
E) Maintenance of Zone in accordance with DNSSEC		-	9 000	9 900	10 890
F) Other		-	-	-	-
G) Total Critical Function Cash Outflows		-	35 000	38 500	42 350
III) Projected Capital Expenditures					
A) Hardware		98 000	21 000	16 000	58 000
B) Software		32 000	18 000	24 000	11 000
C) Furniture & Other Equipment		43 000	22 000	14 000	16 000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):					
i)		-	-	-	-
ii)		-	-	-	-
iii)		-	-	-	-
iv)		-	-	-	-
v)		-	-	-	-
vi)		-	-	-	-
E) Other Capital Expenditures		-	-	-	-
F) Total Capital Expenditures		173 000	61 000	54 000	85 000
IV) Projected Assets & Liabilities					
A) Cash		668 300	474 300	413 000	471 679
B) Accounts receivable		-	70 000	106 000	160 000
C) Other current assets		-	40 000	60 000	80 000
D) Total Current Assets		668 300	584 300	579 000	711 679
E) Accounts payable		41 000	110 000	113 000	125 300
F) Short-term Debt		-	-	-	-
G) Other Current Liabilities		-	-	-	-
H) Total Current Liabilities		41 000	110 000	113 000	125 300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Yr - Cur Yr	173 000	234 000	288 000	373 000
J) 3-year Reserve		186 000	186 000	186 000	186 000
K) Other Long-term Assets		-	-	-	-
L) Total Long-term Assets		359 000	420 000	474 000	559 000
M) Total Long-term Debt		1 000 000	1 000 000	1 000 000	1 000 000
V) Projected Cash flow (excl. 3-year Reserve)					
A) Net operating cash flows	= Sec. I) N	(199 700)	(92 000)	46 000	205 079
B) Capital expenditures	= Sec. III) FE	(173 000)	(61 000)	(54 000)	(85 000)
C) Change in Non Cash Current Assets	= Sec. IV) (B) (C): Prior Yr - Cur Yr	n/a	(110 000)	(56 000)	(74 000)
D) Change in Total Current Liabilities	= Sec. IV) H: Cur Yr - Prior Yr	41 000	69 000	3 000	12 300
E) Debt Adjustments	= Sec. IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments		-	-	-	-
G) Projected Net Cash flow		(331 700)	(194 000)	(61 000)	58,379
VI) Sources of funds					
A) Debt:					
i) On-hand at time of application		1 000 000	-	-	-
ii) Contingent and/or committed but not yet on-hand		-	-	-	-
B) Equity:					
i) On-hand at time of application		-	-	-	-
ii) Contingent and/or committed but not yet on-hand		-	-	-	-
C) Total Sources of funds		1 000 000	-	-	-

Provide name of local currency used.

Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function. Outsourcing hot site to ABC Company - cost based on number of servers hosted and customer support. Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management.

Variable Costs:
-Start Up equals all labor plus 75% of marketing.
-Years 1 through 3 equal 75% of all labor plus 50% of Marketing and 30% of G&A and Other Operating Costs
Fixed Costs: equals Total Costs less Variable Costs

Check that I) C equals I) N.

Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50

Commensurate with Question 24
Commensurate with Question 26
Commensurate with Question 35
Commensurate with Question 38
Commensurate with Question 43

-Hardware & Software have a useful life of 3 years
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.

Should equal amount calculated for Question 50

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I) J.

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self-funded (i.e. revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown are adequate to fund our start-up phase.

Template 1 - Financial Projections: Most Likely

Comments / Notes

In local currency (unless noted otherwise)		Reference / Formula	Live / Operational				Provide name of local currency used.
Sec.			Start-up Costs	Year 1	Year 2	Year 3	
I) Projected Cash inflows and outflows							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
Projected Operating Cash Outflows							
F) Labor:							
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa) Break out of Fixed and Variable Operating Cash Outflows							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb) Break out of Critical Function Operating Cash Outflows							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III) Projected Capital Expenditures							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV) Projected Assets & Liabilities							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)							
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets		n/a				
	D) Change in Total Current Liabilities						
	E) Debt Adjustments		n/a				
	F) Other Adjustments						
	G) Other Adjustments						
	H) Projected Net Cash flow						
VI) Sources of funds							
A) Debt:							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
B) Equity:							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							

Template 2 - Financial Projections: Worst Case						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
I)	Projected Cash inflows and outflows						
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
	Projected Operating Cash Outflows						
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa)	Break out of Fixed and Variable Operating Cash Outflows						
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb)	Break out of Critical Function Operating Cash Outflows						
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III)	Projected Capital Expenditures						
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV)	Projected Assets & Liabilities						
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V)	Projected Cash flow (excl. 3-year Reserve)						
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) Projected Net Cash flow						
VI)	Sources of funds						
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
- II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 *Public Objection and Dispute Resolution Process*

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 *Grounds for Objection*

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible

outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2 Legal Rights Objection

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name¹:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3 Limited Public Interest Objection

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the

¹ See also <http://www.iana.org/domains/int/policy/>.

accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.²

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

² The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 Dispute Resolution Service Providers

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest³ followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

3.2.5 Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

³ See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3 Filing Procedures

The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure ("Procedure") included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed. See <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>.

3.3.1 Objection Filing Procedures

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date.

Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
 - A statement giving the specific ground upon which the objection is being filed.
 - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will

dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.

- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon

consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3 *Mediation*

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4 Selection of Expert Panels

A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6 Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;

- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
 - a. Level of global recognition of both entities;
 - b. Length of time the entities have been in existence;
 - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6^{ter} of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

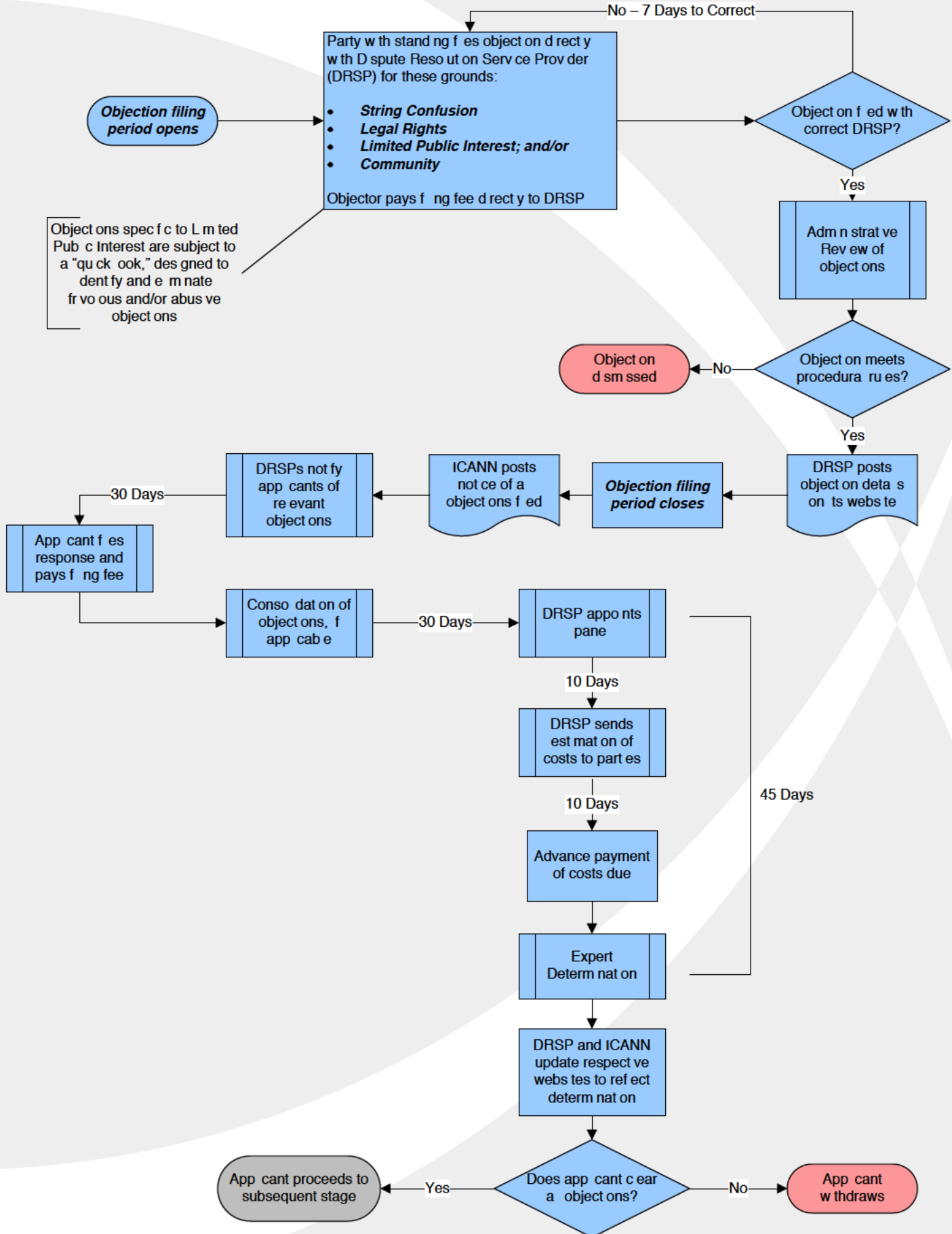
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW gTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
 - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
 - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
- (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
 - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
 - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
 - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
 - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
 - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
 - (iii) A Limited Public Interest Objection must be filed at: [●].
 - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
 - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
 - (ii) A statement of the Objector's basis for standing; and
 - (iii) A description of the basis for the Objection, including:
 - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
 - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
 - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
 - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
 - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
 - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
 - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
 - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
 - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
 - (i) The Panel shall decide how and where the hearing shall be conducted.
 - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
 - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
 - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 4

4 June 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

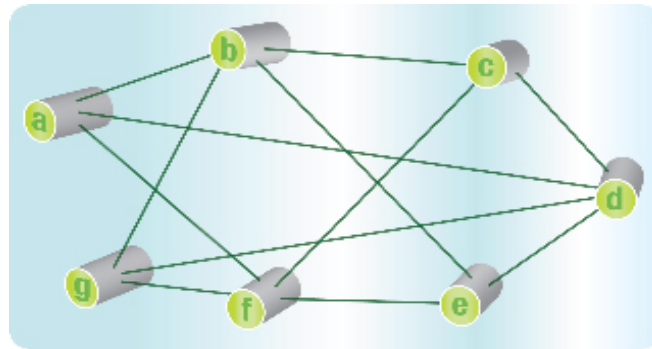


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

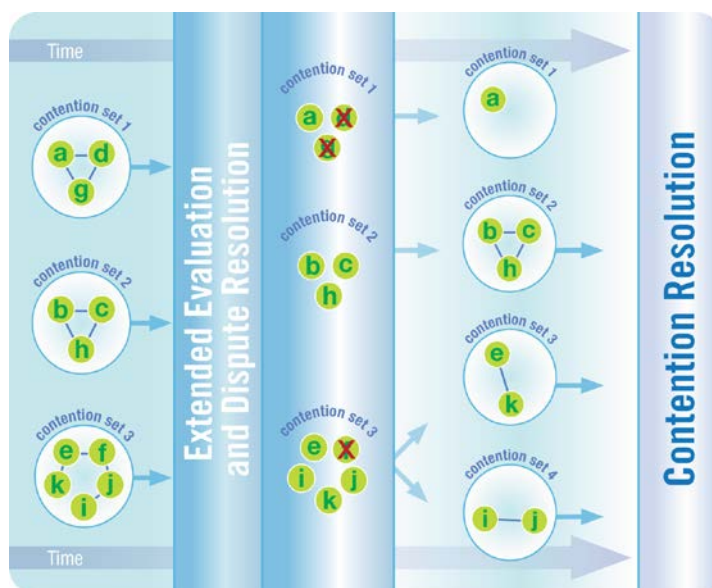


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

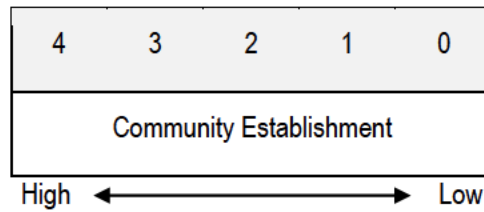
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

Criterion 1 Definitions

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be:
(a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

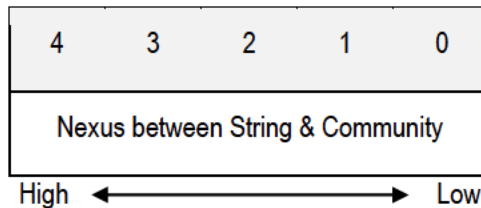
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
---	---

String has no other significant meaning beyond identifying the community described in the application.

String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

Criterion 2 Definitions

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

Criterion 2 Guidelines

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

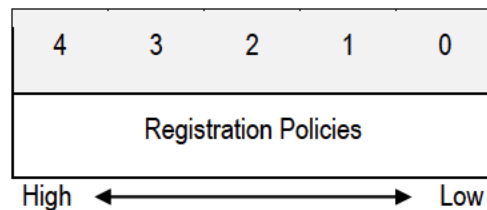
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies (0-4 points)

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

Criterion 3 Guidelines

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

Criterion #4: Community Endorsement (0-4 points)

4	3	2	1	0
Community Endorsement				
High		←————→		Low

As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.¹

¹ The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.



Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
 - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
 - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
 - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
 - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
 - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

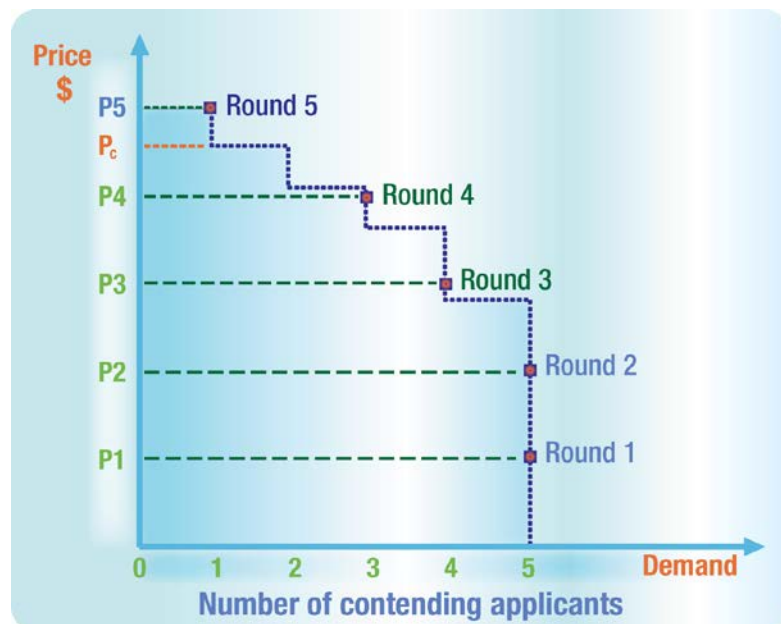


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1 .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1 . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2 .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2 . The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3 .
- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3 , while the other four bidders submit bids of at least P_3 . The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4 .
- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4 , while the other three remaining bidders submit bids of at least P_4 . The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5 .
- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4 , and one of the bidders submits an exit bid at P_c midway between P_4 and P_5 . The final bidder submits a bid greater than P_c . Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.² Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

² If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

4.4 *Contention Resolution and Contract Execution*

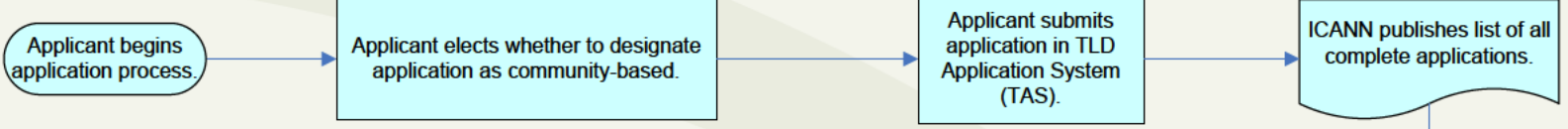
An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

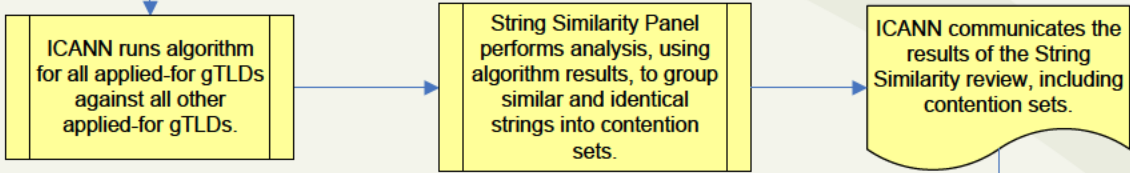
DRAFT - New gTLD Program - String Contention



Application/
Admin Check



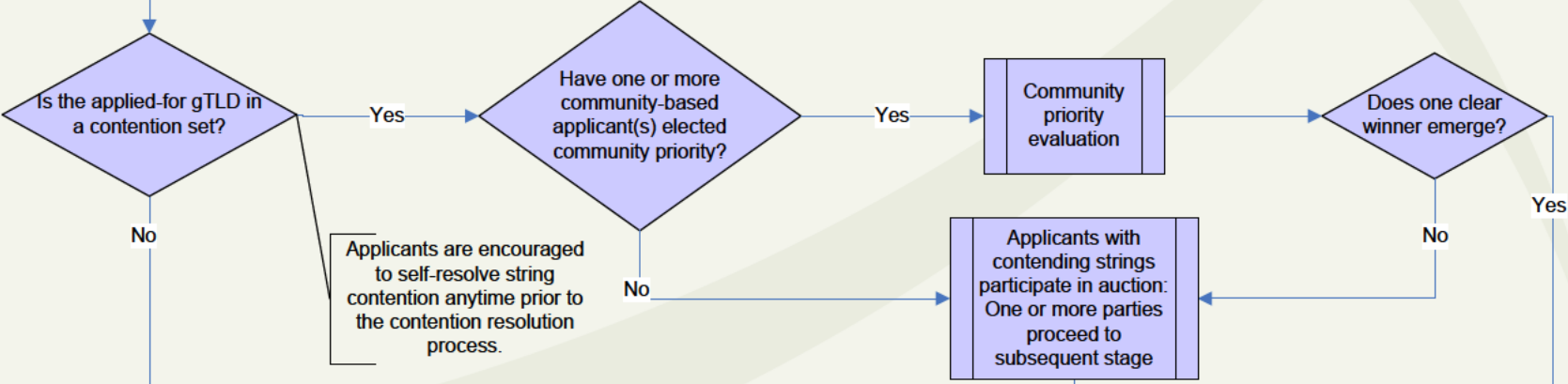
Initial Evaluation (IE)
String Review



IE + EE
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to
Delegation

Applicant enters
Transition to
Delegation phase



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 5

4 June 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 Pre-Delegation Testing

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 Testing Procedures

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

IDN support -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

Escrow deposit -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

5.3 Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

5.4 Ongoing Operations

An applicant that is successfully delegated a gTLD will become a “Registry Operator.” In being delegated the role of operating part of the Internet’s domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

5.4.1 What is Expected of a Registry Operator

The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator’s obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591¹:

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

¹ See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR² (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies.

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)³ following the process in Annex A of the ICANN Bylaws.⁴ The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

² IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

³ <http://gns0.icann.org>

⁴ <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process.

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 What is Expected of ICANN

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

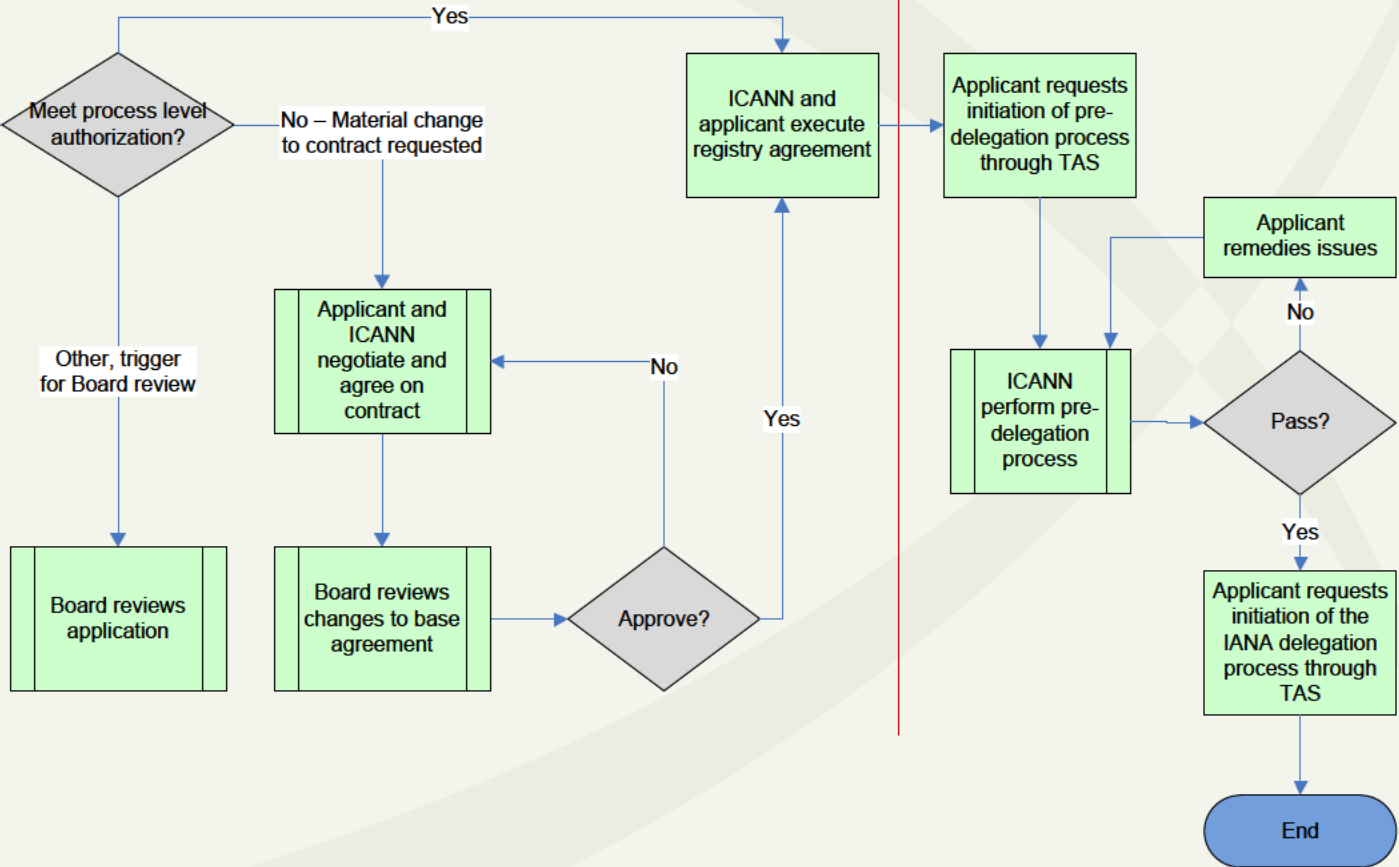
Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months

ICANN provides notice of eligibility to applicant

Applicant prepares documentation for contracting

- Includes:
- Material changes in circumstances
 - Continued Operations instrument
 - Designated contracting parties



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* (“Specification 1”).

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [*Note: For Community-Based TLDs Only*] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

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(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*
ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

6.5 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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7.7 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.8 General Notices. Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[_____]
[_____]
[_____]

Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[_____] President and CEO

Date:

[Registry Operator]

By: _____
[_____] _____
[_____]

Date:

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EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2. functional and performance specifications for the provision of Registry Services;
 - 1.2.3. Security and Stability of the registry database for the TLD;
 - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
 - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
 - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

```

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

```

Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213

Email: registrar@example.tld
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 Admin Contact: Joe Registrar
 Phone Number: +1.3105551213
 Fax Number: +1.3105551213
 Email: joeregistrar@example-registrar.tld
 Admin Contact: Jane Registrar
 Phone Number: +1.3105551214
 Fax Number: +1.3105551213
 Email: janeregistrar@example-registrar.tld
 Technical Contact: John Geek
 Phone Number: +1.3105551215
 Fax Number: +1.3105551216
 Email: johngeek@example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
 IP Address: 192.0.2.123
 IP Address: 2001:0DB8::1
 Registrar: Example Registrar, Inc.
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. Zone File Access

2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. Use of Data by User. Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. Term of Use. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. No Fee for Access. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2 Co-operation

2.2.1. Assistance. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3 ICANN Access. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. Bulk Registration Data Access to ICANN

3.1. Periodic Access to Thin Registration Data. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. Contents. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. Format. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3. Access. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. Exceptional Access to Thick Registration Data. In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
 - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;
 - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
 - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.

2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

- ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
 5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
 6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding **SLR**, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.

4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
4 JUNE 2012

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below.

The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
4 JUNE 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
 - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
 - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
 - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
 - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
 - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
 - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
 - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
 - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant’s mark; or

(b) impairing the distinctive character or the reputation of the complainant’s mark; or

(c) creating a likelihood of confusion with the complainant’s mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
 - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
 - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
 - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
 - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
 - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.

9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.

9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.

10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.

10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
 - 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
 - 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
 - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
 - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
 - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
 - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application - Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

EXHIBIT C-4



**AUCTION RULES FOR
NEW gTLDs:
INDIRECT CONTENTIONS EDITION
VERSION 2015-02-24**

PREPARED FOR ICANN

BY POWER AUCTIONS LLC



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Auction Rules for New gTLDs: Indirect Contentions Edition

1. This document (“Auction Rules”) sets out the auction rules for resolving string contention among applicants for new gTLDs by the Internet Corporation for Assigned Names and Numbers (“ICANN”), for Contention Sets containing one or more Indirect Contention relationships.
2. Auctions for resolving string contention among applicants for new gTLDs will occur in a series of auction events. In each auction event (“Auction”), bidding will occur for one or more Contention Sets. If bidding occurs for at least two Contention Sets within an Auction, the bidding will occur simultaneously.
3. ICANN will be assisted in the implementation of these Auctions by its independent auction consultant, Power Auctions LLC (the “Auction Manager”).

Definitions and Interpretation

4. The definitions are set out in the Glossary at the end of the Auction Rules. The majority of the terms are explained in the body of the Auction Rules. Terms used but not otherwise defined herein shall have the meanings ascribed to them in the gTLD Applicant Guidebook (the “Applicant Guidebook”) or the “Bidder Agreement” (defined below). In the event of any inconsistency between the Bidder Agreement and the Applicant Guidebook or the Auction Rules, the Bidder Agreement shall prevail.
5. All prices in the Auction are expressed in whole numbers of United States dollars (\$US).
6. All references to time, unless otherwise stated, are to time defined under the UTC time standard.
7. Text boxes containing additional explanations and examples have been included in this document to assist applicants. The contents of these text boxes are not formally part of the Auction Rules.

 *Text boxes like these contain additional explanation and examples.*

Participation in the Auction

8. Prior to the scheduling of an Auction, an Intent to Auction notice will be provided to all members of an eligible Contention Set via the ICANN Customer Portal. To be eligible to receive an Intent to Auction notice from ICANN, requirements a-d below must be met:

All active applications in the Contention Set have:

- a) Passed evaluation
- b) Resolved any applicable GAC advice
- c) Resolved any objections

d) No pending ICANN Accountability Mechanisms

✍ ICANN intends to initiate the Auction process once the composition of the contention set has stabilized. ICANN reserves the right not to send Intent to Auction notices and/or to postpone a scheduled Auction if a change request by one or more applicants in the Contention Set is pending, but believes that in most instances the Auction should be able to proceed without further delay.

9. [Reserved for future use.]

10. After an applicant receives the Intent to Auction notice from ICANN pursuant to the eligibility requirements described in clause 8, if each and every member of the Contention Set submits a postponement request through the ICANN Customer Portal, ICANN at its sole discretion may postpone the Auction for that Contention Set to a future date. Postponement requests must be submitted by all members of the Contention Set by the due date specified within the ICANN Customer Portal, generally twenty eight (28) days after receipt of Intent to Auction notice from ICANN. If a postponement request is not submitted by the due date specified within the ICANN Customer Portal or is not accommodated by ICANN, an applicant may request an advancement/postponement request via submission of the Auction Date Advancement/Postponement Request Form. The form must be submitted at least 45 days prior to the scheduled Auction Date and ICANN must receive a request from each member of the contention set. Without limiting the foregoing, ICANN reserves the right at its sole discretion to postpone the Auction for any Contention Set to a future date regardless of whether each and every member of the Contention Set has submitted a postponement request.

11. Eligible Contention Sets containing one or more Indirect Contention relationships, pursuant to clauses 8 -10, will generally be notified of ICANN's Intent to Auction the contention set priority order. ICANN in its sole discretion will determine the scheduling of each Auction.

✍ It is anticipated that Auctions for Contention Sets containing one or more Indirect Contention relationships will be scheduled in separate Auction events from Contention Sets involving Direct Contention relationships only. Each Auction event will include only one or two Contention Sets with Indirect Contention relationships. The scheduling may not necessarily be based upon the priority order of these Contention Sets, but may be based on operational issues relating to the conduct of the Auctions, including the complexity of a given Contention Set.

12. Before an Auction, each Qualified Applicant may designate a party to bid on its behalf ("Designated Bidder"). Each Qualified Applicant or its Designated Bidder must execute a Bidder Agreement with the Auction Manager. The Bidder Agreement must be signed and returned to ICANN by the deadline specified in the Intent to Auction notice. A Qualified Applicant or its Designated Bidder, after executing a Bidder Agreement with Auction Manager, will henceforth be referred to as a "Bidder". Participation in an Auction is limited to Bidders. Failure to execute a Bidder Agreement by the deadline specified in the Intent to Auction notice and to submit a Deposit which is received into the Auction Bank Account by the Deposit Deadline may result in the inability to participate in the Auction

for the Contention Set, which will result in the rejection of the Qualified Applicant's application for the Contention String and the Contention String not being assigned or delegated to the relevant Qualified Applicant.

13. Before each Auction, each Bidder shall nominate up to two people ("Authorized Individuals") to bid on its behalf in the Auction.

✍ Training materials will be made available to Authorized Individuals in advance of each Auction. In addition, Authorized Individuals will be invited and encouraged to participate in a mock auction, which will be conducted on the Auction Site prior to the live Auction.

14. The first time in each Auction that an Authorized Individual accesses the Auction Site, he/she will be required to confirm acceptance of the Bidder Agreement and the Auction Rules.
15. All actions of Authorized Individuals on the Auction Site will be attributed to the Bidder that nominated the Authorized Individual to bid on its behalf.

Auction Process

16. Bidding will take place online at the Auction Site. Authorized Individuals will be given the web address of the Auction Site and will be provided with individual user names and passwords in order to access it. Authorized Individuals shall be obligated to keep this information confidential. The public will not have any access to the Auction Site.
17. Each Auction will take place in a number of Rounds, using an auction format known as an ascending clock auction. Each Round of an Auction will have a Starting Time and an Ending Time designated by the Auction Manager. There will be a Recess after each Round. Bids will be submitted between the Starting Time and Ending Time of the Round, subject to clause 39, and the results of the Round will be posted during the Recess after the Round.
18. These Auction Rules set out the rules for Contention Sets containing one or more Indirect Contention relationships. The changes introduced into the current document are not applicable to the substantial majority of Auctions, in which there are Direct Contention relationships only.

Auction Information and Scheduling

19. Prior to the Commencement Date of the Auction, ICANN or the Auction Manager will inform Bidders of relevant information relating to the Auction, including:
 - (a) The Contention Set or Sets that will be the subject of the Auction;
 - (b) confirmation of the Commencement Date; and
 - (c) the Starting Time, Ending Time and duration of Round 1.
20. The first Round of an Auction will start on the Commencement Date and last 30 minutes, the recess after the first Round will last 20 minutes, and all subsequent Rounds and recesses will last 20 minutes

each. The Auction Manager may open Round 1 for Early Bidding, a time period prior to the standard 30 minutes of bidding for Round 1 of a duration designated by the Auction Manager. A Bid submitted during Early Bidding has the same effect as a Bid submitted during the standard 30 minutes of Round 1. All Contention Sets within a single Auction event will follow the same Auction Schedule. The Auction Manager may lengthen the Round or Recess timescales on an ad hoc basis at its sole discretion. The Auction Manager may also shorten the Round or Recess timescales on an ad hoc basis, but only with the electronic written consent of all remaining participants in an Auction.

21. The Auction Site will contain a schedule showing the indicative times for each Round and each Recess (the "Auction Schedule"). The Auction Schedule will be updated as necessary during the course of the Auction. When applicable, the Early Bidding Starting Time will be announced by the Auction Manager.

✍ The Auction Manager intends to provide Early Bidding for most Auction events. Early bidding will provide an additional period of time prior to the standard bidding time allotted in Round 1 to accommodate Bidders in various time zones who may prefer to submit a Proxy Bid. The Auction Manager generally intends to open Early Bidding approximately 8 hours prior to the start of Round 1. The opening for early bidding may take place on the day prior to the official Commencement Date of the Auction. ICANN or the Auction Manager will communicate the opening of Round 1 to Bidders, pursuant to clause 19.

It should be noted, the Auction Manager does not intend to provide live customer support throughout the Early Bidding period. Live customer support will begin approximately 1 hour prior to the start of Round 1.

Auction Bank Account and Deposits

22. In advance of an Auction, each Bidder will receive wire instructions for an Auction Bank Account, which will be established for auction purposes by ICANN and Power Auctions LLC at a major US commercial bank. The funds in the Auction Bank Account will be held in escrow and segregated on a Bidder-by-Bidder basis.
23. All Deposits to the Auction Bank Account must be made by bank wire. All bank wires to the Auction Bank Account must be denominated in \$US. All bank wires to the Auction Bank Account must clearly identify the relevant Bidder and the relevant Contention Set. All Deposits to the Auction Bank Account and all payments of the net balance of the aggregate Winning Prices to the Auction Bank Account must be net of all taxes, tariffs and duties of any kind and all wire and service fees, all of which are the sole responsibility of the Bidder.
24. All bank wires to the Auction Bank Account must be made from a bank account owned by the Bidder. If the Qualified Applicant is an entity that does not own a bank account, it is required to designate a Designated Bidder that owns a bank account. All refunds from the Auction Bank Account will be made only to the same bank account from which the associated deposit was made, except for exceptional circumstances and at the sole discretion of the Auction Manager.

Bidding Limits

25. Each Bidder will be assigned a Bidding Limit applicable to a Contention Set within an Auction based on the amount of the Deposit, net of any bank fees, submitted by the Bidder for such Contention Set.
26. The Bidding Limit will be determined by the amount of the Deposit applicable to the Contention Set received from the Bidder. If the Deposit is less than \$2,000,000, the Bidding Limit will be set at ten (10) times the Deposit. If the Deposit is \$2,000,000 or greater, the Bidding Limit will be deemed to be "Unlimited".
27. If a Bidder is eligible to bid for more than one Application within an Auction, the Bidder will be assigned a separate Bidding Limit for each such Application, and the Bidding Limits will be non-transferable among Applications. If any wire to the Auction Bank Account is intended to provide Deposits for more than one Application, the Bidder must provide clear instructions in a specified form to the Auction Manager as to the allocation of Deposits among the Applications.
28. All wires and all instructions associated with Deposits, including instructions regarding the allocation of funds among Contention Sets from wires and funds rolled over from previous Auctions, must be received no later than 16:00 UTC on the day that is seven (7) calendar days prior to the Commencement Date of the relevant Auction (the "Deposit Deadline"), unless this deadline is waived, at the Auction Manager's sole discretion.

Participation in an Auction

29. To place Bids on an Application within an Auction, a Bidder must submit a Deposit and thereby establish a positive Bidding Limit pursuant to clauses 25 – 28. In the event that no Qualified Applicant in a given Contention Set submits a Deposit by the Deposit Deadline, ICANN reserves the right to reject all Applications subject to the Contention Set and not delegate any of the Contention Strings.
30. A Bidder who has submitted a Deposit for an Application in a Contention Set is required to participate in the Auction for the Contention Set unless the Bidder sends ICANN and the Auction Manager written notice that it has withdrawn from the Auction for the Contention Set. Such notification must be received by ICANN and the Auction Manager no later than the Deposit Deadline. In the absence of written notification or non-participation in the Auction, a default bid of one dollar (\$1), pursuant to clauses 31 and 42, will be entered automatically on the Bidder's behalf.

Bidding

31. For each Round and for each Open Contention Set, a Start-of-Round Price and an End-of-Round Price will be announced to Bidders for the Contention Set. The Start-of-Round Price for each Contention Set in Round 1 will be one dollar (\$1). The Start-of-Round and End-of-Round Prices will increase as the Auction progresses, pursuant to clauses 44(d), 45 and 48.
32. A Bid represents a price, which a Bidder is willing to pay to resolve string contention within a Contention Set in favor of its Application.
33. There are two types of Bids:

- (a) *Continue Bids*: A Continue Bid is a Bid for an Application at the End-of-Round Price for the relevant Contention Set (or a Proxy Bid at a specified greater price, see clauses 37 and 38 for further explanation of Proxy Bids); and
- (b) *Exit Bids*: An Exit Bid is a Bid for an Application at a specified price, which is less than the End-of-Round Price but at least the amount of the previous Bid for the Application (or \$1 in Round 1).

✍ The Auction Site will include a link to make it very easy to submit a Continue Bid. Clicking on this link will generate a bid at the End-of-Round Price. Bids may also be typed at other allowable prices.

34. After each Round of the Auction, it is determined whether each Application that was eligible for bidding in the Round is Enduring, by sequentially applying conditions 34(a), 34(b) and 34(c) below. Only Enduring Applications may force the Auction to go to a next Round:

- (a) An Application that was eligible for bidding in the Round and received a Continue Bid is deemed to be Enduring;
- (b) An Application that was eligible for bidding in the Round is deemed not to be Enduring if an Exit Bid was received for this Application and if a higher Bid has been received for another Application that was Positioned the Same or Better than this Application; and
- (c) Under the assumption that conditions (a) and (b) are not satisfied: An Application that was eligible for bidding in the Round is deemed to be Enduring *if and only if* an Exit Bid was received for this Application, but this Application was part of a Feasible Set of Applications eligible for bidding in the Round whose Bids summed to at least the End-of-Round Price of the Round.

✍ The purpose of the bidding restriction in clause 34 is to prevent "bid sniping": a Bidder is not permitted to wait until the very end of the Auction to bid. Instead, the Bidder is required to bid sufficiently much for its Application in each and every Round (or to place a Proxy Bid that has the same effect).

✍ A Continue Bid guarantees that the Bidder's Application will not be eliminated from the Open Contention Set in the then current Round. By contrast, an Exit Bid may result in the Application being eliminated from the Auction or remaining in the Auction, in accordance with conditions (b) and (c), respectively.

35. After the processing of Round n ($n \geq 1$) pursuant to clause 34:

- (a) The Auction proceeds to Round $n + 1$ *if and only if* there remain two or more Enduring Applications that are in a Direct Contention relationship with one another—see clauses 44 and 46 below; and

- (b) Any Enduring Application that is no longer in a Direct Contention relationship with any other Enduring Application will be deemed to be a Winning Application, and will be removed from the list of Enduring Applications. Any Winning Application will no longer be treated as part of the Auction beginning in Round $n + 1$, if applicable; and
 - (c) Any Enduring Application that is in a Direct Contention relationship with another Enduring Application will be eligible for bidding in Round $n + 1$,
36. Bids may only be submitted during a Round (i.e. between the Starting Time and the Ending Time). During a Round, a Bidder may edit or cancel its Bids as often as desired, subject to the conditions set out in these Auction Rules. The valid Bids residing on the Auction Site at the Ending Time of the Round are binding on the respective Bidders and may not be amended or removed except pursuant to clause 39.
37. The End-of-Round Price for a Round is only the minimum price for a Continue Bid. Subject to limitations in clause 40, Continue Bids may be placed at prices higher than the End-of-Round Price. These are often referred to as Proxy Bids.
38. A Proxy Bid submitted by a Bidder in a prior Round, will be treated the same as a Bid that has been placed in the current Round, subject to clauses 34 and 35. It will be treated as an Exit Bid if its price is less than the relevant End-of-Round Price of the current Round, or otherwise as a Continue Bid.

The Proxy Bid capability makes it possible to submit a Bid in Round 1 and to take no further active part in the auction. In other words, it is not necessary to bid in real time in each Round. Proxy Bids submitted in a given Round will be processed by the auction software in each subsequent Round in exactly the same way as equivalent bids submitted during the Round. A Proxy Bid entered in one Round may also be amended during a subsequent Round, so long as the price was sufficiently large to keep the Bidder in the Auction until the subsequent Round.

39. In the event that an Authorized Individual loses access to the Internet or is otherwise unable to place a Bid, the Auction Manager, at its sole discretion, may permit the submission of Bids by alternative means, generally by fax. The Auction Manager will provide forms for any submissions by fax. All such submissions by alternative means must be validated by an Authorized Individual. Any Authorized Individual who submits Bids by alternative means shall be deemed to have confirmed acceptance of the Bidder Agreement and the Auction Rules as if he or she had accepted them on the Auction Site pursuant to clause 14.

Validity of Bids

40. In order to be valid, a Bid must satisfy each and all of the following conditions:
- (a) the Bid must have been submitted no earlier than the Starting Time of the relevant Round and no later than the Ending Time of the relevant Round, with the exception of Bids permitted by the Auction Manager pursuant to clause 39;
 - (b) the Bid must be placed by a Bidder for its Application in an Open Contention Set;

- (c) in Round 2 or later, the Bid must be placed by a Bidder for an Application that is deemed to be eligible for bidding pursuant to clause 35;
 - (d) the price of the Bid must be a whole number of \$US that is not less than the Bid of the previous Round (or \$1 in the first Round); and
 - (e) the price of the Bid must not exceed the Bidding Limit assigned to the Bidder for the Contention Set—this clause will not place any constraint if the Bidding Limit is “Unlimited”.
41. The Auction Site will enforce the conditions of clause 40 on Bid submissions.
42. If a Bidder who is eligible to bid for a Contention Set in a given Round does not submit a valid Bid during the Round and is unable to correct this omission pursuant to clause 39, then a Bid equal to the amount of the Bid of the previous Round (or \$1 in the first Round) will be entered automatically on the Bidder’s behalf.

Processing of Bids after a Round

43. During the Recess after each Round, the Auction Manager will process the Bids for each Open Contention Set and post the following results on the Auction Site to Bidders for the Contention Set:
- (a) the Number of Applications remaining eligible for bidding in the next Round , i.e., the Number of Enduring Applications, and the number of Enduring Applications that received Continue Bids in the Round (“Aggregate Demand”), but not the identities of the Enduring Applications or the Applications that received Continue Bids; and
 - (b) Start-of-Round Price and an End-of-Round Price for the next round of the Auction.
44. An Open Contention Set will remain Open in the next Round if there remain two or more Enduring Applications that are in a Direct Contention relationship with one another. In this event:
- (a) the number of Enduring Applications and the Aggregate Demand (but not the identities of the Enduring Applications or the Applications that received Continue Bids), will be posted to Bidders for the Contention Set;
 - (b) if any Application is eliminated after a Round, thereby causing another Application to be deemed a Winning Application pursuant to clause 35(b), or, if any Application is eliminated, thereby causing the Contention Set to divide into two or more disjoint subsets, this information (including the position of the eliminated Application in the Contention Set, as well as the Winning Application’s identity) will be communicated to Bidders for the Contention Set;
 - (c) the next Round’s Start-of-Round Price for the Contention Set, equal to the current Round’s End-of-Round Price, will be announced to Bidders for the Contention Set; and
 - (d) the next Round’s End-of-Round Price for the Contention Set, strictly greater than the current Round’s End-of-Round Price, will be announced to Bidders for the Contention Set.
45. The price increment used to obtain the End-of-Round Price in clause 44(d) will be set by the Auction Manager taking into account Aggregate Demand for the Contention Set and other information

relevant to the likely level of prices for the Contention Set, but the actual level of increment that is selected will be at the Auction Manager's sole discretion.

✍ Aggregate Demand is defined as the number of Continue Bids for Applications received in a Round, aggregated over all Applications that remained eligible for bidding in the Contention Set after a Round. It does not attempt to describe commercial demand for the gTLD.

46. An Open Contention Set will close after a Round if there do not remain two or more Enduring Applications that are in a Direct Contention relationship with one another. In this event:
- (a) The Auction Manager will select the Feasible Set of Applications for which the sum of the associated Bids is maximized.
 - (b) In the event that the maximization problem of clause (a) has a unique solution, the Applications in the selected Feasible Set will be deemed to be Winning Applications; and
 - (c) the Bidder(s) associated with Winning Applications will be deemed the Winner(s) of the Contention Set.
47. The Winning Prices will be determined by "second-price principles," specified as follows:
- (a) The sum of the Winning Prices associated with a set of Winning Applications shall not be less than the sum of the Bids for a non-winning set of Applications, evaluated in the Round in which the set of Winning Applications caused the non-winning set of Applications to be eliminated from the Auction.
 - (b) In applying clause (a), to the extent that the Bids of non-winning Applications need to be allocated among two or more Winning Applications, they shall be allocated proportionally. For example, suppose that Applications A and C together eliminate Application B in Round 3, and suppose that the Bids for these Applications in Round 3 are p_A , p_C and p_B , respectively. Then we require:
 - The Winning Price of Application A is not less than $\left(\frac{p_A}{p_A+p_C}\right)p_B$; and
 - The Winning Price of Application C is not less than $\left(\frac{p_C}{p_A+p_C}\right)p_B$.
 - (c) For the avoidance of doubt, the Bid amounts used in the calculation of clause (b) shall be the Bid amounts in the Round in which the Winning Applications caused the non-winning Applications to be eliminated.
 - (d) In particular, the Winning Price associated with a Winning Application shall not be less than any Bid, submitted in any Round of the Auction, for any other Application that is Positioned the Same or Better than the Winning Application.
 - (e) If applying these second-price principles generates two or more constraints on the Winning Price of a Winning Application, then each and every one of these constraints is required to

be satisfied. For example, if these rules determine that the Winning Price shall be not less than X and that the Winning Price shall not be less than Y, then the Winning Price shall not be less than the maximum of X and Y.

- (f) Similarly, in the event that a non-winning set of Applications can be eliminated by a set that includes either of two Enduring Applications, then the constraints generated on Winning Prices are required to hold in relation to each choice of these Enduring Applications, including the Enduring Application whose Bid is the minimum.
 - (g) In no event will the Winning Price for a Winning Application exceed the highest Bid submitted for the Winning Application. Additionally, in no event will the Winning Price for a Winning Application be less than \$1.
 - (h) The fact that the Contention Set has Closed, and the amounts of the Winning Prices, will be announced to all Bidders for the Contention Set when the Contention Set Closes.
 - (i) Greater detail on applying the second-price principles is provided in the paper, "Auction Design for Indirect Contentions."
 - (j) If ICANN or the Auction Manager feels there is any ambiguity in applying the second-price principles to a Contention Set, ICANN and the Auction Manager may issue an Addendum giving more detailed examples for the Contention Set. Such Addendum, if issued, will be provided to Bidders prior to the Deposit Deadline for the Contention Set and will be deemed to provide the definitive interpretation of the pricing rules for the Contention Set.
48. In the event that that the maximization problem of clause 46(a) has two or more solutions (i.e. there is a tie), the Contention Set will enter a single Tie-Breaking Round, which will be conducted as follows:
- (a) only those Bidders whose Exit Bids for the Contention Set were part of the tie are eligible to bid in the Tie-Breaking Round;
 - (b) the price of the Bid must be a whole number of \$US that is not less than the Bidder's previous Bid amount; and
 - (c) the price of the Bid must not exceed the Bidding Limit assigned to the Bidder for the Contention Set by more than \$50,000—this clause will not place any constraint if the Bidding Limit is "Unlimited".
49. If a Bidder who is eligible to bid in a Tie-Breaking Round does not submit a valid Bid during the Round and is unable to correct this omission pursuant to clause 39, then a Bid at the Bidder's previous Bid amount will be entered automatically on the Bidder's behalf.
50. The solution to the maximization problem of clause 46(a), as solved using the Bids from the Tie-Breaking Round including automatic bids entered pursuant to clause 49, shall determine the Winning Applications after the Tie-Breaking Round, if applicable. The Winning Prices shall be determined by applying clause 47 to the full set of Bids, including the Bids from the Tie-Breaking Round. In the event that there is a tie for Winner of the Tie-Breaking Round, the tie will be broken by means of a quasi-random number generator accessed by the Auction Site.

The probability of ties can be reduced by utilizing the full richness of allowable prices, rather than bidding round numbers. For example, instead of placing a Bid at \$250,000, consider placing a Bid at \$250,017.

The use of quasi-random numbers to break ties is a well-established practice in spectrum auctions organized by various national telecommunications regulators around the world.

Conclusion of the Auction

51. The Auction concludes when every Contention Set in the Auction has Closed.
52. After a Contention Set has Closed, the Winning Bidder will be informed that it has won and will be informed of the Winning Price. All other Bidders for the Contention Set will be informed of the Winning Price only.
53. After the Auction has concluded, the Auction Manager will provide a complete, confidential report about the Auction to ICANN.
54. After receiving the Auction Manager's report, ICANN will make the following information publicly available on its website within seven (7) Calendar Days:
 - (a) the Start-of-Round and End-of-Round Prices of each Round, for each Contention Set;
 - (b) the number of Enduring Applications and the Aggregate Demand for each Round (except the final Round) for each Contention Set (but not the identities of the participants in each Round);
 - (c) the additional information, if any, implied by clause 44(b);
 - (d) the Winning Price for each Winning Application; and
 - (e) the identity of each Winning Application.

Payments, Defaults and Penalties

55. If a Bidder has one or more Winning Applications in the Auction, each Deposit will be applied to the respective Winning Application and any unused part of its aggregate Deposit for the Auction will be automatically applied toward payment of its aggregate Winning Prices. To the extent the aggregate Deposit exceeds the aggregate Winning Prices and any penalties, if applicable, the Bidder will be entitled to a refund.
56. The Winner of any Contention Set is required to pay the net balance of the aggregate Winning Prices by bank wire to the Auction Bank Account. Payment must be received within twenty (20) Business Days of the Close of the Auction for the Contention Set. In the event that a Bidder anticipates that it would require a longer payment period than twenty (20) Business Days due to verifiable government-imposed currency restrictions, the Bidder may advise Auction Manager well in advance of the Auction and Auction Manager will consider applying a longer payment period to all Bidders within the same Contention Set.

57. Any Winner from whom the net balance owed of the Winning Price(s) is not received within twenty (20) Business Days of the Close of the Auction for the Contention Set is subject to being declared in default. The Auction Manager, at its sole discretion, may delay the declaration of default for a brief period, but only if the Auction Manager determines in its sole discretion that receipt of full payment appears to be imminent.
58. Once declared in default, any Winner is subject to immediate forfeiture of its position in the Auction and assessment of default penalties.
59. After a Winner is declared in default, the remaining Applications (that have not been withdrawn from the New gTLD Program) which are not in a Direct Contention relationship with any of the non-defaulting Winning Applications will receive offers to have their Applications accepted, one at a time, in descending order of and subject to payment of its respective final Exit Bid. In this way, the next Bidder would be declared the winner subject to payment of its Exit Bid. In the event that there is a tie between two or more of the remaining Bidders that are next in descending order, the tie will be broken by means of a quasi-random number generator accessed by the Auction Site to determine the order in which the tied Bidders will receive offers to have their Applications accepted. Each Bidder that is offered the relevant gTLD will be given four (4) Business Days to respond as to whether it wants its Application to win. A Bidder who responds in the affirmative will have four (4) Business Days after its response to submit a 10% deposit and an additional sixteen (16) Business Days to submit the balance of its payment. The same default procedures and penalties are in place for any runner-up Bidder receiving such an offer. A Bidder who declines such an offer cannot rescind its decision to decline the offer, has no further obligations in this context and will not be considered in default.
60. The penalty for defaulting on the Winning Price will equal 10% of the Winning Price, but not to exceed two million dollars (\$2,000,000). Default penalties will be forfeited on an individual Contention String basis and charged against the Bidder's aggregate Deposit for the Auction. In the event a Bidder participates in multiple Contention Sets in an Auction and defaults on its net balance owed, the Bidder must provide by written notice the order of allocation of the aggregate Deposit net of penalties to those Contention Sets it has won.
61. A Bidder will be subject to a penalty of up to the full amount of the Deposit forfeiture of its Applications and/or termination of any or all of its registry agreements for a serious violation of the Auction Rules or Bidder Agreement. Without limiting the foregoing, violations of clause 68 (the anti-collusion clause) shall be considered to be serious violations of the Auction Rules.

Effect of Ineligibility of Winner To Sign a Registry Agreement or To Be Delegated the Contention String

62. If, at any time following the conclusion of an Auction, the Winner is determined by ICANN to be ineligible to sign a Registry Agreement for the Contention String that was the subject of the Auction, the remaining Bidders (with applications that have not been withdrawn from the New gTLD Program) will receive offers to have their Applications accepted, one at a time, in descending order of and subject to payment of its respective Exit Bid. In this way, the next Bidder would be declared the Winner subject to payment of its Exit Bid. Each Bidder that is offered the relevant gTLD will be given four (4) Business Days to respond as to whether it wants its Application to win. A Bidder who responds in the affirmative will have four (4) Business Days after its response to submit a 10% deposit and an additional sixteen (16) Business Days to submit the balance of its payment. The same procedures and

penalties are in place for any runner-up Bidder receiving such an offer. A Bidder who declines such an offer cannot rescind its decision to decline the offer, has no further obligations in this context and will not be considered in default.

Refunds and Rollovers

63. If a Bidder did not win any Contention Sets in an Auction, its Deposits will be eligible for a refund. All refunds are denominated in \$US.
64. If a Bidder wins at least one Contention Set in an Auction, and the Bidder's aggregate Deposit exceed its aggregate Winning Prices for an auction and any applicable Penalties, the Bidder will be entitled to a refund of the excess funds.
65. If a Winner is determined by ICANN following the conclusion of the Auction to be ineligible to sign a Registry Agreement, it will be eligible for a refund of the amount of any Deposit and Winning Price paid by the Winner for the Contention String. Nothing contained in this clause 65 limits any of ICANN's rights or remedies under the Applicant Guidebook in the event the Winner (a) fails to pay the full amount of the Winning Price within 20 business days of the end of an auction or (b) fails to fulfil its obligation to execute the required Registry Agreement within 90 days of the end of the auction for any reason other than a determination by ICANN that the Winner is ineligible to sign the Registry Agreement.
66. All refunds are net of any associated wire fees and will be initiated to the Bidder within seven (7) calendar days after the conclusion of the Auction unless the Bidder requests the funds be committed to Deposits for a future Auction, subject to clause 67.
67. Upon the Bidder's request and to the extent practical, the Auction Manager will work with the Bidder to roll over the Deposit to a future Auction. Such a request must be received no later than 16.00 UTC two (2) calendar days following the day on which the Auction concluded.

Rollover: After the conclusion of an Auction a Bidder may request the excess funds from its Deposit to be applied toward a future Auction. This request is due to the Auction Manager by 16.00 UTC 2 calendar days after the conclusion of the Auction.

The allocation of the Rollover to various Contention Sets must be provided to the Auction Manager prior to the Deposit Deadline for the next applicable Auction.

General Terms and Conditions

68. For each Contention Set in an Auction, there will be a Blackout Period, extending from the Deposit Deadline for the Auction until full payment has been received in the Auction Bank Account from the Winner of the Contention Set, pursuant to clause 55, or another Bidder, pursuant to clauses 57-59, and that the following rules relate to the Blackout Period:
 - (a) During the Blackout Period, all applicants for Contention Strings within the Contention Set are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating

settlement agreements or post-Auction ownership transfer arrangements, with respect to any Contention Strings in the Auction. The provisions of this section shall not prohibit cooperation or collaboration among two or more Applications in the same Contention Set that were filed by the same applicant or were filed by applicants under the common control of the same entity, provided that the same Bidder has been designated for each Application.

- (b) The prohibition against these activities applies only with respect to Contention Strings that are within Blackout Periods; during the same time periods, applicants are permitted to engage in these activities with respect to other Contention Strings that are not within Blackout Periods and applicants are permitted to engage in discussions unrelated to Contention Strings.
 - (c) ICANN and the Auction Manager shall be permitted to disclose to other Bidders for the Contention Set that multiple Applications were filed by the same applicant or were under the common control of the same entity.
69. ICANN or the Auction Manager may terminate, suspend and resume, re-run a round, or change all or any part of an Auction, if ICANN or the Auction Manager determines in its sole discretion that such decision is justified by a technical or operational reason. ICANN or the Auction Manager will, without undue delay, give notice to each Bidder of any decision taken under this clause 69 and the respective reason(s).
70. ICANN shall be entitled, in its sole reasonable discretion, to amend these Auction Rules for any Auction at any time at least fifteen (15) days prior to that Auction. Any amendments to these Auction Rules will be published to the New gTLD microsite.
71. (a) The Bidder agrees to indemnify, defend and hold Auction Manager harmless from and against any and all claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys' fees, whether direct or indirect, which may arise from or be related to the actual or alleged acts or omissions of the Bidder respecting (i) its participation in the Auction, (ii) its performance under the Bidder Agreement, or (iii) any other transaction in which the Bidder participates to which the Bidder Agreement relates.
- (b) Except to the extent set forth in Section 71(c) below, the Bidder expressly releases Auction Manager from any liability for (i) any and all claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys' fees and costs, whether direct or indirect, which may arise from or be related to any Auction, the Bidder Agreement, or any other transaction to which the Bidder Agreement relates, including without limitation the conduct of the Auction, the quality or availability of the Auction Site or any tools or materials provided by the Auction Manager, any disturbance in the technical process, the receipt, storage and/or security of bids, or the award or failure to award a Contention String to any Bidder or other person, and (ii) any incidental or consequential damage, lost profits or lost opportunity which may arise from or be related to any Auction, the Bidder Agreement, or any other transaction to which the Bidder Agreement relates.
- (c) Auction Manager agrees to indemnify and hold harmless the Bidder from any and all third-party claims (including all damages, losses, liabilities, costs or expenses and claims thereof) which may arise from a claim that the Bidder's use of the Auction-Manager-provided Auction Site or participation in the Auction-Manager-provided Auction, as such use or participation is intended within the scope of

the Bidder Agreement, infringes, violates or misappropriates a valid third-party patent, copyright or other intellectual property right, provided that: (1) Auction Manager is notified promptly in writing of any such claim or action; (2) Bidder has neither reached any compromise or settlement of such claim or action nor made any admissions in respect of the same; (3) Auction Manager, at its option and expense, has sole control over the defense of any such claim or action and any related settlement negotiations; and (4) Bidder provides all requested reasonable assistance to defend the same (including, without limitation, by making available to Auction Manager all documents and information in Bidder's possession or control that are relevant to the infringement or misappropriation claims, and by making Bidder's personnel available to testify or consult with Auction Manager or its attorneys in connection with such defense). For the avoidance of doubt, this Section applies only in relation to claims of infringement, violation or misappropriation of intellectual property rights in auction technology or auction software arising directly from an Auction administered by the Auction Manager on behalf of ICANN, and, without limitation, this Section does not apply to any claims involving ownership rights, trademark rights or other rights to (or third-party agreements or rights involving) any gTLD.

(d) The Auction-Manager-Provided Auction Site and Auction-Manager-Provided Auction are provided "As Is" without warranty of any kind, either express or implied, including without limitation of any implied warranties of condition, uninterrupted use, merchantability, and fitness for a particular purpose.

72. If any dispute or disagreement arises in connection with these Auction Rules, including the interpretation or application of these Auction Rules, or the form, content, validity or time of receipt of any Bid, ICANN's decision shall be final and binding.

Schedule – Table of Definitions

Item	Applies to	Definition
Active	Round	A Round status denoting the Round is open for bidding.
Aggregate Demand	Contention Set, with respect to a Round	The number of Continue Bids for Applications received in a Round, aggregated over all Applications that remain eligible to be bid in the Contention Set in the next Round.
Application	Contention Set	An application for a specific gTLD string.
Auction	Bidders	The ICANN auction event for resolving string contention among Applications for one or more Contention Sets, governed by a Bidder Agreement and the Auction Rules as set out in this document.
Auction Bank Account	Auction	A bank account maintained by Power Auctions or ICANN to receive Deposits.
Auction Manager	Auction	Power Auctions LLC.
Auction Schedule	Auction	A schedule showing the indicative timing of each Round and each Recess in relation to an Auction.
Auction Site	Auction	The website at which Bids will be submitted
Authorized Individuals	Bidder	Up to two individuals nominated by a Bidder to bid on its behalf.
Blackout Period	Contention Set	A time period, extending from the Deposit Deadline until full payment has been received, during which applicants are prohibited from engaging in the activities described in clause 68.
Bid	Contention Set during a Round	A Bidder's binding willingness to secure its Application within the Contention Set at prices up to the specified price.
Bidder	Auction	A Qualified Applicant or its Designated Bidder identified as the Bidder in the ICANN Registration Form.
Bidder Agreement	Auction	The Agreement entered into between Bidders and the Auction Manager that provides terms and conditions for participation in the Auction.

Item	Applies to	Definition
Bidding Limit	Bidder, for a Contention Set	An upper limit on the price that a Bidder can specify for its Bid on an Application within a Contention Set, based on the Deposit submitted by the Bidder for that Contention Set.
Business Day		Monday to Friday, excluding days that banks are closed in New York City, New York
Closed	Contention Set	A status for a Contention Set indicating that the condition set out in clauses 46 has been met. Bidding on Applications in the Contention Set is no longer permitted.
Commencement Date	Auction	The date on which the standard 30 minutes of Round 1 of the Auction is scheduled to occur. If applicable, Early Bidding may start prior to the Commencement Date.
Contention Set	Auction	A group of Applications that are connected by a series of Direct Contention relationships.
Continue Bid	Application during a Round	A Bid for an Application within a Contention Set at the End-of-Round Price for that Contention Set or any higher price.
Deposit	Bidder, for a Contention Set	Money deposited into the Auction Bank Account by a Bidder for a nominated Contention Set.
Deposit Deadline	Bidder, for a Contention Set	16:00 UTC on the day that is seven calendar days prior to the Commencement Date of the relevant Auction.
Designated Bidder	Qualified Applicant	A party designated by a Qualified Applicant to bid on its behalf in an Auction
Direct Contention	Applications	The relationship between two Applications for strings that are identical or confusingly similar to one another and so both cannot be awarded.

Item	Applies to	Definition
Early Bidding	Auction	A time period prior to the standard 30 minutes of Round 1 that allows for Bidders to submit bids. Bids placed during Early Bidding will have the same effect as Bids submitted during the standard 30 minutes of Round 1. During this time period, the Auction Manager may not be available by phone or email, subject to the Auction Manager's standard business hours (i.e. 1 hour before an Auction, and Monday to Friday 8:30 AM to 5:00 PM US Eastern Time Zone). Offering Early Bidding for any particular Auction event is in the Auction Managers discretion, as is the duration of the Early Bidding period.
End-of-Round Price	Contention Set during a Round	The lowest price at which a Continue Bid for an Application within a Contention Set may be placed in a Round.
Ending Time	Round	The time at which any particular Round ends.
Enduring Application	Application	An Application for which a Continue Bid has been submitted or which satisfies the condition of clause 34(c), but which has not been deemed to be a Winning Application pursuant to clause 35(b).
Exit Bid	Application during a Round	A Bid for an Application at any price less than the End-of-Round Price but greater than or equal to the amount of the previous Bid for the Application (or \$1 in Round 1).
Feasible Set	Applications	A collection of Applications such that no two of the Applications are in a Direct Contention relationship with one another.
ICANN		Internet Corporation for Assigned Names and Numbers
Indirect Contention	Applications	The relationship between two Applications that are in the same Contention Set but are not in a Direct Contention relationship with one another.
Open	Contention Set during Round	A status indicating that any eligible Bidder for that Contention Set may place a Bid on its Application, if that Bid meets the requirements in clause 40. All Contention Sets are Open in Round 1.

Item	Applies to	Definition
Positioned Better	Applications	The position of a first Application relative to a second Application if the two Applications are in a Direct Contention relationship with one another, and if the set of all other Applications that are in a Direct Contention relationship with the first Application is a subset of the set of all other Applications that are in a Direct Contention relationship with the second Application.
Positioned the Same	Applications	The position of a first Application relative to a second Application if the two Applications are in a Direct Contention relationship with one another, and if the set of all other Applications that are in a Direct Contention relationship with the first Application is the same as the set of all other Applications that are in a Direct Contention relationship with the second Application.
Posted	Round	A Round status indicating that the Bids from the most recent Round have been processed and that the results have been made available to Bidders. When a Round is Posted, Bidders will be able to see the number of Enduring Applications and the Aggregate Demand for the Contention Sets that they have Applications within, whether any of these Contention Sets have Closed, the Applications that they have secured and the associated Winning Prices.
Proxy Bid	Application during a Round	A Bid for an Application within a Contention Set at a price higher than the End-of-Round Price for that Contention Set.
Qualified Applicant	Auction	An entity that has submitted an Application for a new gTLD, has received all necessary approvals from ICANN, and which is included within a Contention Set to be resolved by an Auction
Recess	Auction	The time interval between Rounds when Bids are processed, during which no bids may be submitted.
Round	Auction	The time interval during which Bids may be submitted.
Starting Time	Round	The time at which any particular Round starts.
Start-of-Round Price	Contention Set during a Round	In Round 1, \$1; in Round 2 or later, the End-of-Round Price of the previous Round.
Tie-Breaking Round	Contention Set	A single Round that is held in the case where there is a tie among the highest Exit Bids.

Item	Applies to	Definition
Tying Bid Price	Contention Set	The price of the highest Exit Bids that were tied.
Unlimited	Bidding Limit	The absence of any Bidding Limit for a Bidder for a Contention Set that has submitted a Deposit of \$2,000,000 or greater amount for that Contention Set.
Winner	Contention Set	A Bidder that secures its Application in the Contention Set.
Winning Application	Contention Set	An Application that prevails contention.
Winning Price	Contention Set	The price to be paid by a Winner to secure its Winning Application.

EXHIBIT C-5

New gTLD Auctions Bidder Agreement

Version 2014-04-03

This Qualified Applicant / Bidder Agreement (the "**Bidder Agreement**"), is made and entered into by the Qualified Applicant or Designated Bidder (collectively the "**Bidder**"), and Power Auctions, a limited liability company organized in the State of Delaware, United States of America, with offices in Washington DC (the "**Auction Manager**"), each of the Bidder and the Auction Manager referred to as a "**Party**" and, together, referred to as the "**Parties**". The terms and conditions set forth in this Bidder Agreement are to be read together with the Auction Rules. Terms used but not otherwise defined herein shall have the meanings ascribed to them in the gTLD Applicant Guidebook (the "**Applicant Guidebook**") or the "**Auction Rules**" (as defined below). In the event of any inconsistency between the Bidder Agreement and the Applicant Guidebook or the Auction Rules, the Bidder Agreement shall prevail.

RECITALS

WHEREAS, the Qualified Applicant has submitted an application (the "**gTLD Application**") for a new generic top-level domain ("**gTLD String**"), to the Internet Corporation for Assigned Names and Numbers ("**ICANN**") pursuant to the ICANN new gTLD program (the "**gTLD Program**");

WHEREAS, ICANN has identified and published a group of applications (the "**Contention Set**") containing identical or confusingly similar applied-for gTLD Strings (the "**Contention Strings**");

WHEREAS, the Qualified Applicant's gTLD Application is for a Contention String that has been included in a Contention Set;

WHEREAS, the Auction Manager will be administering an auction on behalf of ICANN to resolve string contention for the Contention Strings in the Contention Set (the "**Auction**") pursuant to section 4.3 of the ICANN gTLD Applicant Guidebook (the "**Applicant Guidebook**");

WHEREAS, the Auction Manager will provide an auction service on the internet ("**Auction Site**") which Bidders will use to participate in the Auction;

WHEREAS, ICANN has published an auction rules document ("**Auction Rules**") on its website which is binding upon Bidders in the Auction;

WHEREAS, the Qualified Applicant will place bids in the Auction on its own behalf or may designate an agent ("**Designated Bidder**") to enter bids in the Auction on the Qualified Applicant's behalf;

NOW, THEREFORE, in consideration of the premises and agreements of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Bidder and the Auction Manager agree as follows:

ARTICLE 1

STRING CONTENTION RESOLUTION BY AUCTION

Section 1.1 The Bidder. The Bidder represents that it is either: (a) a Qualified Applicant for one or more Contention Strings for which ICANN has provided to the Qualified Applicant a Notice of Intent to Auction; or (b) the Designated Bidder authorized by a Qualified Applicant for one or more Contention Strings for which ICANN has provided to the Qualified Applicant a Notice of Intent to Auction.

Section 1.2 Effective Date. This Bidder Agreement will become effective on the day that it has been executed by the Bidder and countersigned by the Auction Manager.

Section 1.3 Endorsement. The Parties agree that the Bidder may endorse this Bidder Agreement for additional gTLD Applications for Contention Strings for which it is the Qualified Applicant or the Designated Bidder, and that the Bidder may make such endorsement on the Auction Site by purely electronic means. If the Bidder endorses this Agreement for additional gTLD Applications, then this Agreement will apply with the same force and effect to the additional gTLD Applications as it does to the initial gTLD Application.

Section 1.4 The Auction. The Bidder shall participate in the Auction(s) for the relevant Contention Sets on the terms set forth herein and under the Auction Rules. The Auction(s) shall be conducted in accordance with the procedure set out in the Auction Rules. The Bidder acknowledges that it has reviewed the Auction Rules that will govern the participation of the Bidder in the Auction(s) and that the Auction(s) will be administered by the Auction Manager. By this Agreement, the Bidder agrees to be bound by the Auction Rules as published on ICANN's website.

Section 1.5 Consequences of Losing. The Bidder acknowledges and agrees that failure to submit a deposit by the specified deadline, failure to participate in the Auction or losing in the Auction will result in the rejection of the Qualified Applicant's application for the Contention String and the Contention String not being assigned or delegated to the relevant Qualified Applicant.

ARTICLE 2

BIDDER REPRESENTATIONS AND WARRANTIES

The Bidder represents and warrants to the Auction Manager as follows:

Section 2.1 Good Standing. The Bidder (i) is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations, under this Bidder Agreement.

Section 2.2 Authorization. The Bidder Agreement has been duly and validly authorized, executed and delivered by the Bidder to the Auction Manager and constitutes the legal, valid and binding obligation of the Bidder, enforceable against the Bidder in accordance with its terms.

Section 2.3 Notifications and Instructions. Any notifications, including but not limited to the documents provided to the Auction Manager as represented by the Bidder Form or Bidder Designation Form included in this Bidder Agreement, signed by any authorized signatories of the Bidder, and delivered to the Auction Manager shall be deemed a representation and warranty by the Bidder to the Auction Manager as to the matters covered thereby.

Section 2.4 Account Information. The Bidder agrees not to disclose to any unauthorized party the Bidder's usernames, passwords, Auction Site URL or any other authentication credentials assigned to the Bidder ("**Account Information**") in connection with the gTLD Application or the Auction. The Bidder acknowledges that it shall be responsible for maintaining the confidentiality of such Account Information and for all utilizations of the Account Information.

Section 2.5 Auction Site. The Bidder agrees not to use the Auction Site for any purpose other than participation in Auctions that the Bidder is entitled to participate or to take any actions aimed at preventing the appropriate use of the Auction Site by any party.

Section 2.6 Anti-Collusion Rules. The Bidder and the Qualified Applicant each acknowledges for each Contention Set in an Auction, there will be a Blackout Period, extending from the Deposit Deadline for the Auction until full payment has been received in the Auction Bank Account from the Winner of the Contention Set, pursuant to Clause 55, or another Bidder, pursuant to clauses 57-59 of the Auction Rules. During the Blackout Period, all applicants for Contention Strings within the Contention Set are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating settlement agreements or post-Auction ownership transfer arrangements, with respect to any Contention Strings in the Auction. The prohibition against these activities applies only with respect to Contention Strings that are within Blackout Periods; during the same time periods, applicants are permitted to engage in these activities with respect to other Contention Strings that are not within Blackout Periods and applicants are permitted to engage in discussions unrelated to Contention Strings.

Section 2.7 Compliance. ICANN reserves the right to conduct due diligence on the Qualified Applicant and the Designated Bidder in an effort to ensure compliance with all applicable laws, regulations and rules governing the Auction and the transfer of funds in connection with the Auction. ICANN reserves the right to require the Qualified Applicant to substitute its Designated Bidder and/or the bank account from which Bidder wires funds to its designated Auction Bank Account if a compliance issue is identified with respect to an applicable law, regulation or rule governing the Auction or the transfer of funds in connection with the Auction.

Section 2.8 Assignment of Contention String. In the event the Bidder is designated a winner at the close of an Auction ("**Winner**") for one or more Contention Sets, its aggregate Deposits for such Auction will be automatically applied towards payment of its aggregate Winning Price(s). In the event the aggregate Deposits exceed the aggregate Winning Prices and penalties, if applicable, a refund will be initiated to the Bidder no later than 16:00 UTC on the day that is seven (7) calendar days after the conclusion of the Auction, subject to Section 2.9. If a net balance of the aggregate Winning Prices is due, the Winner is required to settle the amount owed by bank wire to its designated Auction Bank Account. Payment must be received no later than 16:00 UTC on the day that is twenty (20) "**Business Days**" (as defined in the Auction Rules) after the close of the Auction. In the event Bidder is a Winner and anticipates that it would require a longer payment period due to verifiable government-imposed currency restrictions, Bidder may advise Auction Manager well in advance of the Auction and Auction Manager will consider applying a longer payment period for all Winner(s) within the same Contention Set.

Section 2.9 Default. A Winner not in compliance with Section 2.8 is subject to being declared in default. Auction Manager at its sole discretion, may delay the declaration of default for a brief period, but only if Auction Manager determines in its sole discretion that receipt of full payment appears to be imminent. Once declared in default, the Winner is subject to immediate forfeiture of its position in the Auction and assessment of default penalties as set forth in clauses 58-60 in the Auction Rules. Default penalties will be forfeited and charged against the Bidder's aggregate Deposit(s) of the Auction. If a Winner defaults on multiple contention sets, ICANN reserve the right, in its sole discretion, to ban such Winner from future Auctions.

Section 2.10 Penalties. The Bidder acknowledges that it may be subject to a penalty of up to the full amount of the Deposit and forfeiture of its Applications or termination of its registry agreements for a serious violation of the Auction Rules or Bidder Agreement. Without limiting the foregoing, a violation of Section 2.6 of the Bidder Agreement shall be considered to be a serious violation of the Bidder Agreement.

Section 2.11 Reliance on Counsel. The Bidder acknowledges that it has been advised by its own counsel regarding the terms of the Bidder Agreement and Auction Rules and in participating in the Auction has not relied and is not relying on any representations, warranties or other statements whatsoever, whether written or oral, from or by the Auction Manager or ICANN, other than those expressly set out in this Bidder Agreement, the Auction Rules and the Applicant Guidebook.

ARTICLE 3

AUCTION BANK ACCOUNT

Section 3.1 Escrow Agreement. The Auction Manager represents that it and ICANN have entered into an agreement ("**Escrow Agreement**") whereby any funds provided by the Bidder to be used in connection with the Auction shall be held in escrow in a bank account ("**Auction Bank Account**") by an escrow agent (the "**Escrow Agent**"). The Auction Manager will provide the Bidder with Auction Bank Account details and wire instructions.

Section 3.2 Auction Bank Account. The Bidder will deposit funds by bank wire into the Auction Bank Account to be held in escrow pursuant to this Bidder Agreement and the Escrow Agreement. The Auction Bank Account is denominated in United States dollars (\$US) and all transactions to and from such account must be in \$US. Funds deposited into escrow by the Bidder may be applied by the Auction Manager in accordance with the Bidder Agreement and Auction Rules. Upon the occurrence of a withdrawal by a Qualified Applicant pursuant to Section 3.4 or termination of this Bidder Agreement pursuant to Section 5 or otherwise, the Auction Manager may direct the Escrow Agent to set-off and apply any amount deposited by the Bidder against any, to the extent amounts are owed, other payments due. The Auction Manager agrees promptly to notify the Bidder after any such set-off is made by the Auction Manager, provided that the failure to give such notice shall not affect the validity of the action.

Section 3.3 Deposits, Refunds, Rollovers. In all respects, including in relation to deposits, refunds and rollovers the Bidder agrees to comply with the provisions of the Bidder Agreement and Auction Rules. The deposit amount(s) made into the Auction Bank Account (the "**Deposit(s)**") including all instructions associated with Deposits and allocation of funds among Contention Sets from wires and funds rolled over from previous Auctions, must be received by the Auction Manager no later than 16:00 UTC on the day that is seven (7) calendar days prior to the commencement date of the Auction ("**Deposit Deadline**"). Failure by Bidder to deposit the Deposit(s) by the Deposit Deadline may, at the Auction Manager's sole discretion, result in the Bidder's ineligibility to participate in the Auction for the Contention Set, which will result in the rejection of the Qualified Applicant's application for the Contention String and the Contention String not being assigned or delegated to the relevant Qualified Applicant. If a Deposit(s) is received and the Bidder is determined to be ineligible for the Auction, a refund of the Deposit will be initiated to the bank account as specified by the Bidder no later than 16:00 UTC on the day that is seven (7) calendar days after the conclusion of the Auction. In the event the Bidder does not win in an Auction, or a Bidder's aggregate Deposits exceed its aggregate Winning Prices for an Auction, any excess amount will be refunded subject to Section 2.8 and 2.9. In the event a refund becomes due, a Bidder may request, by submitting rollover instructions to the Auction Manager by no later than 16:00 UTC two calendar days following the day on which the Auction concluded, that the Auction Manager, to the extent practical, assigns funds to a future Auction ("**Rollover**"). If this Bidder Agreement is terminated for any reason other than breach of contract by the Bidder, a refund of any remaining Deposit will be initiated to the Bidder no later than 16:00 UTC on the day that is seven (7) calendar days after the conclusion of the next scheduled Auction. All refunds are net of associated wire fees.

Section 3.4 Withdrawal Notices and Withdrawal Refunds. In all respects, including in relation to withdrawal refunds and the Qualified Applicant's notice of withdrawal, the Bidder agrees to comply with the provisions of the Bidder Agreement and Auction Rules. Applicants that are identified as being in contention are encouraged by ICANN to reach a settlement or agreement among themselves that resolves the contention prior to the date of the Auction, as set forth in section 4.1.3 of the Applicant Guidebook. Such settlement or agreement is allowed up until the Deposit Deadline of the Auction for such applicable Contention Set(s). In the event settlement is reached prior to the Deposit Deadline, the relevant Qualified Applicants shall send both ICANN and the Auction Manager

written notice and follow the process specified by ICANN to withdraw any application(s) for such Contention Strings that will not proceed as a result of the resolution. Such notification must be received by ICANN and the Auction Manager no later than the Deposit Deadline. The Auction Manager will remove such Contention Sets from the Auction upon receipt of instructions from ICANN applicable to such Contention Sets. A refund for the Deposit(s) corresponding to these Contention Sets will be initiated to the Bidder no later than 16:00 UTC on the day seven (7) calendar days after the conclusion of the Auction unless the Auction Manager receives rollover instructions from the Bidder by no later than 16:00 UTC two calendar days following the day on which the Auction concluded. After the Deposit Deadline each Bidder that submitted a Deposit is required to participate in the Auction.

ARTICLE 4

INDEMNIFICATION, WAIVERS OF LIABILITY AND RELEASE

Section 4.1 Auction Rules. The Auction Manager acknowledges its obligation to make a good-faith effort to administer the Auction in accordance with the Auction Rules.

Section 4.2 Indemnification and Waiver.

(a) The Bidder agrees to indemnify, defend and hold Auction Manager harmless from and against any and all claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys' fees, whether direct or indirect, which may arise from or be related to the actual or alleged acts or omissions of the Bidder respecting (i) its participation in the Auction, (ii) its performance under this Bidder Agreement, or (iii) any other transaction in which the Bidder participates to which this Bidder Agreement relates.

(b) Except to the extent set forth in Section 4.2(c) below, the Bidder expressly releases Auction Manager from any liability for (i) any and all claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys' fees and costs, whether direct or indirect, which may arise from or be related to any Auction, this Bidder Agreement, or any other transaction to which this Bidder Agreement relates, including without limitation the conduct of the Auction, the quality or availability of the Auction Site or any tools or materials provided by the Auction Manager, any disturbance in the technical process, the receipt, storage and/or security of bids, or the award or failure to award a Contention String to any Bidder or other person, and (ii) any incidental or consequential damage, lost profits or lost opportunity which may arise from or be related to any Auction, this Bidder Agreement, or any other transaction to which this Bidder Agreement relates.

(c) Auction Manager agrees to indemnify and hold harmless the Bidder from any and all third-party claims (including all damages, losses, liabilities, costs or expenses and claims thereof) which may arise from a claim that the Bidder's use of the Auction-Manager-provided Auction Site or participation in the Auction-Manager-provided Auction, as such use or participation is intended within the scope of

this Bidder Agreement, infringes, violates or misappropriates a valid third-party patent, copyright or other intellectual property right, provided that: (1) Auction Manager is notified promptly in writing of any such claim or action; (2) Bidder has neither reached any compromise or settlement of such claim or action nor made any admissions in respect of the same; (3) Auction Manager, at its option and expense, has sole control over the defense of any such claim or action and any related settlement negotiations; and (4) Bidder provides all requested reasonable assistance to defend the same (including, without limitation, by making available to Auction Manager all documents and information in Bidder's possession or control that are relevant to the infringement or misappropriation claims, and by making Bidder's personnel available to testify or consult with Auction Manager or its attorneys in connection with such defense). For the avoidance of doubt, this Section applies only in relation to claims of infringement, violation or misappropriation of intellectual property rights in auction technology or auction software arising directly from an Auction administered by the Auction Manager on behalf of ICANN, and, without limitation, this Section does not apply to any claims involving ownership rights, trademark rights or other rights to (or third-party agreements or rights involving) any gTLD.

(d) The Auction-Manager-Provided Auction Site and Auction-Manager-Provided Auction are provided "As Is" without warranty of any kind, either express or implied, including without limitation of any implied warranties of condition, uninterrupted use, merchantability, and fitness for a particular purpose.

Section 4.3 Force Majeure. No Party to this Bidder Agreement shall be responsible or liable for any failure or delay in the performance of its obligation under this Bidder Agreement arising out of or caused, directly or indirectly, by circumstances beyond their reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that each party to this Bidder Agreement shall use commercially reasonable efforts which are consistent with accepted practices to resume performance as soon as reasonably practicable under the circumstances; provided that Bidder's loss of access to the Internet during an Auction shall not be deemed a matter beyond Bidder's reasonable control in light of Bidder's ability to (a) designate two Authorized Individuals under the Auction Rules; and (b) employ alternative bidding mechanisms during the Auction via fax.

Section 4.4 Liability of ICANN. Qualified Applicant and Designated Bidder each understands, acknowledges and agrees that the Auction is a method of contention resolution contemplated by the gTLD Applicant Guidebook for Qualified Applicant's application and that, as between Qualified Applicant and ICANN, the provisions of Module 6: Top-Level Domain Application - Terms and Conditions of the Applicant Guidebook apply to the Auction. Without limiting the foregoing, Designated Bidder understands, acknowledges and agrees that it is participating in the Auction as an authorized agent of Qualified Applicant and its rights and remedies with respect to ICANN are limited to the same extent that Qualified Applicant's rights and remedies are limited by the provisions of Module 6: Top-Level Domain Application - Terms and Conditions of the Applicant Guidebook.

ARTICLE 5

TERMINATION

Section 5.1 Termination. This Bidder Agreement shall terminate 90 days after notice of termination is provided by either Party; provided, however, that the provisions of Section 4.2 (Indemnification), Section 6.1 (Confidentiality), Section 7.1 (Survival; Successors or Assigns), Section 7.3 (Notices), and Section 7.8 (Governing Law) shall survive termination of this Bidder Agreement.

ARTICLE 6

CONFIDENTIALITY

Section 6.1 Confidentiality. Except as otherwise stated in this Bidder Agreement, each Party agrees, to maintain the confidentiality of any confidential and proprietary information received by it from the other Party pursuant to this Bidder Agreement, including, without limitation, any Account Information or any material nonpublic information ("**Confidential Information**"); provided, however, that Confidential Information shall not include any information that: (a) is or becomes generally available to the public other than as a result of a disclosure by the receiving Party or its representatives; (b) is already in the receiving Party's possession, provided that such information is not subject to a contractual, legal or fiduciary obligation of confidentiality for the benefit of another; or (c) becomes available to the receiving Party on a non-confidential basis from a source not bound by a contractual, legal or fiduciary obligation to keep such information confidential for the benefit of another. The foregoing will not prohibit either Party from disclosing Confidential Information: to the extent it is required to do so by applicable law so long as the Party, prior to disclosure that is legally required, provides the Party with written notice of the Confidential Information to be disclosed and takes appropriate steps to preserve the confidentiality of such information to the extent reasonably practicable; to its affiliates, attorneys, accountants, consultants, and other professionals bound by similar confidentiality obligations. Bids in the Auction shall be deemed Confidential Information; however, the Auction Manager shall be permitted to disclose bids or bidding information to ICANN during the Auction only if reasonably necessary to inform ICANN of a potential pending dispute requiring resolution or input, and to disclose bids or bidding information publicly after the conclusion of the Auction to the extent permitted by and pursuant to the Auction Rules. Notwithstanding the above, the Auction Manager is expressly permitted to share with the Bidder such other information as may be provided or set forth in the Auction Rules.

ARTICLE 7

MISCELLANEOUS

Section 7.1 Survival; Successors and Assigns. All representations, warranties, covenants, indemnities and other provisions made by the parties shall be considered to have been relied upon by the parties, shall be true and correct as of the date hereof, and shall survive the execution, delivery, and performance of this Bidder Agreement. This Bidder Agreement, including the declarations, acknowledgments, guarantees and indemnities contained in this Bidder Agreement, shall inure to the benefit of, be binding upon and be enforceable by and against the parties and their respective successors and permitted assigns.

Section 7.2 Interpretation; Severability. The Bidder intends for this Bidder Agreement to comply with applicable state and federal laws. If any term or provision hereof is illegal or invalid for any reason whatsoever, such provisions will be replaced with a valid provision that as closely as possible resembles the purposes and intents of the invalid provision or, if not possible, will be severed from this Bidder Agreement, and such invalid or unenforceable provision will not affect the enforceability or validity of the remainder of this Bidder Agreement.

Section 7.3 Notices. All notices, requests, demands, and other communications required under this Bidder Agreement shall be in writing, in English, and shall be delivered by electronic transmission with written confirmation of receipt via RPost or a similar service that authenticates email delivery or via acknowledgement from the recipient, or via fax. If notice is given to a Bidder, it shall be delivered to the email address or fax number for such Bidder as provided by the Bidder to the Auction Manager. It shall be the responsibility of the Bidders to notify the Auction Manager of any changes in name, address or contact information.

Section 7.4 Entire Agreement. This Bidder Agreement, including the Bidder Form and Bidder Designation Form attached hereto and made a part hereof, sets forth the entire agreement and understanding of the parties related to the Auction.

Section 7.5 Amendment. This Bidder Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Auction Manager and Bidder.

Section 7.6 Auction Rules. ICANN shall be entitled, in its sole reasonable discretion, to amend the Auction Rules for any Auction at any time at least fifteen (15) days prior to that Auction. ICANN will inform the Bidder of such changes via electronic written notice and the changes will be effective immediately. Such amendments will be published to the ICANN website. If any dispute or disagreement arises in connection with the Auction Rules, including the interpretation or application of the Auction Rules, or the form, content, validity or time of receipt of any Bid, ICANN's decision shall be final and binding.

Section 7.7 Waivers. The failure of any party to this Bidder Agreement at any time or times to require performance of any provision under this Bidder Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Bidder Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Bidder Agreement, in any one or more instances, will neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Bidder Agreement.

Section 7.8 Governing Law. This Bidder Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, United States of America, excluding any choice of law provisions.

Section 7.9 Jurisdiction. Subject to Section 8.2 on arbitration, the Bidder and the Auction Manager irrevocably and unconditionally submit to and accept the exclusive jurisdiction of the federal and state courts located in the State of Delaware for any action, suit, or proceeding arising out of or based upon this Bidder Agreement or any matter relating to it, and waive any objection that it may have to the laying of venue in any such court or that such court is an inconvenient forum or does not have personal jurisdiction over it.

Section 7.10 Third Party Beneficiary. ICANN is an intended third party beneficiary of this Bidder Agreement entitled to enforce this Bidder Agreement against the Bidder and the Auction Manager as if ICANN was a direct party to this Bidder Agreement.

Section 7.11 Execution in Counterparts. This Bidder Agreement may be executed in counterparts. All executed counterparts constitute one document.

ARTICLE 8

DISPUTE RESOLUTION

Section 8.1 Mediation. In the event of any dispute arising under or in connection with this Bidder Agreement, before either party may initiate arbitration pursuant to Section 8.2 below, the Auction Manager and the Bidder must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

- (a) - a party shall submit a dispute to mediation by written notice to the other party. The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days of delivery of written notice pursuant to this Section 8.1, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law and, to the extent necessary to mediate the particular dispute, general knowledge of the gTLD Program. Any mediator must confirm in writing that he or she is not, and will not become during the term of

the mediation, an employee, partner, executive officer, director, or security holder of ICANN, the Auction Manager or the Bidder. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 8.1(a);


- (b) - the mediator shall conduct the mediation in accordance with the rules and procedures that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either party in any later proceeding relating to the dispute, including any arbitration pursuant to Section 8.2. The mediator may not testify for either party in any later proceeding relating to the dispute;
- (c) - each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation that is appropriately marked as confidential (as required by Article 6) as Confidential Information of such other party in accordance with Article 6.
- (d) - if the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 8.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 8.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 8.2 below.

Section 8.2 Arbitration. Disputes arising under or in connection with this Bidder Agreement that are not resolved pursuant to Section 8.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in the State of Delaware. Any arbitration will be in front of a single arbitrator, unless the parties agree in writing to a greater number of arbitrators in which event the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. Each party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential (as required by Article 6) as Confidential Information of such other party in accordance with Article 6. In any litigation involving the Auction Manager concerning this Bidder Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in the State of Delaware; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction. The provisions for arbitration set forth herein shall be in lieu of any other procedure for the determination of controversies between the


Parties to this Agreement or any claim by such Party against any other such Party arising thereunder and the Parties agree not to invoke the intervention of the courts of Delaware or any other jurisdiction in relation to the appointment of the arbitrators, procedures adopted by or proceedings at the sitting of the arbitral tribunal in any dispute.

IN WITNESS WHEREOF, this Bidder Agreement has been duly executed by

Qualified Applicant

Name of Entity	Ruby Glen, LLC
Type of Entity (e.g. Corporation)	Limited Liability Company
Jurisdiction of incorporation or organization	Delaware. http://delcode.delaware.gov/title6/c018/sc01/index.shtml
TIN, corporate registration no., or equivalent	5119775
Address	Contact Information Redacted
Phone Number	Contact information Redacted
Name of Authorized Representative	Jonathon Nevett
Title	Manager of its Sole Member
Signature	
Date (DD-MM-YYYY)	24-05-2016

Designated Bidder

Name of Entity	Covered TLD, LLC
Type of Entity (e.g. Corporation)	LLC
Jurisdiction of incorporation or organization	Delaware
TIN, corporate registration no., or equivalent	45-4347053
Address	Contact Informat on Redacted
Phone Number	Contact nformation Redacted
Name of Authorized Representative	Jonathon Nevett
Title	Manager
Signature	
Date (DD-MM-YYYY)	24-05-2016

ICANN gTLD Auction Bidder Agreement

IN WITNESS WHEREOF, this Bidder Agreement has been duly executed by

POWER AUCTIONS LLC

Shawn Williams
Name

Accounting manager
Title

Shawn Will
Signature

6/6/16
Date

EXHIBIT C-6

SUPPLEMENT TO NEW gTLD AUCTIONS BIDDER AGREEMENT

This SUPPLEMENT TO NEW gTLD AUCTIONS BIDDER AGREEMENT (the “Supplement”) shall be effective as of the first date of the signature below by and between the Auction Manager and the Bidder identified in the signature block, and shall amend by supplement the parties’ previously executed New gTLD Auctions Bidder Agreement (the “Bidder Agreement”) as follows:

1. The terms of this Supplement shall be applicable exclusively for Auctions with Indirect Contention, which rules are prescribed by the *Auction Rules for New gTLDs: Indirect Contention Edition* (“Indirect Contention Rules”), and any reference to “Auction Rules” therein the Bidder Agreement in the instance of any Auction for Indirect Contention shall be instead a reference to the Indirect Contention Rules.
2. Article 2.6, in the event of any Auction for Indirect Contention, shall instead read in its entirety as follows:

Anti-Collusion Rules. The Bidder and the Qualified Applicant each acknowledges that, for each Contention Set in an Auction, there will be a Blackout Period, extending from the Deposit Deadline for the Auction until full payment has been received in the Auction Bank Account from the Winner of the Contention Set, pursuant to clause 55, or another Bidder, pursuant to clauses 57-59 of the Auction Rules, and that the following rules relate to the Blackout Period:

(a) During the Blackout Period, all applicants for Contention Strings within the Contention Set are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating settlement agreements or post-Auction ownership transfer arrangements, with respect to any Contention Strings in the Auction. The provisions of this section shall not prohibit cooperation or collaboration among two or more Applications in the same Contention Set that were filed by the same applicant or were filed by applicants under the common control of the same entity, provided that the same Bidder has been designated for each Application.

(b) The prohibition against these activities applies only with respect to Contention Strings that are within Blackout Periods; during the same time periods, applicants are permitted to engage in these activities with respect to other Contention Strings that are not within Blackout Periods and applicants are permitted to engage in discussions unrelated to Contention Strings.

(c) ICANN and the Auction Manager shall be permitted to disclose to other Bidders for the Contention Set that multiple Applications were filed by the same applicant or were under the common control of the same entity.

Except to the extent modified by the provisions of this Supplement, the terms and conditions of the Bidder Agreement will otherwise continue with full force and effect in the event of any Auction for Indirect Contention. This Supplement shall not amend, in any way, the full force and effect of the previously executed Bidder Agreement for the application of Auctions not specified with Indirect Contention. Unless otherwise defined in this Amendment, all capitalized terms have the meaning given to them in the Agreement.

AGREED:

Power Auctions, LLC

Signature: Shawn Williams
Print Name: Shawn Williams
Title: Accounting Manager
Date: 6/22/16

Qualified Applicant

Signature: [Signature]
Print Name: Jonathon Nevett
Title: Manager of its Sole Member
Date: June 22, 2016

Designated Bidder [if applicable]

Signature: [Signature]
Print Name: Jonathon Nevett
Title: Manager
Date: June 22, 2016

EXHIBIT C-7

Approved Board Resolutions | Special Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

06 Nov 2018

1. **Consent Agenda:**
 - a. **Approval of Minutes**

2. **Main Agenda:**
 - a. **Consideration of Reconsideration Request 18-8**
Rationale for Resolution 2018.11.06.02

 - b. **Reaffirming the Temporary Specification for gTLD (generic Top Level Domain) Registration Data**
Rationale for Resolutions 2018.11.06.03 – 2018.11.06.04

 - c. **AOB**

1. Consent Agenda:

a. Approval of Minutes

Resolved (2018.11.06.01), the Board approves the minutes of the 16 September and 3 October 2018 Meetings of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

2. Main Agenda:

a. Consideration of Reconsideration Request 18-8

Whereas, Afilias Domains No. 3 Ltd. (Requestor) submitted Reconsideration Request 18-8 seeking reconsideration of ICANN (Internet Corporation for

Assigned Names and Numbers) organization's response to the Requestor's request for documents, pursuant to ICANN (Internet Corporation for Assigned Names and Numbers)'s Documentary Information Disclosure Policy (DIDP), relating to the .WEB contention set.

Whereas, the Requestor claims that in declining to produce certain requested documents in the DIDP Response, ICANN (Internet Corporation for Assigned Names and Numbers) org violated the DIDP and its Core Values and commitments established in the Bylaws concerning transparency and openness.

Whereas, the Board Accountability Mechanisms Committee (BAMC) previously determined that Request 18-8 is sufficiently stated and sent the Request to the Ombudsman for review and consideration in accordance with Article 4, Section 4.2(j) and (k) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws.

Whereas, the Ombudsman recused himself from this matter pursuant to Article 4, Section 4.2(l)(iii) of the Bylaws.

Whereas, the BAMC carefully considered the merits of Request 18-8 and all relevant materials and recommended that Request 18-8 be denied because ICANN (Internet Corporation for Assigned Names and Numbers) org adhered to established policies and procedures in the DIDP Response; and ICANN (Internet Corporation for Assigned Names and Numbers) org did not violate its commitments established in the Bylaws concerning transparency and openness.

Whereas, the Requestor did not file a rebuttal to the BAMC Recommendation on Request 18-8 within the allotted time under Article 4, Section 4.2(q) of the Bylaws.

Resolved (2018.11.06.02), the Board adopts the BAMC Recommendation on Request 18-8

</en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf>) [PDF, 211 KB].

Rationale for Resolution 2018.11.06.02

1. Brief Summary and Recommendation

The full factual background is set forth in the [BAMC Recommendation on Request 18-8 \(/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf\)](/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf) [PDF, 211 KB] (BAMC Recommendation), which the Board has reviewed and considered, and which is incorporated here.

On 28 August 2018, the BAMC evaluated Request 18-8 and all relevant materials and recommended that the Board deny Request 18-8 because [ICANN \(Internet Corporation for Assigned Names and Numbers\) org](#) adhered to established policies and procedures in the DIDP Response; and [ICANN \(Internet Corporation for Assigned Names and Numbers\) org](#) did not violate its commitments established in the Bylaws concerning transparency and openness.

Pursuant to Article 4, Section 4.2(q), the Requestor has 15 days from the receipt of the BAMC's Recommendation on Request 18-8 to submit a rebuttal. No rebuttal was filed by the 12 September 2018 deadline and none has been received to date.

The Board has carefully considered the [BAMC's Recommendation \(/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf\)](/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf) [PDF, 211 KB] and all relevant materials related to Request 18-8, and the Board agrees with the [BAMC's Recommendation \(/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf\)](/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf) [PDF, 211 KB].

2. Issue

The issues are as follows:

- Whether ICANN (Internet Corporation for Assigned Names and Numbers) org complied with established ICANN (Internet Corporation for Assigned Names and Numbers) policies in responding to the Second DIDP Request; and
- Whether ICANN (Internet Corporation for Assigned Names and Numbers) org complied with its Core Values and commitments established in the Bylaws concerning transparency and openness.

3. Analysis and Rationale

A. ICANN (Internet Corporation for Assigned Names and Numbers) Org Adhered to Established Policies and Procedures in Responding to the DIDP Request.

1. **The Response to the DIDP Request Complies with Applicable Policies and Procedures.**

The Requestor's DIDP Request sought the disclosure of documents relating to the .WEB/.WEBS contention set. The Board notes that the Requestor does not challenge the *applicability* of the DIDP Defined Conditions of Nondisclosure (Nondisclosure Conditions) asserted in ICANN (Internet Corporation for Assigned Names and Numbers) org's DIDP Response. Instead, the Requestor claims that ICANN (Internet

Corporation for Assigned Names and Numbers) org should have determined that the public interest outweighs the reasons for nondisclosure set forth in the Nondisclosure Conditions.¹ The Board finds that this represents a substantive disagreement with ICANN (Internet Corporation for Assigned Names and Numbers) org's discretionary determination, and not a challenge to the process by which ICANN (Internet Corporation for Assigned Names and Numbers) org reached that conclusion. On that basis alone, reconsideration is not warranted. Nevertheless, the BAMC did review the DIDP Response at issue in Request 18-8 and, for the reasons discussed in the BAMC Recommendation, which are incorporated herein by reference, the BAMC concluded, and the Board agrees, that the DIDP Response complied with applicable policies and procedures, and that reconsideration is not warranted. (See [BAMC Recommendation \(/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf\)](/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf) [PDF, 211 KB], Pgs. 15-17.)

The Board agrees with the BAMC's determination that the ICANN (Internet Corporation for Assigned Names and Numbers) org adhered to the "Process For Responding To ICANN (Internet Corporation for Assigned Names and Numbers)'s Documentary Information

Disclosure Policy (DIDP Requests" (DIDP Response Process) when it responded to the Requestor's DIDP Request.² (See [BAMC Recommendation \(/en/system/files/files/reconsideration-18-8-afiliis-bamc-recommendation-28aug18-en.pdf\)](#) [PDF, 211 KB], Pgs. 15-17.) That is, consistent with the DIDP Response Process, [ICANN \(Internet Corporation for Assigned Names and Numbers\) org](#) responded individually to each of the five items requested (and their subparts) by providing links to the publicly available documents responsive to the requests. [ICANN \(Internet Corporation for Assigned Names and Numbers\) org](#) also identified documents responsive to these items and determined that they were subject to the following Nondisclosure Conditions and thus not appropriate for disclosure. Notwithstanding the applicable Nondisclosure Conditions, [ICANN \(Internet Corporation for Assigned Names and Numbers\) org](#) considered whether the public interest in disclosing the information outweighed the harm that may be caused by the disclosure and determined that there are no circumstances for which the public interest in disclosure outweighed that potential harm.³

2. [ICANN \(Internet Corporation for Assigned Names and Numbers\) Org](#) Adhered to Established Policy and Procedure in Finding That the Harm in Disclosing the

Requested Documents That Are Subject to Nondisclosure Conditions Outweighs the Public's Interest in Disclosing the Information.

The BAMC concluded, and the Board agrees, that ICANN (Internet Corporation for Assigned Names and Numbers) org adhered to established policy and procedure in finding that the harm in disclosing the requested that are subject to the Nondisclosure Conditions outweighs the public's interest in disclosing the information.

As noted above, the Requestor does not challenge the applicability of the Nondisclosure Conditions to the responsive documents to the DIDP Request. Instead, the Requestor claims that ICANN (Internet Corporation for Assigned Names and Numbers) org should have concluded that the public interest in disclosing these documents outweighed the harm that may be caused by such disclosure.⁴ According to the Requestor, "there is a significant public interest in providing for a competitive market in the DNS (Domain Name System) that outweighs any harm in disclosure, especially given the proposed confidentiality agreement in the [DIDP Request]."⁵

As an initial matter, the Board agrees with the BAMC's determination that the Requestor's

proposal to enter into a confidentiality agreement to protect the information contained in the requested materials does not support reconsideration. Indeed, the concept of a confidentiality agreement for the disclosure of documents through the DIDP runs afoul of the DIDP itself, which is to make *public* documents concerning ICANN (Internet Corporation for Assigned Names and Numbers) org's operations unless there is a compelling reason for confidentiality.⁶ Moreover, the Requestor's proposal asks ICANN (Internet Corporation for Assigned Names and Numbers) org to treat the Requestor differently than other requestors, and to act in a manner that is contrary to what is set forth in the DIDP Response Process, which could be in contravention of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws. Further, by proposing that the documents be made available only to the Requestor's outside counsel via a "confidentiality agreement," it appears that the Requestor concedes that the requested information is *not* appropriate for public disclosure.

With respect to the allegations set forth in Request 18-8 regarding Verisign's intentions and conduct in connection with the .WEB gTLD (generic Top Level Domain), the Board agrees with the BAMC's conclusion that the Requestor fails to provide any evidence or other

support for its assertions. The Board further agrees that the Requestor fails to explain how its unsubstantiated claims concerning Verisign's alleged conduct demonstrate that ICANN (Internet Corporation for Assigned Names and Numbers) org violated a policy or procedure when it responded to the Requestor's DIDP Request.

The Board also agrees with the BAMC's finding that ICANN (Internet Corporation for Assigned Names and Numbers) org did not violate the DIDP Response Process when it determined that the public interest does not outweigh the potential harm in the disclosure of the confidential and privileged documents. ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws recognize that "[s]ituations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission."² The DIDP, which was developed through the multistakeholder process with significant community input, specifically permits ICANN (Internet Corporation for Assigned Names and Numbers) org to

balance applicable competing Core Values and commitments in any given situation. Here, ICANN (Internet Corporation for Assigned Names and Numbers) org's commitment to promote competition in the DNS (Domain Name System) is in tension with its commitment to operate with efficiency and excellence, as well as ICANN (Internet Corporation for Assigned Names and Numbers) org's commitment to reasonably balance the interests of different stakeholders, and to support the multistakeholder process. Pursuant to the DIDP, ICANN (Internet Corporation for Assigned Names and Numbers) org may exercise its discretion to withhold materials under these circumstances without violating its commitment to promoting competition, which is what ICANN (Internet Corporation for Assigned Names and Numbers) org did in the DIDP Response. Accordingly, reconsideration is not warranted. (See [BAMC Recommendation \(/en/system/files/files/reconsideration-18-8-afilias-bamc-recommendation-28aug18-en.pdf\)](#) [PDF, 211 KB], Pgs. 17 – 21.)

B. ICANN (Internet Corporation for Assigned Names and Numbers) Org Adhered to Its Commitments and Core Values in Responding to the DIDP Request.

The Board agrees with the BAMC's determination that the DIDP Response did

not violate ICANN (Internet Corporation for Assigned Names and Numbers) org's commitments and Core Values. Neither the DIDP nor ICANN (Internet Corporation for Assigned Names and Numbers)'s commitments and Core Values supporting transparency and accountability obligates ICANN (Internet Corporation for Assigned Names and Numbers) org to make public every document in its possession. As noted above, the DIDP sets forth Nondisclosure Conditions for which other commitments or Core Values may compete or conflict with the transparency commitment. These Nondisclosure Conditions represent areas, vetted through public comment, that the community has agreed are presumed not to be appropriate for public disclosure. The public interest balancing test in turn allows ICANN (Internet Corporation for Assigned Names and Numbers) org to determine whether or not, under the specific circumstances, its commitment to transparency outweighs its other commitments and Core Values. Accordingly, without contravening its commitment to transparency, ICANN (Internet Corporation for Assigned Names and Numbers) org may appropriately exercise its discretion, pursuant to the DIDP, to determine that certain documents are not appropriate for disclosure.

As the *Amazon EU S.A.R.L.* Independent Review Process Panel noted in June 2017:

[N]otwithstanding ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency commitment, both ICANN (Internet Corporation for Assigned Names and Numbers)'s By-Laws and its

Publication Practices recognize that there are situations where non-public information, e.g., internal staff communications relevant to the deliberative processes of ICANN (Internet Corporation for Assigned Names and Numbers) . . . may contain information that is appropriately protected against disclosure.⁸

As noted above, ICANN (Internet Corporation for Assigned Names and Numbers) org's Bylaws address this need to balance competing interests such as transparency and confidentiality, noting that "in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing test must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission."⁹

The BAMC concluded, and the Board agrees, that ICANN (Internet Corporation for Assigned Names and Numbers) org set forth the basis for its determination in each instance of nondisclosure in the DIDP Response, which are pre-defined in the DIDP; the Nondisclosure Conditions that ICANN (Internet Corporation for Assigned Names and Numbers) identified, by definition, set forth compelling reasons for not disclosing the materials. (See [BAMC Recommendation \(/en/system/files/files/reconsideration-18-8-afiliis-bamc-recommendation-28aug18-en.pdf\)](#) [PDF, 211 KB], Pgs. 22-23.) It is entirely within ICANN (Internet

Corporation for Assigned Names and Numbers) org's discretion to make this finding, and ICANN (Internet Corporation for Assigned Names and Numbers) org may conclude as much without contravening its commitment to transparency. Accordingly, the Requestor's generalized invocations of ICANN (Internet Corporation for Assigned Names and Numbers) org's commitments to transparency and openness do not support reconsideration.

This action is within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures, by having a process in place by which a person or entity materially affected by an action of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or Staff may request reconsideration of that action or inaction by the Board. Adopting the BAMC's Recommendation has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

b. **Reaffirming the Temporary Specification for gTLD (generic Top Level Domain) Registration Data**

Whereas, on 17 May 2018, the Board adopted the Temporary Specification for gTLD (generic Top Level Domain) Registration Data (the "Temporary Specification") to be effective 25 May 2018 for a 90-day period. The Temporary Specification establishes temporary requirements to allow ICANN (Internet Corporation for Assigned Names and Numbers) and gTLD (generic Top Level Domain) registry operators and registrars to continue to comply with existing ICANN (Internet Corporation for Assigned Names and Numbers) contractual requirements and community-developed policies concerning gTLD (generic Top Level Domain) registration data (including WHOIS (WHOIS (pronounced "who is"; not an acronym))) in light of the European Union's General Data Protection Regulation (GDPR).

Whereas, on 21 August 2018, the Board reaffirmed the adoption of the Temporary Specification to be effective for an additional 90-day period beginning on 23 August 2018.

Whereas, the Board adopted the Temporary Specification pursuant to the procedures in the Registry Agreement and Registrar Accreditation Agreement for adopting temporary policies. This procedure requires that "[i]f the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus (Consensus) Policy".

Resolved (2018.11.06.03), the Board reaffirms the Temporary Specification for gTLD (generic Top Level Domain) Registration Data (/resources/pages/gtld-registration-data-specs-2018-05-17-en#temp-spec) pursuant to the procedures in the Registry Agreement

and Registrar Accreditation Agreement concerning the establishment of temporary policies. In reaffirming this Temporary Specification, the Board has determined that:

1. The modifications in the Temporary Specification to existing requirements concerning the processing of personal data in registration data continue to be justified and immediate temporary establishment of the Temporary Specification continues to be necessary to maintain the stability or security of Registrar Services, Registry Services or the DNS (Domain Name System) or the Internet.
2. The Temporary Specification is as narrowly tailored as feasible to achieve the objective to maintain the stability or security of Registrar Services, Registry Services or the DNS (Domain Name System) or the Internet.
3. The Temporary Specification will be effective for an additional 90-day period beginning 21 November 2018.

Resolved (2018.11.06.04), the Board reaffirms the Advisory Statement Concerning Adoption of the Temporary Specification for gTLD (generic Top Level Domain) Registration Data (</en/system/files/files/advisory-statement-gtld-registration-data-specs-17may18-en.pdf>) [PDF, 510 KB], which sets forth its detailed explanation of its reasons for adopting the Temporary Specification and why the Board believes such Temporary Specification should receive the consensus support of Internet stakeholders.

Rationale for Resolutions 2018.11.06.03 – 2018.11.06.04

The European Union's General Data Protection Regulation (GDPR) went into effect on 25 May 2018. The GDPR is a set of rules adopted by the European Parliament, the European Council and the European Commission that impose new obligations on all

companies and organizations that collect and maintain any "personal data" of residents of the European Union, as defined under EU data protection law. The GDPR impacts how personal data is collected, displayed and processed among participants in the gTLD (generic Top Level Domain) domain name ecosystem (including registries and registrars) pursuant to ICANN (Internet Corporation for Assigned Names and Numbers) contracts and policies.

On 17 May 2018, the Board adopted the Temporary Specification for gTLD (generic Top Level Domain) Registration Data ("Temporary Specification") to establish temporary requirements to allow ICANN (Internet Corporation for Assigned Names and Numbers) and gTLD (generic Top Level Domain) registry operators and registrars to continue to comply with existing ICANN (Internet Corporation for Assigned Names and Numbers) contractual requirements and community-developed policies concerning gTLD (generic Top Level Domain) registration data (including WHOIS (WHOIS (pronounced "who is"; not an acronym))) in relation to the GDPR. The Temporary Specification, which became effective on 25 May 2018, was adopted utilizing the procedure for temporary policies established in the Registry Agreement and the Registrar Accreditation Agreement.

On 21 August 2018, the Board reaffirmed the Temporary Specification for an additional 90-day period beginning 23 August 2018.

As required by the procedure in the Registrar Accreditation Agreement and Registry Agreements for adopting a temporary policy or specification, "[i]f the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus (Consensus) Policy."

Today, the Board is taking action to reconfirm the Temporary Specification for an additional 90 days as the temporary requirements continue to be justified in order to maintain the stability or security of registry services, registrar services or the DNS (Domain Name System). When adopting the Temporary Specification, the Board provided an Advisory Statement (</en/system/files/files/advisory-statement-gtld-registration-data-specs-17may18-en.pdf>) [PDF, 510 KB] to provide a detailed explanation of its reasons for adopting the Temporary Specification and why the Board believes such Temporary Specification should receive the consensus support of Internet stakeholders. The Board reaffirms the Advisory Statement, which is incorporated by reference into the rationale to the Board's resolutions.

As required when a temporary policy or specification is adopted, the Board took action to implement the consensus policy development process and consulted with the GNSO (Generic Names Supporting Organization) Council on potential paths forward for considering the development of a consensus policy on the issues within the Temporary Specification. The consensus policy development process must be concluded in a one-year time period. The Board takes note that the GNSO (Generic Names Supporting Organization) Council launched (</news/blog/gnso-council-launches-edpd-on-the-temporary-specification-for-gtld-registration-data>) an Expedited Policy Development Process on the Temporary Specification, and the Working Group is continuing with its deliberations to develop proposed policy recommendations. The Board will continue to engage with the GNSO (Generic Names Supporting Organization) Council on this matter and reconfirms its commitment to provide the necessary support to the work of the Expedited Policy Development Process to meet the deadline (see 7 August 2018 letter from Cherine Chalaby to GNSO (Generic Names Supporting Organization) Council Chair: [<https://www.icann.org/resources/board-material/resolutions-2018-11-06-en>](https://www.icann.org/en/system/files/correspondence/chalaby-</p></div><div data-bbox=)

[to-forrest-et-al-07aug18-en.pdf](#)
([/en/system/files/correspondence/chalaby-to-forrest-et-al-07aug18-en.pdf](#)) [PDF, 269 KB]).

The Board's action to reaffirm the Temporary Specification is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission "[...] to ensure the stable and secure operation of the Internet's unique identifier systems [...]". As one of ICANN (Internet Corporation for Assigned Names and Numbers)'s primary roles is to be responsible for the administration of the topmost levels of the Internet's identifiers, facilitating the ability to identify the holders of those identifiers is a core function of ICANN (Internet Corporation for Assigned Names and Numbers). The Board's action today will help serve the public interest and further the requirement in ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws to "assess the effectiveness of the then current gTLD (generic Top Level Domain) registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data." [Bylaws Sec. 4.6(e)(ii)]

Also, this action is expected to have an immediate impact on the continued security, stability or resiliency of the DNS (Domain Name System), as it will assist in continuing to maintain WHOIS (WHOIS (pronounced "who is"; not an acronym)) to the greatest extent possible while the community works to develop a consensus policy. Reaffirming the Temporary Specification is not expected to have a fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) organization beyond what was previously identified in the Board's [rationale for resolutions 2018.05.17.01 – 2018.05.17.09 \(/resources/board-material/resolutions-2018-05-17-en#1.a.rationale\)](#). If the resource needs are greater than the amounts currently budgeted to perform work on WHOIS (WHOIS (pronounced "who is"; not an acronym))- and GDPR-related issues, the President and CEO will bring any additional resource needs to the

Board Finance Committee for consideration, in line with existing fund request practices.

This is an Organizational Administrative Function of the Board for which public comment is not required, however ICANN (Internet Corporation for Assigned Names and Numbers)'s approach to addressing compliance with ICANN (Internet Corporation for Assigned Names and Numbers) policies and agreements concerning gTLD (generic Top Level Domain) registration data in relation to the GDPR has been the subject of comments from the community over the past year (<https://www.icann.org/dataprotectionprivacy/dataprotectionprivacy>).

c. AOB

No Resolutions taken.

Published on 8 November 2018

¹ Reconsideration Request 18-8, § 6, at Pg. 9-11. While the Requestor summarily concludes that the Nondisclosure Conditions were "unreasonably and illegitimately appl[ied]" (see Reconsideration Request 18-8, § 6, Pg. 8), the Requestor does not explain how that is so. Without more, the Requestor's unsupported assertions do not support reconsideration.

² See DIDP Response Process, <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf> (/en/system/files/files/didp-response-process-29oct13-en.pdf) [PDF, 59 KB].

³ *Id.* at Pg. 14.

⁴ Reconsideration Request 18-8, § 6, at Pgs. 8-11.

⁵ Reconsideration Request 18-8, § 6, Pg. 9.

⁶ See DIDP.

⁷ ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, 18 June 2018, Art. I, § 1.2(c).

⁸ *Amazon EU S.A.R.L. v. ICANN (Internet Corporation for Assigned Names and Numbers)*, ICDR Case No. 01-16-000-7056, Procedural Order (7 June 2017), at Pg. 3, <https://www.icann.org/en/system/files/files/irp-amazon-procedural-order-3-07jun17-en.pdf> (/en/system/files/files/irp-amazon-procedural-order-3-07jun17-en.pdf) [PDF, 119 KB].

⁹ ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, 18 June 2018, Art. 1, § 1.2(c).

EXHIBIT C-8



New gTLD Application Submitted to ICANN by: Afilias Domains No. 3 Limited,

String: WEB

Originally Posted: 13 June 2012

Application ID: 1-1013-6638

Applicant Information

1. Full legal name

Afilias Domains No. 3 Limited,

2. Address of the principal place of business

Contact Information Redacted

3. Phone number

Contact Information Redacted

4. Fax number

Contact nformation Redacted

5. If applicable, website or URL

<http://www.AfiliasDomains3.info>

Primary Contact

6(a). Name

John Kane

6(b). Title

Vice President, Corporate Services

6(c). Address

6(d). Phone Number

Contact nformation Redacted

6(e). Fax Number

6(f). Email Address

Contact Information Redacted

Secondary Contact

7(a). Name

John Kane

7(b). Title

Vice President, Corporate Services

7(c). Address

7(d). Phone Number

Contact Information Redacted

7(e). Fax Number

7(f). Email Address

Contact Information Redacted

Proof of Legal Establishment

8(a). Legal form of the Applicant

limited liability corporation

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Republic of Ireland

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

Afilias Limited

9(c). If the applying entity is a joint venture, list all joint venture partners.

not a joint venture

Applicant Background

11(a). Name(s) and position(s) of all directors

M. Scott Hemphill	Director
Thomas Wade	Director

11(b). Name(s) and position(s) of all officers and partners

Thomas Wade	CFO
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11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

WEB

14(a). If an IDN, provide the A-label (beginning with "xn--").

14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

14(c). If an IDN, provide the language of the label (in English).

14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).

14(d). If an IDN, provide the script of the label (in English).

14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).

14(e). If an IDN, list all code points contained in the U-label according to Unicode form.

15(a). If an IDN, Attach IDN Tables for the proposed registry.

Attachments are not displayed on this form.

15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

Afilias anticipates the introduction of this TLD without operational or rendering problems. Based on a decade of experience launching and operating new TLDs, Afilias, the back-end provider of registry services for this TLD, is confident the launch and operation of this TLD presents no known challenges. The rationale for this opinion includes:

- The string is not complex and is represented in standard ASCII characters and follows relevant technical, operational and policy standards;
- The string length is within lengths currently supported in the root and by ubiquitous Internet programs such as web browsers and mail applications;
- There are no new standards required for the introduction of this TLD;
- No onerous requirements are being made on registrars, registrants or Internet users, and;
- The existing secure, stable and reliable Afilias SRS, DNS, WHOIS and supporting systems and staff are amply provisioned and prepared to meet the needs of this TLD.

17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

Mission/Purpose

18(a). Describe the mission/purpose of your proposed gTLD.

Afilias Domains No. 3, the Applicant, is a subsidiary of Afilias Limited, and will be referred to throughout this application as Afilias for simplicity of review by ICANN.

Mission and purpose

The goal of the .WEB TLD is to help users of the Internet establish meaningful and relevant identities while promoting themselves or their groups, companies or organizations at the same time. This TLD will open up new opportunities for individuals, businesses and organizations to garner a unique piece of the Internet in a space where they can secure the domain name they want but can't have currently.

Businesses and organizations will want to acquire a domain in the .WEB TLD:

- A professional web presence is desired to support merchandising, retailing efforts and business goals.
- Retailers may wish to obtain a .WEB domain to create websites to support or announce planned business offerings and marketing efforts in the "web" arena.
- The web is an indispensable part of virtually every individual's and business' life today.

"As of 2011, more than 2.2 billion people - nearly a third of Earth's population - uses the services of the Internet." (source: Internet World Stats, updated 31 March 2011). Considering that many of this population have heretofore been unable to get the domain name they desired because it was already taken or reserved in a .com or .net environment, the need for a new TLD with a well-established name in the industry is obvious. And nothing is as synonymous with "Internet" or "net" as the word, "web".

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

The .WEB TLD will be positioned to become one the most-used, professional Internet spaces available.

i. General goals

.WEB will be an open TLD, generally available to all registrants (except in the Sunrise period as described below). The domains can be used for any purpose, including for business use, for personal use and by organizations. There are no content or use restrictions for this TLD.

Afilias will design and position the .WEB TLD to be one of the most popular TLDs on the Internet. The company will market, brand, provide outreach, and offer marketing support to registrars with the goal of gaining public support for the .WEB TLD. This can only be accomplished by creating a user friendly, easy to use, interesting, professionally relevant and entertaining TLD.

ii. How .WEB adds to the current space

On today's Internet, there are hundreds of thousands of companies around the world vying for the attention of potential users and customers. For this precise reason, the .WEB TLD provides an excellent opportunity for companies who elect to

participate in the domain to separate themselves from the rest of the .com and .net pack.

The .WEB TLD opens up a tremendous number of options for those companies involved with applications who wish to create a targeted identity on the Internet. In addition, it gives those companies the opportunity to build off the name recognition associated with their brand and name. Any company would be very receptive to being able to associate its own products or services with other quality products and services through the .WEB TLD.

iii. User experience goals

As is the goal of all new gTLDs, this TLD intends to create a space where registrants who desire to participate in the .WEB can create identities where potential users and clients can find the kinds of information they want and need. For example, if you are an organization or company whose business is built around use of the Internet, by belonging to this space you will be able to join forces or share information with other organizations or companies with similar interests and common goals. If an entity or group belongs to the .WEB TLD group, they can be assured they are establishing a presence on the Internet which will:

- a) closely align them with similar brands,
- b) ensure they can keep their own names/brands rather than having to "fit in" to the short list of current TLDs available,
- c) facilitate ease of discovery when searched for by potential customers and users, and
- d) foster confidence of users seeking any information whatsoever regarding applications because this person belongs to the .WEB.

iv. Registry policies

.WEB will be an open TLD, generally available to all registrants except during the Sunrise period.

.WEB domains will be offered for one to ten years as a general rule with a maximum period of no more than ten years. During the Sunrise period, initial registrations will likely have a minimum requirement for number of years. A requirement may be put in place during Sunrise, for example, that all names must be registered for at least five years.

The roll-out of our TLD is anticipated to feature the following phases:

- Reservation of reserved names and premium names, which will be distributed through special mechanisms (detailed below).
- Sunrise – the required period for trademark owners to secure their domains before availability to the general public. This phase will feature applications for domain strings, verification of trademarks via Trademark Clearinghouse and a trademark verification agent, auctions between qualified parties who wish to secure the same string, and a Trademark Claims Service.
- Land rush – this period provides an opportunity for potential registrations to apply for names prior to the General availability period.
- General Availability period – real-time registrations, made on a first-come first-served basis. Trademark Claims Service will be in use at least for the first 60 days after General Availability applications open.

The registration of domain names in the .WEB TLD will follow the standard practices, procedures and policies Afiliias, the back-end provider of registry services, currently has in place. This includes the following:

- Domain registration policies (for example, grace periods, transfer policies,

etc.) are defined in response #27.

- Abuse prevention tools and policies, for example, measures to promote WHOIS accuracy and efforts to reduce phishing and pharming, are discussed in detail in our response #28.
- Rights protection mechanisms and dispute resolution mechanism policies (for example, UDRP, URS) are detailed in #29.

Other detailed policies for this domain include policies for reserved names.

Reserved names

Registry reserved names

We will reserve the following classes of domain names, which will not be made generally available to registrants via the Sunrise or subsequent periods:

- All of the reserved names required in Specification 5 of the new gTLD Registry Agreement;
- The geographic names required in Specification 5 of the new gTLD Registry Agreement, and may be released to the extent that Registry Operator reaches agreement with the government and country-code manager;
- The registry operator's own name and variations thereof, and registry operations names (such as registry.tld, and www.tld), for internal use;
- Names related to ICANN and Internet standards bodies (iana.tld, ietf.tld, w3c.tld, etc.), and may be released to the extent that Registry Operator reaches agreement with ICANN.

The list of reserved names will be published publicly before the Sunrise period begins, so that registrars and potential registrants will know which names have been set aside.

Premium names

The registry will also designate a set of premium domain names, set aside for distribution via special mechanisms. The list of premium names will be published publicly before the Sunrise period begins, so that registrars and potential registrants will know that these names are not available. Premium names may be distributed via mechanisms such as requests for proposals, contests, direct sales, and auctions.

For the auctioning of premium names, we intend to contract with an established auction provider that has successfully conducted domain auctions. This will ensure that there is a tested, trustworthy technical platform for the auctions, auditable records, and reliable collection mechanisms. With our chosen auction provider, we will create and post policies and procedures that ensure clear, fair, and ethical auctions. As an example of such a policy, all employees of the registry operator and its contractors will be strictly prohibited from bidding in auctions for domains in the TLD. We expect a comprehensive and robust set of auction rules to cover possible scenarios, such as how domains will be awarded if the winning bidder does not make payment.

v. Privacy and confidential information protection

As per the New gTLD Registry Agreement, we will make domain contact data (and other fields) freely and publicly available via a Web-based WHOIS server. This default set of fields includes the mandatory publication of registrant data. Our Registry-Registrar Agreement will require that registrants consent to this publication.

We shall notify each of our registrars regarding the purposes for which data about any identified or identifiable natural person ("Personal Data") submitted to the

Registry Operator by such registrar is collected and used, and the intended recipients (or categories of recipients) of such Personal Data (the data in question is essentially the registrant and contact data required to be published in the WHOIS). We will require each registrar to obtain the consent of each registrant in the TLD for the collection and use of such Personal Data. The policies will be posted publicly on our TLD web site. As the registry operator, we shall not use or authorize the use of Personal Data in any way that is incompatible with the notice provided to registrars.

Our privacy and data use policies are as follows:

- As registry operator, we do not plan on selling bulk WHOIS data. We will not sell contact data in any way. We will not allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations.
- We may use registration data in the aggregate for marketing purposes.
- DNS query data will never be sold in a way that is personally identifiable.
- We may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notice provided to registrars regarding the purpose and procedures for such use.

As the registry operator we shall take significant steps to protect Personal Data collected from registrars from loss, misuse, unauthorized disclosure, alteration, or destruction. In our responses to Question 30 ("Security Policy") and Question 38 ("Escrow") we detail the security policies and procedures we will use to protect the registry system and the data contained therein from unauthorized access and loss.

Please see our response to Question 26 ("WHOIS") regarding "searchable WHOIS" and rate-limiting. That section contains details about how we will limit the mining of WHOIS data by spammers and other parties who abuse access to the WHOIS.

In order to acquire and maintain accreditation for our TLD, we will require registrars to adhere to certain information technology policies designed to help protect registrant data. These will include standards for access to the registry system and password management protocols. Our response to Question 30, "Security Policy" provides details of implementation.

We will allow the use of proxy and privacy services, which can protect the personal data of registrants from spammers and other parties that mine zone files and WHOIS data. We are aware that there are parties who may use privacy services to protect their free speech rights, or to avoid religious or political persecution.

18(c). What operating rules will you adopt to eliminate or minimize social costs?

Afilias has adopted the above-mentioned and other policies to ensure fair and equitable access and cost structures to the Internet community, including:

- no new burdens placed on the Internet community to resolve name disputes
- utilization of standard registration practices and policies (as detailed in responses to questions #27, #28, #29)
- protection of trademarks at launch and on-going operations (as detailed in the response to question #29)
- fair and reasonable wholesale prices
- fair and equitable treatment of registrars

As per the ICANN Registry Agreement, we will use only ICANN-accredited registrars, and will provide non-discriminatory access to registry services to those registrars.

Pricing Policies and Commitments

Pricing for domain names at General Availability will be \$8 per domain year for the first year. Applicant reserves the right to reduce this pricing for promotional purposes in a manner available to all accredited registrars. Registry Operator reserves the right to work with ICANN to initiate an increase in the wholesale price of domains if required. Registry Operator will provide reasonable notice to the registrars of any approved price increase.

Community-based Designation

19. Is the application for a community-based TLD?

No

20(a). Provide the name and full description of the community that the applicant is committing to serve.

20(b). Explain the applicant's relationship to the community identified in 20(a).

20(c). Provide a description of the community-based purpose of the applied-for gTLD.

20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).

20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).

Attachments are not displayed on this form.

Geographic Names

21(a). Is the application for a geographic name?

No

Protection of Geographic Names

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

We will protect names with national or geographic significance by reserving the country and territory names at the second level and at all other levels within the TLD, as per the requirements in the New TLD Registry Agreement (Specification 5, paragraph 5).

We will employ a series of rules to translate the geographical names required to be reserved by Specification 5, paragraph 5 to a form consistent with the "host names" format used in domain names.

Considering the Governmental Advisory Committee (GAC) advice "Principles regarding new gTLDs", these domains will be blocked, at no cost to governments, public authorities, or IGOs, before the TLD is introduced (Sunrise), so that no parties may apply for them. We will publish a list of these names before Sunrise, so our registrars and their prospective applicants can be aware that these names are reserved.

We will define a procedure so that governments can request the above reserved domain(s) if they would like to take possession of them. This procedure will be based on existing methodology developed for the release of country names in the .INFO TLD. For example, we will require a written request from the country's GAC representative, or a written request from the country's relevant Ministry or Department. We will allow the designated beneficiary (the Registrant) to register

the name, with an accredited Afiliias Registrar, possibly using an authorization number transmitted directly to the designated beneficiary in the country concerned.

As defined by Specification 5, paragraph 5, such geographic domains may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry operator will work with respective GAC representatives of the country's relevant Ministry of Department to obtain their release of the names to the Registry Operator.

If internationalized domains names (IDNs) are introduced in the TLD in the future, we will also reserve the IDN versions of the country names in the relevant script (s) before IDNs become available to the public. If we find it advisable and practical, we will confer with relevant language authorities so that we can reserve the IDN domains properly along with their variants.

Regarding GAC advice regarding second-level domains not specified via Specification 5, paragraph 5: All domains awarded to registrants are subject to the Uniform Domain Name Dispute Resolution Policy (UDRP), and to any properly-situated court proceeding. We will ensure appropriate procedures to allow governments, public authorities or IGO's to challenge abuses of names with national or geographic significance at the second level. In its registry-registrar agreement, and flowing down to registrar-registrant agreements, the registry operator will institute a provision to suspend domains names in the event of a dispute. We may exercise that right in the case of a dispute over a geographic name.

Registry Services

23. Provide name and full description of all the Registry Services to be provided.

Afiliias Domains No. 3, the Applicant, is a subsidiary of Afiliias Limited, and will be referred to throughout this application as Afiliias for simplicity of review by ICANN.

Afiliias has more experience successfully applying to ICANN and launching new TLDs than any other provider. Afiliias is the ICANN-contracted registry operator of the .INFO and .MOBI TLDs, and Afiliias is the back-end registry services provider for other ICANN TLDs including .ORG, .ASIA, .AERO, and .XXX.

Registry services for this TLD will be performed by Afiliias in the same responsible manner used to support 16 top level domains today. Afiliias supports more ICANN-contracted TLDs (6) than any other provider currently. Afiliias' primary corporate mission is to deliver secure, stable and reliable registry services. This TLD will utilize an existing, proven team and platform for registry services with:

- A stable and secure, state-of-the-art, EPP-based SRS with ample storage capacity, data security provisions and scalability that is proven with registrars who account for over 95% of all gTLD domain name registration activity (over 375 registrars);
- A reliable, 100% available DNS service (zone file generation, publication and dissemination) tested to withstand severe DDoS attacks and dramatic growth in

Internet use;

- A WHOIS service that is flexible and standards compliant, with search capabilities to address both registrar and end-user needs; includes consideration for evolving standards, such as RESTful, or draft-kucherawy-wierds;
- Experience introducing IDNs in the following languages: German (DE), Spanish (ES), Polish (PL), Swedish (SV), Danish (DA), Hungarian (HU), Icelandic (IS), Latvian (LV), Lithuanian (LT), Korean (KO), Simplified and Traditional Chinese (CN), Devanagari (HI-DEVA), Russian (RU), Belarusian (BE), Ukrainian (UK), Bosnian (BS), Serbian (SR), Macedonian (MK) and Bulgarian (BG) across the TLDs it serves;
- A registry platform that is both IPv6 and DNSSEC enabled;
- An experienced, respected team of professionals active in standards development of innovative services such as DNSSEC and IDN support;
- Methods to limit domain abuse, remove outdated and inaccurate data, and ensure the integrity of the SRS, and;
- Customer support and reporting capabilities to meet financial and administrative needs, e.g., 24x7 call center support, integration support, billing, and daily, weekly, and monthly reporting.

Afilias will support this TLD as the registry operator, leveraging a proven registry infrastructure that is fully operational, staffed with professionals, massively provisioned, and immediately ready to launch and maintain this TLD.

The below response includes a description of the registry services to be provided for this TLD, additional services provided to support registry operations, and an overview of Afilias' approach to registry management.

Registry services to be provided

To support this TLD, Afilias will offer the following registry services, all in accordance with relevant technical standards and policies:

- Receipt of data from registrars concerning registration for domain names and nameservers, and provision to registrars of status information relating to the EPP-based domain services for registration, queries, updates, transfers, renewals, and other domain management functions. Please see our responses to questions #24, #25, and #27 for full details, which we request be incorporated here by reference.
- Operation of the registry DNS servers: The Afilias DNS system, run and managed by Afilias, is a massively provisioned DNS infrastructure that utilizes among the most sophisticated DNS architecture, hardware, software and redundant design created. Afilias' industry-leading system works in a seamless way to incorporate nameservers from any number of other secondary DNS service vendors. Please see our response to question #35 for full details, which we request be incorporated here by reference.
- Dissemination of TLD zone files: Afilias' distinctive architecture allows for real-time updates and maximum stability for zone file generation, publication and dissemination. Please see our response to question #34 for full details, which we request be incorporated here by reference.
- Dissemination of contact or other information concerning domain registrations: A port 43 WHOIS service with basic and expanded search capabilities with requisite measures to prevent abuse. Please see our response to question #26 for full details, which we request be incorporated here by reference.
- Internationalized Domain Names (IDNs): Ability to support all protocol valid Unicode characters at every level of the TLD, including alphabetic, ideographic and right-to-left scripts, in conformance with the ICANN IDN Guidelines. Please see our response to question #44 for full details, which we request be incorporated here by reference.
- DNS Security Extensions (DNSSEC): A fully DNSSEC-enabled registry, with a stable and efficient means of signing and managing zones. This includes the ability to safeguard keys and manage keys completely. Please see our response to question #43 for full details, which we request be incorporated here by reference.

Each service will meet or exceed the contract service level agreement. All registry services for this TLD will be provided in a standards-compliant manner.

Security

Afilias addresses security in every significant aspect—physical, data and network as well as process. Afilias' approach to security permeates every aspect of the registry services provided. A dedicated security function exists within the company to continually identify existing and potential threats, and to put in place comprehensive mitigation plans for each identified threat. In addition, a rapid security response plan exists to respond comprehensively to unknown or unidentified threats. The specific threats and Afilias mitigation plans are defined in our response to question #30(b); please see that response for complete information. In short, Afilias is committed to ensuring the confidentiality, integrity, and availability of all information.

New registry services

No new registry services are planned for the launch of this TLD.

Additional services to support registry operation

Numerous supporting services and functions facilitate effective management of the TLD. These support services are also supported by Afilias, including:

- Customer support: 24x7 live phone and e-mail support for customers to address any access, update or other issues they may encounter. This includes assisting the customer identification of the problem as well as solving it. Customers include registrars and the registry operator, but not registrants except in unusual circumstances. Customers have access to a web-based portal for a rapid and transparent view of the status of pending issues.
- Financial services: billing and account reconciliation for all registry services according to pricing established in respective agreements.

Reporting is an important component of supporting registry operations. Afilias will provide reporting to the registry operator and registrars, and financial reporting.

Reporting provided to registry operator

Afilias reporting provides an extensive suite of reports, including daily, weekly and monthly reports with data at the transaction level that enable us to track and reconcile at whatever level of detail preferred. Afilias provides the exact data required by ICANN in the required format to enable the registry operator to meet its technical reporting requirements to ICANN.

In addition, Afilias offers access to a data warehouse capability that will enable near real-time data to be available 24x7. Afilias' data warehouse capability enables drill-down analytics all the way to the transaction level.

Reporting available to registrars

Afilias provides an extensive suite of reporting to registrars and has been doing so in an exemplary manner for more than ten years. Specifically, Afilias provides daily, weekly and monthly reports with detail at the transaction level to enable registrars to track and reconcile at whatever level of detail they prefer.

Reports are provided in standard formats, facilitating import for use by virtually any registrar analytical tool. Registrar reports are available for download via a secure administrative interface. A given registrar will only have access to its own reports. These include the following:

- Daily Reports: Transaction Report, Billable Transactions Report, and Transfer Reports;
- Weekly: Domain Status and Nameserver Report, Weekly Nameserver Report, Domains Hosted by Nameserver Weekly Report, and;
- Monthly: Billing Report and Monthly Expiring Domains Report.

Weekly registrar reports are maintained for each registrar for four weeks. Weekly reports older than four weeks will be archived for a period of six months, after which they will be deleted.

Financial reporting

Registrar account balances are updated real-time when payments and withdrawals are posted to the registrars' accounts. In addition, the registrar account balances are updated as and when they perform billable transactions at the registry level.

Afilias provides Deposit/Withdrawal Reports that are updated periodically to reflect payments received or credits and withdrawals posted to the registrar accounts.

The following reports are also available: a) Daily Billable Transaction Report, containing details of all the billable transactions performed by all the registrars in the SRS, b) daily e-mail reports containing the number of domains in the registry and a summary of the number and types of billable transactions performed by the registrars, and c) registry operator versions of most registrar reports (for example, a daily Transfer Report that details all transfer activity between all of the registrars in the SRS).

Afilias approach to registry support

Afilias is dedicated to managing the technical operations and support of this TLD in a secure, stable and reliable manner. Afilias has reviewed specific needs and objectives of this TLD. The resulting comprehensive plans are illustrated in technical responses #24-44. Afilias has provided financial responses for this application which demonstrate cost and technology consistent with the size and objectives of this TLD.

Afilias is the registry services provider for this and several other TLD applications. Over the past 11 years of providing services for gTLD and ccTLDs, Afilias has accumulated experience about resourcing levels necessary to provide high quality services with conformance to strict service requirements. Afilias currently supports over 20 million domain names, spread across 16 TLDs, with over 400 accredited registrars.

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

With over a decade of registry experience, Afilias has the depth and breadth of experience that ensure existing and new needs are addressed, all while meeting or exceeding service level requirements and customer expectations. This is evident in Afilias' participation in business, policy and technical organizations supporting registry and Internet technology within ICANN and related organizations. This

allows Afiliias to be at the forefront of security initiatives such as: DNSSEC, wherein Afiliias worked with Public Interest Registry (PIR) to make the .ORG registry the first DNSSEC enabled gTLD and the largest TLD enabled at the time; in enhancing the Internet experience for users across the globe by leading development of IDNs; in pioneering the use of open-source technologies by its usage of PostgreSQL, and; being the first to offer near-real-time dissemination of DNS zone data.

The ability to observe tightening resources for critical functions and the capacity to add extra resources ahead of a threshold event are factors that Afiliias is well versed in. Afiliias' human resources team, along with well-established relationships with external organizations, enables it to fill both long-term and short-term resource needs expediently.

Afiliias' growth from a few domains to serving 20 million domain names across 16 TLDs and 400 accredited registrars indicates that the relationship between the number of people required and the volume of domains supported is not linear. In other words, servicing 100 TLDs does not automatically require 6 times more staff than servicing 16 TLDs. Similarly, an increase in the number of domains under management does not require in a linear increase in resources. Afiliias carefully tracks the relationship between resources deployed and domains to be serviced, and pro-actively reviews this metric in order to retain a safe margin of error. This enables Afiliias to add, train and prepare new staff well in advance of the need, allowing consistent delivery of high quality services.

Demonstration of Technical & Operational Capability

24. Shared Registration System (SRS) Performance

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE "<" and ">" CHARACTERS), WHICH ICANN INFORMS AFILIAS (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE FULL ANSWER TO THIS QUESTION IS ATTACHED AS A PDF FILE.

Afiliias operates a state-of-the-art EPP-based Shared Registration System (SRS) that is secure, stable and reliable. The SRS is a critical component of registry operations that must balance the business requirements for the registry and its customers, such as numerous domain acquisition and management functions. The SRS meets or exceeds all ICANN requirements given that Afiliias:

- Operates a secure, stable and reliable SRS which updates in real-time and in full compliance with Specification 6 of the new gTLD Registry Agreement;
- Is committed to continuously enhancing our SRS to meet existing and future needs;
- Currently exceeds contractual requirements and will perform in compliance with Specification 10 of the new gTLD Registry Agreement;
- Provides SRS functionality and staff, financial, and other resources to more than adequately meet the technical needs of this TLD, and;
- Manages the SRS with a team of experienced technical professionals who can seamlessly integrate this TLD into the Afiliias registry platform and support the TLD in a secure, stable and reliable manner.

Description of operation of the SRS, including diagrams

Afilias' SRS provides the same advanced functionality as that used in the .INFO and .ORG registries, as well as the fourteen other TLDs currently supported by Afilias. The Afilias registry system is standards-compliant and utilizes proven technology, ensuring global familiarity for registrars, and it is protected by our massively provisioned infrastructure that mitigates the risk of disaster.

EPP functionality is described fully in our response to question #25; please consider those answers incorporated here by reference. An abbreviated list of Afilias SRS functionality includes:

- Domain registration: Afilias provides registration of names in the TLD, in both ASCII and IDN forms, to accredited registrars via EPP and a web-based administration tool.
- Domain renewal: Afilias provides services that allow registrars the ability to renew domains under sponsorship at any time. Further, the registry performs the automated renewal of all domain names at the expiration of their term, and allows registrars to rescind automatic renewals within a specified number of days after the transaction for a full refund.
- Transfer: Afilias provides efficient and automated procedures to facilitate the transfer of sponsorship of a domain name between accredited registrars. Further, the registry enables bulk transfers of domains under the provisions of the Registry-Registrar Agreement.
- RGP and restoring deleted domain registrations: Afilias provides support for the Redemption Grace Period (RGP) as needed, enabling the restoration of deleted registrations.
- Other grace periods and conformance with ICANN guidelines: Afilias provides support for other grace periods that are evolving as standard practice inside the ICANN community. In addition, the Afilias registry system supports the evolving ICANN guidelines on IDNs.

Afilias also supports the basic check, delete, and modify commands.

As required for all new gTLDs, Afilias provides "thick" registry system functionality. In this model, all key contact details for each domain are stored in the registry. This allows better access to domain data and provides uniformity in storing the information.

Afilias' SRS complies today and will continue to comply with global best practices including relevant RFCs, ICANN requirements, and this TLD's respective domain policies. With over a decade of experience, Afilias has fully documented and tested policies and procedures, and our highly skilled team members are active participants of the major relevant technology and standards organizations, so ICANN can be assured that SRS performance and compliance are met. Full details regarding the SRS system and network architecture are provided in responses to questions #31 and #32; please consider those answers incorporated here by reference.

SRS servers and software

All applications and databases for this TLD will run in a virtual environment currently hosted by a cluster of servers equipped with the latest Intel Westmere multi-core processors. (It is possible that by the time this application is evaluated and systems deployed, Westmere processors may no longer be the "latest"; the Afilias policy is to use the most advanced, stable technology available at the time of deployment.) The data for the registry will be stored on storage arrays of solid state drives shared over a fast storage area network. The virtual environment allows the infrastructure to easily scale both vertically and horizontally to cater to changing demand. It also facilitates effective utilization of system resources, thus reducing energy consumption and carbon footprint.

The network firewalls, routers and switches support all applications and servers. Hardware traffic shapers are used to enforce an equitable access policy for connections coming from registrars. The registry system accommodates both IPv4 and IPv6 addresses. Hardware load balancers accelerate TLS/SSL handshaking and distribute load among a pool of application servers.

Each of the servers and network devices are equipped with redundant, hot-swappable components and multiple connections to ancillary systems. Additionally, 24x7 support agreements with a four-hour response time at all our data centers guarantee replacement of failed parts in the shortest time possible.

Examples of current system and network devices used are:

- Servers: Cisco UCS B230 blade servers
- SAN storage arrays: IBM Storwize V7000 with Solid State Drives
- SAN switches: Brocade 5100
- Firewalls: Cisco ASA 5585-X
- Load balancers: F5 Big-IP 6900
- Traffic shapers: Procera PacketLogic PL8720
- Routers: Juniper MX40 3D
- Network switches: Cisco Nexus 7010, Nexus 5548, Nexus 2232

These system components are upgraded and updated as required, and have usage and performance thresholds which trigger upgrade review points. In each data center, there is a minimum of two of each network component, a minimum of 25 servers, and a minimum of two storage arrays.

Technical components of the SRS include the following items, continually checked and upgraded as needed: SRS, WHOIS, web admin tool, DNS, DNS distributor, reporting, invoicing tools, and deferred revenue system (as needed).

All hardware is massively provisioned to ensure stability under all forecast volumes from launch through "normal" operations of average daily and peak capacities. Each and every system application, server, storage and network device is continuously monitored by the Afilias Network Operations Center for performance and availability. The data gathered is used by dynamic predictive analysis tools in real-time to raise alerts for unusual resource demands. Should any volumes exceed established thresholds, a capacity planning review is instituted which will address the need for additions well in advance of their actual need.

SRS diagram and interconnectivity description

As with all core registry services, the SRS is run from a global cluster of registry system data centers, located in geographic centers with high Internet bandwidth, power, redundancy and availability. All of the registry systems will be run in a <n+1> setup, with a primary data center and a secondary data center. For detailed site information, please see our responses to questions #32 and #35. Registrars access the SRS in real-time using EPP.

A sample of the Afilias SRS technical and operational capabilities (displayed in Figure 24-a) include:

- Geographically diverse redundant registry systems;
- Load balancing implemented for all registry services (e.g. EPP, WHOIS, web admin) ensuring equal experience for all customers and easy horizontal scalability;
- Disaster Recovery Point objective for the registry is within one minute of the loss of the primary system;
- Detailed and tested contingency plan, in case of primary site failure, and;
- Daily reports, with secure access for confidentiality protection.

As evidenced in Figure 24-a, the SRS contains several components of the registry system. The interconnectivity ensures near-real-time distribution of the data throughout the registry infrastructure, timely backups, and up-to-date billing information.

The WHOIS servers are directly connected to the registry database and provide real-time responses to queries using the most up-to-date information present in the registry.

Committed DNS-related EPP objects in the database are made available to the DNS Distributor via a dedicated set of connections. The DNS Distributor extracts committed DNS-related EPP objects in real time and immediately inserts them into the zone for dissemination.

The Afiliast system is architected such that read-only database connections are executed on database replicas and connections to the database master (where write-access is executed) are carefully protected to ensure high availability.

This interconnectivity is monitored, as is the entire registry system, according to the plans detailed in our response to question #42.

Synchronization scheme

Registry databases are synchronized both within the same data center and in the backup data center using a database application called Slony. For further details, please see the responses to questions #33 and #37. Slony replication of transactions from the publisher (master) database to its subscribers (replicas) works continuously to ensure the publisher and its subscribers remain synchronized. When the publisher database completes a transaction the Slony replication system ensures that each replica also processes the transaction. When there are no transactions to process, Slony "sleeps" until a transaction arrives or for one minute, whichever comes first. Slony "wakes up" each minute to confirm with the publisher that there has not been a transaction and thus ensures subscribers are synchronized and the replication time lag is minimized. The typical replication time lag between the publisher and subscribers depends on the topology of the replication cluster, specifically the location of the subscribers relative to the publisher. Subscribers located in the same data center as the publisher are typically updated within a couple of seconds, and subscribers located in a secondary data center are typically updated in less than ten seconds. This ensures real-time or near-real-time synchronization between all databases, and in the case where the secondary data center needs to be activated, it can be done with minimal disruption to registrars.

SRS SLA performance compliance

Afiliast has a ten-year record of delivering on the demanding ICANN SLAs, and will continue to provide secure, stable and reliable service in compliance with SLA requirements as specified in the new gTLD Registry Agreement, Specification 10, as presented in Figure 24-b.

The Afiliast SRS currently handles over 200 million EPP transactions per month for just .INFO and .ORG. Overall, the Afiliast SRS manages over 700 million EPP transactions per month for all TLDs under management.

Given this robust functionality, and more than a decade of experience supporting a thick TLD registry with a strong performance history, Afiliast will meet or exceed the performance metrics in Specification 10 of the new gTLD Registry Agreement. The Afiliast services and infrastructure are designed to scale both vertically and

horizontally without any downtime to provide consistent performance as this TLD grows. The Afiliias architecture is also massively provisioned to meet seasonal demands and marketing campaigns. Afiliias' experience also gives high confidence in the ability to scale and grow registry operations for this TLD in a secure, stable and reliable manner.

SRS resourcing plans

Since its founding, Afiliias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afiliias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afiliias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afiliias project management methodology allows efficient and effective use of our staff in a focused way.

Over 100 Afiliias team members contribute to the management of the SRS code and network that will support this TLD. The SRS team is composed of Software Engineers, Quality Assurance Analysts, Application Administrators, System Administrators, Storage Administrators, Network Administrators, Database Administrators, and Security Analysts located at three geographically separate Afiliias facilities. The systems and services set up and administered by these team members are monitored 24x7 by skilled analysts at two NOCs located in Toronto, Ontario (Canada) and Horsham, Pennsylvania (USA). In addition to these team members, Afiliias also utilizes trained project management staff to maintain various calendars, work breakdown schedules, utilization and resource schedules and other tools to support the technical and management staff. It is this team who will both deploy this TLD on the Afiliias infrastructure, and maintain it. Together, the Afiliias team has managed 11 registry transitions and six new TLD launches, which illustrate its ability to securely and reliably deliver regularly scheduled updates as well as a secure, stable and reliable SRS service for this TLD.

25. Extensible Provisioning Protocol (EPP)

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE "<" and ">" CHARACTERS), WHICH ICANN INFORMS AFILIIAS (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE FULL ANSWER TO THIS QUESTION IS ATTACHED AS A PDF FILE.

Afiliias has been a pioneer and innovator in the use of EPP. .INFO was the first EPP-based gTLD registry and launched on EPP version 02/00. Afiliias has a track record of supporting TLDs on standards-compliant versions of EPP. Afiliias will operate the EPP registrar interface as well as a web-based interface for this TLD in accordance with RFCs and global best practices. In addition, Afiliias will maintain a proper OT&E (Operational Testing and Evaluation) environment to facilitate registrar system development and testing.

Afiliias' EPP technical performance meets or exceeds all ICANN requirements as demonstrated by:

- A completely functional, state-of-the-art, EPP-based SRS that currently meets the needs of various gTLDs and will meet this new TLD's needs;
- A track record of success in developing extensions to meet client and registrar

business requirements such as multi-script support for IDNs;

- Supporting six ICANN gTLDs on EPP: .INFO, .ORG, .MOBI, .AERO, .ASIA and .XXX
- EPP software that is operating today and has been fully tested to be standards-compliant;
- Proven interoperability of existing EPP software with ICANN-accredited registrars, and;
- An SRS that currently processes over 200 million EPP transactions per month for both .INFO and .ORG. Overall, Afilias processes over 700 million EPP transactions per month for all 16 TLDs under management.

The EPP service is offered in accordance with the performance specifications defined in the new gTLD Registry Agreement, Specification 10.

EPP Standards

The Afilias registry system complies with the following revised versions of the RFCs and operates multiple ICANN TLDs on these standards, including .INFO, .ORG, .MOBI, .ASIA and .XXX. The systems have been tested by our Quality Assurance ("QA") team for RFC compliance, and have been used by registrars for an extended period of time:

- 3735 - Guidelines for Extending EPP
- 3915 - Domain Registry Grace Period Mapping
- 5730 - Extensible Provisioning Protocol (EPP)
- 5731 - Domain Name Mapping
- 5732 - Host Mapping
- 5733 - Contact Mapping
- 5734 - Transport Over TCP
- 5910 - Domain Name System (DNS) Security Extensions Mapping for the Extensible Provisioning Protocol (EPP)

This TLD will support all valid EPP commands. The following EPP commands are in operation today and will be made available for this TLD. See attachment #25a for the base set of EPP commands and copies of Afilias XSD schema files, which define all the rules of valid, RFC compliant EPP commands and responses that Afilias supports. Any customized EPP extensions, if necessary, will also conform to relevant RFCs.

Afilias staff members actively participated in the Internet Engineering Task Force (IETF) process that finalized the new standards for EPP. Afilias will continue to actively participate in the IETF and will stay abreast of any updates to the EPP standards.

EPP software interface and functionality

Afilias will provide all registrars with a free open-source EPP toolkit. Afilias provides this software for use with both Microsoft Windows and Unix/Linux operating systems. This software, which includes all relevant templates and schema defined in the RFCs, is available on sourceforge.net and will be available through the registry operator's website.

Afilias' SRS EPP software complies with all relevant RFCs and includes the following functionality:

- EPP Greeting: A response to a successful connection returns a greeting to the client. Information exchanged can include: name of server, server date and time in UTC, server features, e.g., protocol versions supported, languages for the text response supported, and one or more elements which identify the objects that the server is capable of managing;
- Session management controls: <login> to establish a connection with a

server, and <logout> to end a session;

- EPP Objects: Domain, Host and Contact for respective mapping functions;
- EPP Object Query Commands: Info, Check, and Transfer (query) commands to retrieve object information, and;
- EPP Object Transform Commands: five commands to transform objects:
<create> to create an instance of an object, <delete> to remove an instance of an object, <renew> to extend the validity period of an object, <update> to change information associated with an object, and <transfer> to manage changes in client sponsorship of a known object.

Currently, 100% of the top domain name registrars in the world have software that has already been tested and certified to be compatible with the Afilias SRS registry. In total, over 375 registrars, representing over 95% of all registration volume worldwide, operate software that has been certified compatible with the Afilias SRS registry. Afilias' EPP Registrar Acceptance Criteria are available in attachment #25b, EPP OT&E Criteria.

Free EPP software support

Afilias analyzes and diagnoses registrar EPP activity log files as needed and is available to assist registrars who may require technical guidance regarding how to fix repetitive errors or exceptions caused by misconfigured client software.

Registrars are responsible for acquiring a TLS/SSL certificate from an approved certificate authority, as the registry-registrar communication channel requires mutual authentication; Afilias will acquire and maintain the server-side TLS/SSL certificate. The registrar is responsible for developing support for TLS/SSL in their client application. Afilias will provide free guidance for registrars unfamiliar with this requirement.

Registrar data synchronization

There are two methods available for registrars to synchronize their data with the registry:

- Automated synchronization: Registrars can, at any time, use the EPP <info> command to obtain definitive data from the registry for a known object, including domains, hosts (nameservers) and contacts.
- Personalized synchronization: A registrar may contact technical support and request a data file containing all domains (and associated host (nameserver) and contact information) registered by that registrar, within a specified time interval. The data will be formatted as a comma separated values (CSV) file and made available for download using a secure server.

EPP modifications

There are no unique EPP modifications planned for this TLD.

All ICANN TLDs must offer a Sunrise as part of a rights protection program. Afilias uses EPP extensions that allow registrars to submit trademark and other intellectual property rights (IPR) data to the registry. These extensions are:

- An <ipr:name> element that indicates the name of Registered Mark.
- An <ipr:number> element that indicates the registration number of the IPR.
- An <ipr:ccLocality> element that indicates the origin for which the IPR is established (a national or international trademark registry).
- An <ipr:entitlement> element that indicates whether the applicant holds the trademark as the original "OWNER", "CO-OWNER" or "ASSIGNEE".
- An <ipr:appDate> element that indicates the date the Registered Mark was applied for.
- An <ipr:regDate> element that indicates the date the Registered Mark was

issued and registered.

- An <ipr:class> element that indicates the class of the registered mark.
- An <ipr:type> element that indicates the Sunrise phase the application applies for.

Note that some of these extensions might be subject to change based on ICANN-developed requirements for the Trademark Clearinghouse.

EPP resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

108 Afilias team members directly contribute to the management and development of the EPP based registry systems. As previously noted, Afilias is an active member of IETF and has a long documented history developing and enhancing EPP. These contributors include 11 developers and 14 QA engineers focused on maintaining and enhancing EPP server side software. These engineers work directly with business staff to timely address existing needs and forecast registry/registrar needs to ensure the Afilias EPP software is effective today and into the future. A team of eight data analysts work with the EPP software system to ensure that the data flowing through EPP is securely and reliably stored in replicated database systems. In addition to the EPP developers, QA engineers, and data analysts, other EPP contributors at Afilias include: Technical Analysts, the Network Operations Center and Data Services team members.

26. Whois

Afilias operates the WHOIS (registration data directory service) infrastructure in accordance with RFCs and global best practices, as it does for the 16 TLDs it currently supports. Designed to be robust and scalable, Afilias' WHOIS service has exceeded all contractual requirements for over a decade. It has extended search capabilities, and methods of limiting abuse.

The WHOIS service operated by Afilias meets and exceeds ICANN's requirements. Specifically, Afilias will:

- Offer a WHOIS service made available on port 43 that is flexible and standards-compliant;
- Comply with all ICANN policies, and meeting or exceeding WHOIS performance requirements in Specification 10 of the new gTLD Registry Agreement;
- Enable a Searchable WHOIS with extensive search capabilities that offers ease of use while enforcing measures to mitigate access abuse, and;
- Employ a team with significant experience managing a compliant WHOIS service.

Such extensive knowledge and experience managing a WHOIS service enables Afilias to offer a comprehensive plan for this TLD that meets the needs of constituents of the domain name industry and Internet users. The service has been tested by our QA team for RFC compliance, and has been used by registrars and many other parties

for an extended period of time. Afilias' WHOIS service currently serves almost 500 million WHOIS queries per month, with the capacity already built in to handle an order of magnitude increase in WHOIS queries, and the ability to smoothly scale should greater growth be needed.

WHOIS system description and diagram

The Afilias WHOIS system, depicted in figure 26-a, is designed with robustness, availability, compliance, and performance in mind. Additionally, the system has provisions for detecting abusive usage (e.g., excessive numbers of queries from one source). The WHOIS system is generally intended as a publicly available single object lookup system. Afilias uses an advanced, persistent caching system to ensure extremely fast query response times.

Afilias will develop restricted WHOIS functions based on specific domain policy and regulatory requirements as needed for operating the business (as long as they are standards compliant). It will also be possible for contact and registrant information to be returned according to regulatory requirements. The WHOIS database supports multiple string and field searching through a reliable, free, secure web-based interface.

Data objects, interfaces, access and lookups

Registrars can provide an input form on their public websites through which a visitor is able to perform WHOIS queries. The registry operator can also provide a Web-based search on its site. The input form must accept the string to query, along with the necessary input elements to select the object type and interpretation controls. This input form sends its data to the Afilias port 43 WHOIS server. The results from the WHOIS query are returned by the server and displayed in the visitor's Web browser. The sole purpose of the Web interface is to provide a user-friendly interface for WHOIS queries.

Afilias will provide WHOIS output as per Specification 4 of the new gTLD Registry Agreement. The output for domain records generally consists of the following elements:

- The name of the domain registered and the sponsoring registrar;
- The names of the primary and secondary nameserver(s) for the registered domain name;
- The creation date, registration status and expiration date of the registration;
- The name, postal address, e-mail address, and telephone and fax numbers of the domain name holder;
- The name, postal address, e-mail address, and telephone and fax numbers of the technical contact for the domain name holder;
- The name, postal address, e-mail address, and telephone and fax numbers of the administrative contact for the domain name holder, and;
- The name, postal address, e-mail address, and telephone and fax numbers of the billing contact for the domain name holder.

The following additional features are also present in Afilias' WHOIS service:

- Support for IDNs, including the language tag and the Punycode representation of the IDN in addition to Unicode Hex and Unicode HTML formats;
- Enhanced support for privacy protection relative to the display of confidential information.

Afilias will also provide sophisticated WHOIS search functionality that includes the ability to conduct multiple string and field searches.

Query controls

For all WHOIS queries, a user is required to enter the character string representing the information for which they want to search. The object type and interpretation control parameters to limit the search may also be specified. If

object type or interpretation control parameter is not specified, WHOIS will search for the character string in the Name field of the Domain object.

WHOIS queries are required to be either an "exact search" or a "partial search," both of which are insensitive to the case of the input string.

An exact search specifies the full string to search for in the database field. An exact match between the input string and the field value is required.

A partial search specifies the start of the string to search for in the database field. Every record with a search field that starts with the input string is considered a match. By default, if multiple matches are found for a query, then a summary containing up to 50 matching results is presented. A second query is required to retrieve the specific details of one of the matching records.

If only a single match is found, then full details will be provided. Full detail consists of the data in the matching object as well as the data in any associated objects. For example: a query that results in a domain object includes the data from the associated host and contact objects.

WHOIS query controls fall into two categories: those that specify the type of field, and those that modify the interpretation of the input or determine the level of output to provide. Each is described below.

The following keywords restrict a search to a specific object type:

- Domain: Searches only domain objects. The input string is searched in the Name field.
- Host: Searches only nameserver objects. The input string is searched in the Name field and the IP Address field.
- Contact: Searches only contact objects. The input string is searched in the ID field.
- Registrar: Searches only registrar objects. The input string is searched in the Name field.

By default, if no object type control is specified, then the Name field of the Domain object is searched.

In addition, Afilius WHOIS systems can perform and respond to WHOIS searches by registrant name, postal address and contact names. Deployment of these features is provided as an option to the registry operator, based upon registry policy and business decision-making.

Figure 26-b presents the keywords that modify the interpretation of the input or determine the level of output to provide.

By default, if no interpretation control keywords are used, the output will include full details if a single match is found and a summary if multiple matches are found.

Unique TLD requirements

There are no unique WHOIS requirements for this TLD.

Sunrise WHOIS processes

All ICANN TLDs must offer a Sunrise as part of a rights protection program. Afilius uses EPP extensions that allow registrars to submit trademark and other intellectual property rights (IPR) data to the registry. The following corresponding data will be displayed in WHOIS for relevant domains:

- Trademark Name: element that indicates the name of the Registered Mark.
- Trademark Number: element that indicates the registration number of the IPR.
- Trademark Locality: element that indicates the origin for which the IPR is established (a national or international trademark registry).

- Trademark Entitlement: element that indicates whether the applicant holds the trademark as the original "OWNER", "CO-OWNER" or "ASSIGNEE".
- Trademark Application Date: element that indicates the date the Registered Mark was applied for.
- Trademark Registration Date: element that indicates the date the Registered Mark was issued and registered.
- Trademark Class: element that indicates the class of the Registered Mark.
- IPR Type: element that indicates the Sunrise phase the application applies for.

IT and infrastructure resources

All the applications and databases for this TLD will run in a virtual environment hosted by a cluster of servers equipped with the latest Intel Westmere multi-core processors (or a more advanced, stable technology available at the time of deployment). The registry data will be stored on storage arrays of solid-state drives shared over a fast storage area network. The virtual environment allows the infrastructure to easily scale both vertically and horizontally to cater to changing demand. It also facilitates effective utilization of system resources thus reducing energy consumption and carbon footprint.

The applications and servers are supported by network firewalls, routers and switches. The WHOIS system accommodates both IPv4 and IPv6 addresses.

Each of the servers and network devices are equipped with redundant hot-swappable components and multiple connections to ancillary systems. Additionally, 24x7 support agreements with our hardware vendor with a 4-hour response time at all our data centers guarantees replacement of failed parts in the shortest time possible.

Models of system and network devices used are:

- Servers: Cisco UCS B230 blade servers
- SAN storage arrays: IBM Storwize V7000 with Solid State Drives
- Firewalls: Cisco ASA 5585-X
- Load balancers: F5 Big-IP 6900
- Traffic shapers: Procera PacketLogic PL8720
- Routers: Juniper MX40 3D
- Network switches: Cisco Nexus 7010, Nexus 5548, Nexus 2232

There will be at least four virtual machines (VMs) offering WHOIS service. Each VM will run at least two WHOIS server instances - one for registrars and one for the public. All instances of the WHOIS service is made available to registrars and the public are rate limited to mitigate abusive behavior.

Frequency of synchronization between servers

Registration data records from the EPP publisher database will be replicated to the WHOIS system database on a near-real-time basis whenever an update occurs.

Specifications 4 and 10 compliance

The WHOIS service for this TLD will meet or exceed the performance requirements in the new gTLD Registry Agreement, Specification 10. Figure 26-c provides the exact measurements and commitments. Afilias has a 10 year track record of exceeding WHOIS performance and a skilled team to ensure this continues for all TLDs under management.

The WHOIS service for this TLD will meet or exceed the requirements in the new gTLD Registry Agreement, Specification 4.

RFC 3912 compliance

Afilias will operate the WHOIS infrastructure in compliance with RFCs and global best practices, as it does with the 16 TLDs Afilias currently supports.

Afilias maintains a registry-level centralized WHOIS database that contains information for every registered domain and for all host and contact objects. The WHOIS service will be available on the Internet standard WHOIS port (port 43) in compliance with RFC 3912. The WHOIS service contains data submitted by registrars during the registration process. Changes made to the data by a registrant are submitted to Afilias by the registrar and are reflected in the WHOIS database and service in near-real-time, by the instance running at the primary data center, and in under ten seconds by the instance running at the secondary data center, thus providing all interested parties with up-to-date information for every domain. This service is compliant with the new gTLD Registry Agreement, Specification 4.

The WHOIS service maintained by Afilias will be authoritative and complete, as this will be a "thick" registry (detailed domain contact WHOIS is all held at the registry); users do not have to query different registrars for WHOIS information, as there is one central WHOIS system. Additionally, visibility of different types of data is configurable to meet the registry operator's needs.

Searchable WHOIS

Afilias offers a searchable WHOIS on a web-based Directory Service. Partial match capabilities are offered on the following fields: domain name, registrar ID, and IP address. In addition, Afilias WHOIS systems can perform and respond to WHOIS searches by registrant name, postal address and contact names.

Providing the ability to search important and high-value fields such as registrant name, address and contact names increases the probability of abusive behavior. An abusive user could script a set of queries to the WHOIS service and access contact data in order to create or sell a list of names and addresses of registrants in this TLD. Making the WHOIS machine readable, while preventing harvesting and mining of WHOIS data, is a key requirement integrated into the Afilias WHOIS systems. For instance, Afilias limits search returns to 50 records at a time. If bulk queries were ever necessary (e.g., to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process), Afilias makes such query responses available to carefully screened and limited staff members at the registry operator (and customer support staff) via an internal data warehouse. The Afilias WHOIS system accommodates anonymous access as well as pre-identified and profile-defined uses, with full audit and log capabilities.

The WHOIS service has the ability to tag query responses with labels such as "Do not redistribute" or "Special access granted". This may allow for tiered response and reply scenarios. Further, the WHOIS service is configurable in parameters and fields returned, which allow for flexibility in compliance with various jurisdictions, regulations or laws.

Afilias offers exact-match capabilities on the following fields: registrar ID, nameserver name, and nameserver's IP address (only applies to IP addresses stored by the registry, i.e., glue records). Search capabilities are fully available, and results include domain names matching the search criteria (including IDN variants). Afilias manages abuse prevention through rate limiting and CAPTCHA (described below). Queries do not require specialized transformations of internationalized domain names or internationalized data fields

Please see "Query Controls" above for details about search options and capabilities.

Deterring WHOIS abuse

Afilias has adopted two best practices to prevent abuse of the WHOIS service: rate limiting and CAPTCHA.

Abuse of WHOIS services on port 43 and via the Web is subject to an automated rate-limiting system. This ensures that uniformity of service to users is unaffected by a few parties whose activities abuse or otherwise might threaten to overload the WHOIS system.

Abuse of web-based public WHOIS services is subject to the use of CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart) technology. The use of CAPTCHA ensures that uniformity of service to users is unaffected by a few parties whose activities abuse or otherwise might threaten to overload the WHOIS system. Afilias will adopt a CAPTCHA on its Web-based WHOIS.

Data mining of any sort on the WHOIS system is strictly prohibited, and this prohibition is published in WHOIS output and in terms of service.

For rate limiting on IPv4, there are configurable limits per IP and subnet. For IPv6, the traditional limitations do not apply. Whenever a unique IPv6 IP address exceeds the limit of WHOIS queries per minute, the same rate-limit for the given 64 bits of network prefix that the offending IPv6 IP address falls into will be applied. At the same time, a timer will start and rate-limit validation logic will identify if there are any other IPv6 address within the original 80-bit (<48) prefix. If another offending IPv6 address does fall into the <48 prefix then rate-limit validation logic will penalize any other IPv6 addresses that fall into that given 80-bit (<48) network. As a security precaution, Afilias will not disclose these limits.

Pre-identified and profile-driven role access allows greater granularity and configurability in both access to the WHOIS service, and in volume/frequency of responses returned for queries.

Afilias staff are key participants in the ICANN Security & Stability Advisory Committee's deliberations and outputs on WHOIS, including SAC003, SAC027, SAC033, SAC037, SAC040, and SAC051. Afilias staff are active participants in both technical and policy decision making in ICANN, aimed at restricting abusive behavior.

WHOIS staff resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

Within Afilias, there are 11 staff members who develop and maintain the compliant

WHOIS systems. They keep pace with access requirements, thwart abuse, and continually develop software. Of these resources, approximately two staffers are typically required for WHOIS-related code customization. Other resources provide quality assurance, and operations personnel maintain the WHOIS system itself. This team will be responsible for the implementation and on-going maintenance of the new TLD WHOIS service.

27. Registration Life Cycle

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE " <" and "> " CHARACTERS), WHICH ICANN INFORMS AFILIAS (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE FULL ANSWER TO THIS QUESTION IS ATTACHED AS A PDF FILE.

Afilias has been managing registrations for over a decade. Afilias has had experience managing registrations for over a decade and supports comprehensive registration lifecycle services including the registration states, all standard grace periods, and can address any modifications required with the introduction of any new ICANN policies.

This TLD will follow the ICANN standard domain lifecycle, as is currently implemented in TLDs such as .ORG and .INFO. The below response includes: a diagram and description of the lifecycle of a domain name in this TLD, including domain creation, transfer protocols, grace period implementation and the respective time frames for each; and the existing resources to support the complete lifecycle of a domain.

As depicted in Figure 27-a, prior to the beginning of the Trademark Claims Service or Sunrise IP protection program[s], Afilias will support the reservation of names in accordance with the new gTLD Registry Agreement, Specification 5. After the quiet period for Sunrise closes, there will be a land rush period providing applicants the opportunity to register their domain prior to general availability; this will be followed by a 30 day quiet period.

Registration period

After the IP protection programs, the landrush and the general launch, eligible registrants may choose an accredited registrar to register a domain name. The registrar will check availability on the requested domain name and if available, will collect specific objects such as, the required contact and host information from the registrant. The registrar will then provision the information into the registry system using standard Extensible Provisioning Protocol ("EPP") commands through a secure connection to the registry backend service provider.

When the domain is created, the standard five day Add Grace Period begins, the domain and contact information are available in WHOIS, and normal operating EPP domain statuses will apply. Other specifics regarding registration rules for an active domain include:

- The domain must be unique;
- Restricted or reserved domains cannot be registered;
- The domain can be registered from 1-10 years;
- The domain can be renewed at any time for 1-10 years, but cannot exceed 10 years;
- The domain can be explicitly deleted at any time;
- The domain can be transferred from one registrar to another except during the first 60 days following a successful registration or within 60 days following a

transfer; and,
Contacts and hosts can be modified at any time.

The following describe the domain status values recognized in WHOIS when using the EPP protocol following RFC 5731.

- OK or Active: This is the normal status for a domain that has no pending operations or restrictions.
- Inactive: The domain has no delegated name servers.
- Locked: No action can be taken on the domain. The domain cannot be renewed, transferred, updated, or deleted. No objects such as contacts or hosts can be associated to, or disassociated from the domain. This status includes: Delete Prohibited / Server Delete Prohibited, Update Prohibited / Server Update Prohibited, Transfer Prohibited, Server Transfer Prohibited, Renew Prohibited, Server Renew Prohibited.
- Hold: The domain will not be included in the zone. This status includes: Client Hold, Server Hold.
- Transfer Prohibited: The domain cannot be transferred away from the sponsoring registrar. This status includes: Client Transfer Prohibited, Server Transfer Prohibited.

The following describe the registration operations that apply to the domain name during the registration period.

- a. Domain modifications: This operation allows for modifications or updates to the domain attributes to include:
- i. Registrant Contact
 - ii. Admin Contact
 - iii. Technical Contact
 - iv. Billing Contact
 - v. Host or nameservers
 - vi. Authorization information
 - vii. Associated status values

A domain with the EPP status of Client Update Prohibited or Server Update Prohibited may not be modified until the status is removed.

- b. Domain renewals: This operation extends the registration period of a domain by changing the expiration date. The following rules apply:
- i. A domain can be renewed at any time during its registration term,
 - ii. The registration term cannot exceed a total of 10 years.

A domain with the EPP status of Client Renew Prohibited or Server Renew Prohibited cannot be renewed.

- c. Domain deletions: This operation deletes the domain from the Shared Registry Services (SRS). The following rules apply:
- i. A domain can be deleted at any time during its registration term, if the domain is deleted during the Add Grace Period or the Renew/Extend Grace Period, the sponsoring registrar will receive a credit,
 - ii. A domain cannot be deleted if it has "child" nameservers that are associated to other domains.

A domain with the EPP status of Client Delete Prohibited or Server Delete Prohibited cannot be deleted.

- d. Domain transfers: A transfer of the domain from one registrar to another is conducted by following the steps below.
- i. The registrant must obtain the applicable <authInfo> code from the sponsoring (losing) registrar.
 - Every domain name has an authInfo code as per EPP RFC 5731. The authInfo code is

a six- to 16-character code assigned by the registrar at the time the name was created. Its purpose is to aid identification of the domain owner so proper authority can be established (it is the "password" to the domain).

- Under the Registry-Registrar Agreement, registrars will be required to provide a copy of the authInfo code to the domain registrant upon his or her request.

- ii. The registrant must provide the authInfo code to the new (gaining) registrar, who will then initiate a domain transfer request. A transfer cannot be initiated without the authInfo code.

- Every EPP <transfer> command must contain the authInfo code or the request will fail. The authInfo code represents authority to the registry to initiate a transfer.

- iii. Upon receipt of a valid transfer request, the registry automatically asks the sponsoring (losing) registrar to approve the request within five calendar days.

- When a registry receives a transfer request the domain cannot be modified, renewed or deleted until the request has been processed. This status must not be combined with either Client Transfer Prohibited or Server Transfer Prohibited status.

- If the sponsoring (losing) registrar rejects the transfer within five days, the transfer request is cancelled. A new domain transfer request will be required to reinitiate the process.

- If the sponsoring (losing) registrar does not approve or reject the transfer within five days, the registry automatically approves the request.

- iv. After a successful transfer, it is strongly recommended that registrars change the authInfo code, so that the prior registrar or registrant cannot use it anymore.

- v. Registrars must retain all transaction identifiers and codes associated with successful domain object transfers and protect them from disclosure.

- vi. Once a domain is successfully transferred the status of TRANSFERPERIOD is added to the domain for a period of five days.

- vii. Successful transfers will result in a one year term extension (resulting in a maximum total of 10 years), which will be charged to the gaining registrar.

e. Bulk transfer: Afiliias supports bulk transfer functionality within the SRS for situations where ICANN may request the registry to perform a transfer of some or all registered objects (includes domain, contact and host objects) from one registrar to another registrar. Once a bulk transfer has been executed, expiry dates for all domain objects remain the same, and all relevant states of each object type are preserved. In some cases the gaining and the losing registrar as well as the registry must approved bulk transfers. A detailed log is captured for each bulk transfer process and is archived for audit purposes.

Afiliias will support ICANN's Transfer Dispute Resolution Process. Afiliias will also respond to Requests for Enforcement (law enforcement or court orders) and will follow that process.

1. Auto-renew grace period

The Auto-Renew Grace Period displays as AUTORENEWPERIOD in WHOIS. An auto-renew must be requested by the registrant through the sponsoring registrar and occurs if a domain name registration is not explicitly renewed or deleted by the expiration date and is set to a maximum of 45 calendar days. In this circumstance the registration will be automatically renewed by the registry system the first day after the expiration date. If a Delete, Extend, or Transfer occurs within the AUTORENEWPERIOD the following rules apply:

- i. Delete. If a domain is deleted the sponsoring registrar at the time of the deletion receives a credit for the auto-renew fee. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

- ii. Renew/Extend. A domain can be renewed as long as the total term does not exceed 10 years. The account of the sponsoring registrar at the time of the extension will be charged for the additional number of years the registration is renewed.

iii. Transfer (other than ICANN-approved bulk transfer). If a domain is transferred, the losing registrar is credited for the auto-renew fee, and the year added by the operation is cancelled. As a result of the transfer, the expiration date of the domain is extended by minimum of one year as long as the total term does not exceed 10 years. The gaining registrar is charged for the additional transfer year(s) even in cases where a full year is not added because of the maximum 10 year registration restriction.

2. Redemption grace period

During this period, a domain name is placed in the PENDING DELETE RESTORABLE status when a registrar requests the deletion of a domain that is not within the Add Grace Period. A domain can remain in this state for up to 30 days and will not be included in the zone file. The only action a registrar can take on a domain is to request that it be restored. Any other registrar requests to modify or otherwise update the domain will be rejected. If the domain is restored it moves into PENDING RESTORE and then OK. After 30 days if the domain is not restored it moves into PENDING DELETE SCHEDULED FOR RELEASE before the domain is released back into the pool of available domains.

3. Pending delete

During this period, a domain name is placed in PENDING DELETE SCHEDULED FOR RELEASE status for five days, and all Internet services associated with the domain will remain disabled and domain cannot be restored. After five days the domain is released back into the pool of available domains.

Other grace periods

All ICANN required grace periods will be implemented in the registry backend service provider's system including the Add Grace Period (AGP), Renew/Extend Grace Period (EGP), Transfer Grace Period (TGP), Auto-Renew Grace Period (ARGP), and Redemption Grace Period (RGP). The lengths of grace periods are configurable in the registry system. At this time, the grace periods will be implemented following other gTLDs such as .ORG. More than one of these grace periods may be in effect at any one time. The following are accompanying grace periods to the registration lifecycle.

Add grace period

The Add Grace Period displays as ADDPERIOD in WHOIS and is set to five calendar days following the initial registration of a domain. If the domain is deleted by the registrar during this period, the registry provides a credit to the registrar for the cost of the registration. If a Delete, Renew/Extend, or Transfer operation occurs within the five calendar days, the following rules apply.

- i. Delete. If a domain is deleted within this period the sponsoring registrar at the time of the deletion is credited for the amount of the registration. The domain is deleted from the registry backend service provider's database and is released back into the pool of available domains.
- ii. Renew/Extend. If the domain is renewed within this period and then deleted, the sponsoring registrar will receive a credit for both the registration and the extended amounts. The account of the sponsoring registrar at the time of the renewal will be charged for the initial registration plus the number of years the registration is extended. The expiration date of the domain registration is extended by that number of years as long as the total term does not exceed 10 years.
- iii. Transfer (other than ICANN-approved bulk transfer). Transfers under Part A of the ICANN Policy on Transfer of Registrations between registrars may not occur during the ADDPERIOD or at any other time within the first 60 days after the initial registration. Enforcement is the responsibility of the registrar sponsoring the domain name registration and is enforced by the SRS.

Renew / extend grace period

The Renew / Extend Grace Period displays as RENEWPERIOD in WHOIS and is set to five calendar days following an explicit renewal on the domain by the registrar. If a Delete, Extend, or Transfer occurs within the five calendar days, the following rules apply:

- i. Delete. If a domain is deleted within this period the sponsoring registrar at the time of the deletion receives a credit for the renewal fee. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.
- ii. Renew/Extend. A domain registration can be renewed within this period as long as the total term does not exceed 10 years. The account of the sponsoring registrar at the time of the extension will be charged for the additional number of years the registration is renewed.
- iii. Transfer (other than ICANN-approved bulk transfer). If a domain is transferred within the Renew/Extend Grace Period, there is no credit to the losing registrar for the renewal fee. As a result of the transfer, the expiration date of the domain registration is extended by a minimum of one year as long as the total term for the domain does not exceed 10 years.

If a domain is auto-renewed, then extended, and then deleted within the Renew/Extend Grace Period, the registrar will be credited for any auto-renew fee charged and the number of years for the extension. The years that were added to the domain's expiration as a result of the auto-renewal and extension are removed. The deleted domain is moved to the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

Transfer Grace Period

The Transfer Grace period displays as TRANSFERPERIOD in WHOIS and is set to five calendar days after the successful transfer of domain name registration from one registrar to another registrar. Transfers under Part A of the ICANN Policy on Transfer of Registrations between registrars may not occur during the TRANSFERPERIOD or within the first 60 days after the transfer. If a Delete or Renew/Extend occurs within that five calendar days, the following rules apply:

- i. Delete. If the domain is deleted by the new sponsoring registrar during this period, the registry provides a credit to the registrar for the cost of the transfer. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.
- ii. Renew/Extend. If a domain registration is renewed within the Transfer Grace Period, there is no credit for the transfer. The registrar's account will be charged for the number of years the registration is renewed. The expiration date of the domain registration is extended by the renewal years as long as the total term does not exceed 10 years.

Registration lifecycle resources

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way. Virtually all Afilias resource are involved in the registration lifecycle of domains.

There are a few areas where registry staff devote resources to registration lifecycle issues:

- a. Supporting Registrar Transfer Disputes. The registry operator will have a compliance staffer handle these disputes as they arise; they are very rare in the

existing gTLDs.

b. Afilias has its development and quality assurance departments on hand to modify the grace period functionality as needed, if ICANN issues new Consensus Policies or the RFCs change.

Afilias has more than 30 staff members in these departments.

28. Abuse Prevention and Mitigation

Afilias will take the requisite operational and technical steps to promote WHOIS data accuracy, limit domain abuse, remove outdated and inaccurate data, and other security measures to ensure the integrity of the TLD. The specific measures include, but are not limited to:

- Posting a TLD Anti-Abuse Policy that clearly defines abuse, and provide point-of-contact information for reporting suspected abuse;
- Committing to rapid identification and resolution of abuse, including suspensions;
- Ensuring completeness of WHOIS information at the time of registration;
- Publishing and maintaining procedures for removing orphan glue records for names removed from the zone, and;
- Establishing measures to deter WHOIS abuse, including rate-limiting, determining data syntax validity, and implementing and enforcing requirements from the Registry-Registrar Agreement.

Abuse policy

The Anti-Abuse Policy stated below will be enacted under the contractual authority of the registry operator through the Registry-Registrar Agreement, and the obligations will be passed on to and made binding upon registrants. This policy will be posted on the TLD web site along with contact information for registrants or users to report suspected abuse.

The policy is designed to address the malicious use of domain names. The registry operator and its registrars will make reasonable attempts to limit significant harm to Internet users. This policy is not intended to take the place of the Uniform Domain Name Dispute Resolution Policy (UDRP) or the Uniform Rapid Suspension System (URS), and it is not to be used as an alternate form of dispute resolution or as a brand protection mechanism. Its intent is not to burden law-abiding or innocent registrants and domain users; rather, the intent is to deter those who use domain names maliciously by engaging in illegal or fraudulent activity.

Repeat violations of the abuse policy will result in a case-by-case review of the abuser(s), and the registry operator reserves the right to escalate the issue, with the intent of levying sanctions that are allowed under the TLD anti-abuse policy.

The below policy is a recent version of the policy that has been used by the .INFO registry since 2008, and the .ORG registry since 2009. It has proven to be an effective and flexible tool.

.WEB Anti-Abuse Policy

The following Anti-Abuse Policy is effective upon launch of the TLD. Malicious use of domain names will not be tolerated. The nature of such abuses creates security and stability issues for the registry, registrars, and registrants, as well as for users of the Internet in general. The registry operator definition of abusive use

of a domain includes, without limitation, the following:

- Illegal or fraudulent actions;
- Spam: The use of electronic messaging systems to send unsolicited bulk messages. The term applies to email spam and similar abuses such as instant messaging spam, mobile messaging spam, and the spamming of web sites and Internet forums;
- Phishing: The use of counterfeit web pages that are designed to trick recipients into divulging sensitive data such as personally identifying information, usernames, passwords, or financial data;
- Pharming: The redirecting of unknowing users to fraudulent sites or services, typically through, but not limited to, DNS hijacking or poisoning;
- Willful distribution of malware: The dissemination of software designed to infiltrate or damage a computer system without the owner's informed consent. Examples include, without limitation, computer viruses, worms, keyloggers, and Trojan horses.
- Malicious fast-flux hosting: Use of fast-flux techniques with a botnet to disguise the location of web sites or other Internet services, or to avoid detection and mitigation efforts, or to host illegal activities.
- Botnet command and control: Services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct distributed denial-of-service attacks (DDoS attacks);
- Illegal Access to Other Computers or Networks: Illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (e.g., port scan, stealth scan, or other information gathering activity).

Pursuant to the Registry-Registrar Agreement, registry operator reserves the right at its sole discretion to deny, cancel, or transfer any registration or transaction, or place any domain name(s) on registry lock, hold, or similar status, that it deems necessary: (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of registry operator, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement and this Anti-Abuse Policy, or (5) to correct mistakes made by registry operator or any registrar in connection with a domain name registration. Registry operator also reserves the right to place upon registry lock, hold, or similar status a domain name during resolution of a dispute.

The policy stated above will be accompanied by notes about how to submit a report to the registry operator's abuse point of contact, and how to report an orphan glue record suspected of being used in connection with malicious conduct (see below).

Abuse point of contact and procedures for handling abuse complaints

The registry operator will establish an abuse point of contact. This contact will be a role-based e-mail address of the form "abuse@registry.WEB". This e-mail address will allow multiple staff members to monitor abuse reports on a 24x7 basis, and then work toward closure of cases as each situation calls for. For tracking purposes, the registry operator will have a ticketing system with which all complaints will be tracked internally. The reporter will be provided with the ticket reference identifier for potential follow-up. Afilias will integrate its existing ticketing system to ensure uniform tracking and handling of the complaint. This role-based approach has been used successfully by ISPs, e-mail service providers, and registrars for many years, and is considered a global best practice.

The registry operator's designated abuse handlers will then evaluate complaints received via the abuse system address. They will decide whether a particular issue is of concern, and decide what action, if any, is appropriate.

In general, the registry operator will find itself receiving abuse reports from a wide variety of parties, including security researchers and Internet security companies, financial institutions such as banks, Internet users, and law enforcement agencies among others. Some of these parties may provide good forensic data or supporting evidence of the malicious behavior. In other cases, the party reporting an issue may not be familiar with how to provide such data or proof of malicious behavior. It is expected that a percentage of abuse reports to the registry operator will not be actionable, because there will not be enough evidence to support the complaint (even after investigation), and because some reports or reporters will simply not be credible.

The security function includes a communication and outreach function, with information sharing with industry partners regarding malicious or abusive behavior, in order to ensure coordinated abuse mitigation across multiple TLDs.

Assessing abuse reports requires great care, and the registry operator will rely upon professional, trained investigators who are versed in such matters. The goals are accuracy, good record-keeping, and a zero false-positive rate so as not to harm innocent registrants.

Different types of malicious activities require different methods of investigation and documentation. Further, the registry operator expects to face unexpected or complex situations that call for professional advice, and will rely upon professional, trained investigators as needed.

In general, there are two types of domain abuse that must be addressed:

- a) Compromised domains. These domains have been hacked or otherwise compromised by criminals, and the registrant is not responsible for the malicious activity taking place on the domain. For example, the majority of domain names that host phishing sites are compromised. The goal in such cases is to get word to the registrant (usually via the registrar) that there is a problem that needs attention with the expectation that the registrant will address the problem in a timely manner. Ideally such domains do not get suspended, since suspension would disrupt legitimate activity on the domain.
- b) Malicious registrations. These domains are registered by malefactors for the purpose of abuse. Such domains are generally targets for suspension, since they have no legitimate use.

The standard procedure is that the registry operator will forward a credible alleged case of malicious domain name use to the domain's sponsoring registrar with a request that the registrar investigate the case and act appropriately. The registrar will be provided evidence collected as a result of the investigation conducted by the trained abuse handlers. As part of the investigation, if inaccurate or false WHOIS registrant information is detected, the registrar is notified about this. The registrar is the party with a direct relationship with—and a direct contract with—the registrant. The registrar will also have vital information that the registry operator will not, such as:

- Details about the domain purchase, such as the payment method used (credit card, PayPal, etc.);
- The identity of a proxy-protected registrant;
- The purchaser's IP address;
- Whether there is a reseller involved, and;
- The registrant's past sales history and purchases in other TLDs (insofar as the registrar can determine this).

Registrars do not share the above information with registry operators due to

privacy and liability concerns, among others. Because they have more information with which to continue the investigation, and because they have a direct relationship with the registrant, the registrar is in the best position to evaluate alleged abuse. The registrar can determine if the use violates the registrar's legal terms of service or the registry Anti-Abuse Policy, and can decide whether or not to take any action. While the language and terms vary, registrars will be expected to include language in their registrar-registrant contracts that indemnifies the registrar if it takes action, and allows the registrar to suspend or cancel a domain name; this will be in addition to the registry Anti-Abuse Policy. Generally, registrars can act if the registrant violates the registrar's terms of service, or violates ICANN policy, or if illegal activity is involved, or if the use violates the registry's Anti-Abuse Policy.

If a registrar does not take action within a time period indicated by the registry operator (usually 24 hours), the registry operator might then decide to take action itself. At all times, the registry operator reserves the right to act directly and immediately if the potential harm to Internet users seems significant or imminent, with or without notice to the sponsoring registrar.

The registry operator will be prepared to call upon relevant law enforcement bodies as needed. There are certain cases, for example, Illegal pharmacy domains, where the registry operator will contact the Law Enforcement Agencies to share information about these domains, provide all the evidence collected and work closely with them before any action will be taken for suspension. The specific action is often dependent upon the jurisdiction of which the registry operator, although the operator in all cases will adhere to applicable laws and regulations.

When valid court orders or seizure warrants are received from courts or law enforcement agencies of relevant jurisdiction, the registry operator will order execution in an expedited fashion. Compliance with these will be a top priority and will be completed as soon as possible and within the defined timelines of the order. There are certain cases where Law Enforcement Agencies request information about a domain including but not limited to:

- Registration information
- History of a domain, including recent updates made
- Other domains associated with a registrant's account
- Patterns of registrant portfolio

Requests for such information is handled on a priority basis and sent back to the requestor as soon as possible. Afilias sets a goal to respond to such requests within 24 hours.

The registry operator may also engage in proactive screening of its zone for malicious use of the domains in the TLD, and report problems to the sponsoring registrars. The registry operator could take advantage of a combination of the following resources, among others:

- Blocklists of domain names and nameservers published by organizations such as SURBL and Spamhaus.
- Anti-phishing feeds, which will provide URLs of compromised and maliciously registered domains being used for phishing.
- Analysis of registration or DNS query data [DNS query data received by the TLD nameservers.]

The registry operator will keep records and track metrics regarding abuse and abuse reports. These will include:

- Number of abuse reports received by the registry's abuse point of contact described above;
- Number of cases and domains referred to registrars for resolution;
- Number of cases and domains where the registry took direct action;
- Resolution times;

- Number of domains in the TLD that have been blacklisted by major anti-spam blacklist providers, and;
- Phishing site uptimes in the TLD.

Removal of orphan glue records

By definition, orphan glue records used to be glue records. Glue records are related to delegations and are necessary to guide iterative resolvers to delegated nameservers. A glue record becomes an orphan when its parent nameserver record is removed without also removing the corresponding glue record. (Please reference the ICANN SSAC paper SAC048 at:

<http://www.icann.org/en/committees/security/sac048.pdf>.) Orphan glue records may be created when a domain (example.tld) is placed on EPP ServerHold or ClientHold status. When placed on Hold, the domain is removed from the zone and will stop resolving. However, any child nameservers (now orphan glue) of that domain (e.g., ns1.example.tld) are left in the zone. It is important to keep these orphan glue records in the zone so that any innocent sites using that nameserver will continue to resolve. This use of Hold status is an essential tool for suspending malicious domains.

Afilias observes the following procedures, which are being followed by other registries and are generally accepted as DNS best practices. These procedures are also in keeping with ICANN SSAC recommendations.

When a request to delete a domain is received from a registrar, the registry first checks for the existence of glue records. If glue records exist, the registry will check to see if other domains in the registry are using the glue records. If other domains in the registry are using the glue records then the request to delete the domain will fail until no other domains are using the glue records. If no other domains in the registry are using the glue records then the glue records will be removed before the request to delete the domain is satisfied. If no glue records exist then the request to delete the domain will be satisfied.

If a registrar cannot delete a domain because of the existence of glue records that are being used by other domains, then the registrar may refer to the zone file or the "weekly domain hosted by nameserver report" to find out which domains are using the nameserver in question and attempt to contact the corresponding registrar to request that they stop using the nameserver in the glue record. The registry operator does not plan on performing mass updates of the associated DNS records.

The registry operator will accept, evaluate, and respond appropriately to complaints that orphan glue is being used maliciously. Such reports should be made in writing to the registry operator, and may be submitted to the registry's abuse point-of-contact. If it is confirmed that an orphan glue record is being used in connection with malicious conduct, the registry operator will have the orphan glue record removed from the zone file. Afilias has the technical ability to execute such requests as needed.

Methods to promote WHOIS accuracy

The creation and maintenance of accurate WHOIS records is an important part of registry management. As described in our response to question #26, WHOIS, the registry operator will manage a secure, robust and searchable WHOIS service for this TLD.

WHOIS data accuracy

The registry operator will offer a "thick" registry system. In this model, all key

contact details for each domain name will be stored in a central location by the registry. This allows better access to domain data, and provides uniformity in storing the information. The registry operator will ensure that the required fields for WHOIS data (as per the defined policies for the TLD) are enforced at the registry level. This ensures that the registrars are providing required domain registration data. Fields defined by the registry policy to be mandatory are documented as such and must be submitted by registrars. The Afiliias registry system verifies formats for relevant individual data fields (e.g. e-mail, and phone/fax numbers). Only valid country codes are allowed as defined by the ISO 3166 code list. The Afiliias WHOIS system is extensible, and is capable of using the VAULT system, described further below.

Similar to the centralized abuse point of contact described above, the registry operator can institute a contact email address which could be utilized by third parties to submit complaints for inaccurate or false WHOIS data detected. This information will be processed by Afiliias' support department and forwarded to the registrars. The registrars can work with the registrants of those domains to address these complaints. Afiliias will audit registrars on a yearly basis to verify whether the complaints being forwarded are being addressed or not. This functionality, available to all registry operators, is activated based on the registry operator's business policy.

Afiliias also incorporates a spot-check verification system where a randomly selected set of domain names are checked periodically for accuracy of WHOIS data. Afiliias' .PRO registry system incorporates such a verification system whereby 1% of total registrations or 100 domains, whichever number is larger, are spot-checked every month to verify the domain name registrant's critical information provided with the domain registration data. With both a highly qualified corps of engineers and a 24x7 staffed support function, Afiliias has the capacity to integrate such spot-check functionality into this TLD, based on the registry operator's business policy. Note: This functionality will not work for proxy protected WHOIS information, where registrars or their resellers have the actual registrant data. The solution to that problem lies with either registry or registrar policy, or a change in the general marketplace practices with respect to proxy registrations.

Finally, Afiliias' registry systems have a sophisticated set of billing and pricing functionality which aids registry operators who decide to provide a set of financial incentives to registrars for maintaining or improving WHOIS accuracy. For instance, it is conceivable that the registry operator may decide to provide a discount for the domain registration or renewal fees for validated registrants, or levy a larger cost for the domain registration or renewal of proxy domain names. The Afiliias system has the capability to support such incentives on a configurable basis, towards the goal of promoting better WHOIS accuracy.

Role of registrars

As part of the RRA (Registry Registrar Agreement), the registry operator will require the registrar to be responsible for ensuring the input of accurate WHOIS data by their registrants. The Registrar/Registered Name Holder Agreement will include a specific clause to ensure accuracy of WHOIS data, and to give the registrar rights to cancel or suspend registrations if the Registered Name Holder fails to respond to the registrar's query regarding accuracy of data. ICANN's WHOIS Data Problem Reporting System (WDPRS) will be available to those who wish to file WHOIS inaccuracy reports, as per ICANN policy (<http://wdprs.internic.net/>).

Controls to ensure proper access to domain functions

Several measures are in place in the Afiliias registry system to ensure proper access to domain functions, including authentication provisions in the RRA

relative to notification and contact updates via use of AUTH-INFO codes.

IP address access control lists, TLS/SSL certificates and proper authentication are used to control access to the registry system. Registrars are only given access to perform operations on the objects they sponsor.

Every domain will have a unique AUTH-INFO code. The AUTH-INFO code is a 6- to 16-character code assigned by the registrar at the time the name is created. Its purpose is to aid identification of the domain owner so proper authority can be established. It is the "password" to the domain name. Registrars must use the domain's password in order to initiate a registrar-to-registrar transfer. It is used to ensure that domain updates (update contact information, transfer, or deletion) are undertaken by the proper registrant, and that this registrant is adequately notified of domain update activity. Only the sponsoring registrar of a domain has access to the domain's AUTH-INFO code stored in the registry, and this is accessible only via encrypted, password-protected channels.

Information about other registry security measures such as encryption and security of registrar channels are confidential to ensure the security of the registry system. The details can be found in the response to question #30b.

Validation and abuse mitigation mechanisms

Afilias has developed advanced validation and abuse mitigation mechanisms. These capabilities and mechanisms are described below. These services and capabilities are discretionary and may be utilized by the registry operator based on their policy and business need.

Afilias has the ability to analyze the registration data for known patterns at the time of registration. A database of these known patterns is developed from domains and other associated objects (e.g., contact information) which have been previously detected and suspended after being flagged as abusive. Any domains matching the defined criteria can be flagged for investigation. Once analyzed and confirmed by the domain anti-abuse team members, these domains may be suspended. This provides proactive detection of abusive domains.

Provisions are available to enable the registry operator to only allow registrations by pre-authorized and verified contacts. These verified contacts are given a unique code that can be used for registration of new domains.

Registrant pre-verification and authentication

One of the systems that could be used for validity and identity authentication is VAULT (Validation and Authentication Universal Lookup). It utilizes information obtained from a series of trusted data sources with access to billions of records containing data about individuals for the purpose of providing independent age and id verification as well as the ability to incorporate additional public or private data sources as required. At present it has the following: US Residential Coverage - 90% of Adult Population and also International Coverage - Varies from Country to Country with a minimum of 80% coverage (24 countries, mostly European).

Various verification elements can be used. Examples might include applicant data such as name, address, phone, etc. Multiple methods could be used for verification include integrated solutions utilizing API (XML Application Programming Interface) or sending batches of requests.

- Verification and Authentication requirements would be based on TLD operator requirements or specific criteria.

- Based on required WHOIS Data; registrant contact details (name, address, phone)
- If address/ZIP can be validated by VAULT, the validation process can continue (North America +25 International countries)
- If in-line processing and registration and EPP/API call would go to the verification clearinghouse and return up to 4 challenge questions.
- If two-step registration is required, then registrants would get a link to complete the verification at a separate time. The link could be specific to a domain registration and pre-populated with data about the registrant.
- If WHOIS data is validated a token would be generated and could be given back to the registrar which registered the domain.
- WHOIS data would reflect the Validated Data or some subset, i.e., fields displayed could be first initial and last name, country of registrant and date validated. Other fields could be generic validation fields much like a "privacy service".
- A "Validation Icon" customized script would be sent to the registrants email address. This could be displayed on the website and would be dynamically generated to avoid unauthorized use of the Icon. When clicked on the Icon would should limited WHOIS details i.e. Registrant: jdoe, Country: USA, Date Validated: March 29, 2011, as well as legal disclaimers.
- Validation would be annually renewed, and validation date displayed in the WHOIS.

Abuse prevention resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way. Abuse prevention and detection is a function that is staffed across the various groups inside Afilias, and requires a team effort when abuse is either well hidden or widespread, or both. While all of Afilias' 200+ employees are charged with responsibility to report any detected abuse, the engineering and analysis teams, numbering over 30, provide specific support based on the type of abuse and volume and frequency of analysis required. The Afilias security and support teams have the authority to initiate mitigation.

Afilias has developed advanced validation and abuse mitigation mechanisms. These capabilities and mechanisms are described below. These services and capabilities are discretionary and may be utilized by the registry operator based on their policy and business need.

This TLD's anticipated volume of registrations in the first three years of operations is listed in response #46. Afilias' anti-abuse function anticipates the expected volume and type of registrations, and together will adequately cover the staffing needs for this TLD. The registry operator will maintain an abuse response team, which may be a combination of internal staff and outside specialty contractors, adjusting to the needs of the size and type of TLD. The team structure planned for this TLD is based on several years of experience responding to, mitigating, and managing abuse for TLDs of various sizes. The team will generally consist of abuse handlers (probably internal), a junior analyst, (either internal or external), and a senior security consultant (likely an external resource providing the registry operator with extra expertise as needed). These responders will be specially trained in the investigation of abuse complaints, and will have the latitude to act expeditiously to suspend domain names (or apply

other remedies) when called for.

The exact resources required to maintain an abuse response team must change with the size and registration procedures of the TLD. An initial abuse handler is necessary as a point of contact for reports, even if a part-time responsibility. The abuse handlers monitor the abuse email address for complaints and evaluate incoming reports from a variety of sources. A large percentage of abuse reports to the registry operator may be unsolicited commercial email. The designated abuse handlers can identify legitimate reports and then decide what action is appropriate, either to act upon them, escalate to a security analyst for closer investigation, or refer them to registrars as per the above-described procedures. A TLD with rare cases of abuse would conform to this structure.

If multiple cases of abuse within the same week occur regularly, the registry operator will consider staffing internally an additional security analyst to investigate the complaints as they become more frequent. Training an abuse analyst requires 3-6 months and likely requires the active guidance of an experienced senior security analyst for guidance and verification of assessments and recommendations being made.

If this TLD were to regularly experience multiple cases of abuse within the same day, a full-time senior security analyst would likely be necessary. A senior security analyst capable of fulfilling this role should have several years of experience and able to manage and train the internal abuse response team.

The abuse response team will also maintain subscriptions for several security information services, including the blocklists from organizations like SURBL and Spamhaus and anti-phishing and other domain related abuse (malware, fast-flux etc.) feeds. The pricing structure of these services may depend on the size of the domain and some services will include a number of rapid suspension requests for use as needed.

For a large TLD, regular audits of the registry data are required to maintain control over abusive registrations. When a registrar with a significant number of registrations has been compromised or acted maliciously, the registry operator may need to analyze a set of registration or DNS query data. A scan of all the domains of a registrar is conducted only as needed. Scanning and analysis for a large registrar may require as much as a week of full-time effort for a dedicated machine and team.

29. Rights Protection Mechanisms

Rights protection is a core responsibility of the TLD operator, and is supported by a fully-developed plan for rights protection that includes:

- Establishing mechanisms to prevent unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies);
- Implementing a robust Sunrise program, utilizing the Trademark Clearinghouse, the services of one of ICANN's approved dispute resolution providers, a trademark validation agent, and drawing upon sunrise policies and rules used successfully in previous gTLD launches;
- Implementing a professional trademark claims program that utilizes the Trademark Clearinghouse, and drawing upon models of similar programs used successfully in previous TLD launches;
- Complying with the URS requirements;
- Complying with the UDRP;
- Complying with the PDDRP, and;

- Including all ICANN-mandated and independently developed rights protection mechanisms ("RPMs") in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD.

The response below details the rights protection mechanisms at the launch of the TLD (Sunrise and Trademark Claims Service) which comply with rights protection policies (URS, UDRP, PDDRP, and other ICANN RPMs), outlines additional provisions made for rights protection, and provides the resourcing plans.

Safeguards for rights protection at the launch of the TLD

The launch of this TLD will include the operation of a trademark claims service according to the defined ICANN processes for checking a registration request and alerting trademark holders of potential rights infringement.

The Sunrise Period will be an exclusive period of time, prior to the opening of public registration, when trademark and service mark holders will be able to reserve marks that are an identical match in the .WEB domain. Following the Sunrise Period, Afiliias will open registration to qualified applicants.

The anticipated Rollout Schedule for the Sunrise Period will be approximately as follows:

- Launch of the TLD - Sunrise Period begins for trademark holders and service mark holders to submit registrations for their exact marks in the .ART domain.
- Quiet Period - The Sunrise Period will close and will be followed by a Quiet Period for testing and evaluation.
- Land rush period opens after the Quiet period
- Quiet period of 30 days begins after the close of Land rush
- One month after close of Quiet Period - Registration in the .ART domain will be opened to qualified applicants.

Sunrise Period Requirements & Restrictions

Those wishing to reserve their marks in the .WEB domain during the Sunrise Period must own a current trademark or service mark listed in the Trademark Clearinghouse.

Notice will be provided to all trademark holders in the Clearinghouse if someone is seeking a Sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match (as defined in the Trademark Clearing House) to the name to be registered during Sunrise.

Each Sunrise registration will require a minimum term, to be determined at a later date.

Afiliias will establish the following Sunrise eligibility requirements (SERs) as minimum requirements, verified by Clearinghouse data, and incorporate a Sunrise Dispute Resolution Policy (SDRP). The SERs include: (i) ownership of a mark that satisfies the criteria set forth in section 7.2 of the Trademark Clearing House specifications, (ii) description of international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.

The SDRP will allow challenges based on the following four grounds: (i) at time the challenged domain name was registered, the registrants did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its

Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.

Ongoing rights protection mechanisms

Several mechanisms will be in place to protect rights in this TLD. As described in our responses to questions #27 and #28, measures are in place to ensure domain transfers and updates are only initiated by the appropriate domain holder, and an experienced team is available to respond to legal actions by law enforcement or court orders.

This TLD will conform to all ICANN RPMs including URS (defined below), UDRP, PDDRP, and all measures defined in Specification 7 of the new TLD agreement.

Uniform Rapid Suspension (URS)

The registry operator will implement decisions rendered under the URS on an ongoing basis. Per the URS policy posted on ICANN's Web site as of this writing, the registry operator will receive notice of URS actions from the ICANN-approved URS providers. These emails will be directed immediately to the registry operator's support staff, which is on duty 24x7. The support staff will be responsible for creating a ticket for each case, and for executing the directives from the URS provider. All support staff will receive pertinent training.

As per ICANN's URS guidelines, within 24 hours of receipt of the notice of complaint from the URS provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will remain in the TLD DNS zone file and will thus continue to resolve. The support staff will "lock" the domain by associating the following EPP statuses with the domain and relevant contact objects:

- ServerUpdateProhibited, with an EPP reason code of "URS"
- ServerDeleteProhibited, with an EPP reason code of "URS"
- ServerTransferProhibited, with an EPP reason code of "URS"
- The registry operator's support staff will then notify the URS provider immediately upon locking the domain name, via email.

The registry operator's support staff will retain all copies of emails from the URS providers, assign them a tracking or ticket number, and will track the status of each opened URS case through to resolution via spreadsheet or database.

The registry operator's support staff will execute further operations upon notice from the URS providers. The URS provider is required to specify the remedy and required actions of the registry operator, with notification to the registrant, the complainant, and the registrar.

As per the URS guidelines, if the complainant prevails, the "registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS provider about the URS. The WHOIS for the domain name shall continue to display all of the information of the original registrant except for the redirection of the nameservers. In addition, the WHOIS shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration."

Rights protection via the RRA

The following will be memorialized and be made binding via the Registry-Registrar and Registrar-Registrant Agreements:

- The registry may reject a registration request or a reservation request, or may delete, revoke, suspend, cancel, or transfer a registration or reservation under the following criteria:
 - a. to enforce registry policies and ICANN requirements; each as amended from time to time;
 - b. that is not accompanied by complete and accurate information as required by ICANN requirements and/or registry policies or where required information is not updated and/or corrected as required by ICANN requirements and/or registry policies;
 - c. to protect the integrity and stability of the registry, its operations, and the TLD system;
 - d. to comply with any applicable law, regulation, holding, order, or decision issued by a court, administrative authority, or dispute resolution service provider with jurisdiction over the registry;
 - e. to establish, assert, or defend the legal rights of the registry or a third party or to avoid any civil or criminal liability on the part of the registry and/or its affiliates, subsidiaries, officers, directors, representatives, employees, contractors, and stockholders;
 - f. to correct mistakes made by the registry or any accredited registrar in connection with a registration; or
 - g. as otherwise provided in the Registry-Registrar Agreement and/or the Registrar-Registrant Agreement.

Reducing opportunities for behaviors such as phishing or pharming

In our response to question #28, the registry operator has described its anti-abuse program. Rather than repeating the policies and procedures here, please see our response to question #28 for full details.

In the case of this TLD, Afilias will apply an approach that addresses registered domain names (rather than potentially registered domains). This approach will not infringe upon the rights of eligible registrants to register domains, and allows Afilias internal controls, as well as community-developed UDRP and URS policies and procedures if needed, to deal with complaints, should there be any.

Afilias is a member of various security fora which provide access to lists of names in each TLD which may be used for malicious purposes. Such identified names will be subject to the TLD anti-abuse policy, including rapid suspensions after due process.

Rights protection resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

Supporting RPMs requires several departments within the registry operator as well

as within Afiliias. The implementation of Sunrise and the Trademark Claims service and on-going RPM activities will pull from the 102 Afiliias staff members of the engineering, product management, development, security and policy teams at Afiliias which are on duty 24x7. A trademark validator will also be assigned within the registry operator, whose responsibilities may require as much as 50% of full-time employment if the domains under management were to exceed several million. No additional hardware or software resources are required to support this as Afiliias has fully-operational capabilities to manage abuse today.

30(a). Security Policy: Summary of the security policy for the proposed registry

Afiliias aggressively and actively protects the registry system from known threats and vulnerabilities, and has deployed an extensive set of security protocols, policies and procedures to thwart compromise. Afiliias' robust and detailed plans are continually updated and tested to ensure new threats are mitigated prior to becoming issues. Afiliias will continue these rigorous security measures, which include:

- Multiple layers of security and access controls throughout registry and support systems;
- 24x7 monitoring of all registry and DNS systems, support systems and facilities;
- Unique, proven registry design that ensures data integrity by granting only authorized access to the registry system, all while meeting performance requirements;
- Detailed incident and problem management processes for rapid review, communications, and problem resolution, and;
- Yearly external audits by independent, industry-leading firms, as well as twice-yearly internal audits.

Security policies and protocols

Afiliias has included security in every element of its service, including facilities, hardware, equipment, connectivity/Internet services, systems, computer systems, organizational security, outage prevention, monitoring, disaster mitigation, and escrow/insurance, from the original design, through development, and finally as part of production deployment. Examples of threats and the confidential and proprietary mitigation procedures are detailed in our response to question #30(b).

There are several important aspects of the security policies and procedures to note:

- Afiliias hosts domains in data centers around the world that meet or exceed global best practices.
- Afiliias' DNS infrastructure is massively provisioned as part of its DDoS mitigation strategy, thus ensuring sufficient capacity and redundancy to support new gTLDs.
- Diversity is an integral part of all of our software and hardware stability and robustness plan, thus avoiding any single points of failure in our infrastructure.
- Access to any element of our service (applications, infrastructure and data) is only provided on an as-needed basis to employees and a limited set of others to fulfill their job functions. The principle of least privilege is applied.
- All registry components-critical and non-critical-are monitored 24x7 by staff at our NOCs, and the technical staff has detailed plans and procedures that have stood the test of time for addressing even the smallest anomaly. Well-documented incident management procedures are in place to quickly involve the on-call

technical and management staff members to address any issues.

Afilias follows the guidelines from the ISO 27001 Information Security Standard (Reference: http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=42103) for the management and implementation of its Information Security Management System. Afilias also utilizes the COBIT IT governance framework to facilitate policy development and enable controls for appropriate management of risk (Reference: <http://www.isaca.org/cobit>). Best practices defined in ISO 27002 are followed for defining the security controls within the organization. Afilias continually looks to improve the efficiency and effectiveness of our processes, and follows industry best practices as defined by the IT Infrastructure Library, or ITIL (Reference: <http://www.itil-officialsite.com/>).

The Afilias registry system is located within secure data centers that implement a multitude of security measures both to minimize any potential points of vulnerability and to limit any damage should there be a breach. The characteristics of these data centers are described fully in our response to question #30(b).

The Afilias registry system employs a number of multi-layered measures to prevent unauthorized access to its network and internal systems. Before reaching the registry network, all traffic is required to pass through a firewall system. Packets passing to and from the Internet are inspected, and unauthorized or unexpected attempts to connect to the registry servers are both logged and denied. Management processes are in place to ensure each request is tracked and documented, and regular firewall audits are performed to ensure proper operation. 24x7 monitoring is in place and, if potential malicious activity is detected, appropriate personnel are notified immediately.

Afilias employs a set of security procedures to ensure maximum security on each of its servers, including disabling all unnecessary services and processes and regular application of security-related patches to the operating system and critical system applications. Regular external vulnerability scans are performed to verify that only services intended to be available are accessible.

Regular detailed audits of the server configuration are performed to verify that the configurations comply with current best security practices. Passwords and other access means are changed on a regular schedule and are revoked whenever a staff member's employment is terminated.

Access to registry system

Access to all production systems and software is strictly limited to authorized operations staff members. Access to technical support and network operations teams where necessary are read only and limited only to components required to help troubleshoot customer issues and perform routine checks. Strict change control procedures are in place and are followed each time a change is required to the production hardware/application. User rights are kept to a minimum at all times. In the event of a staff member's employment termination, all access is removed immediately.

Afilias applications use encrypted network communications. Access to the registry server is controlled. Afilias allows access to an authorized registrar only if each of the authentication factors matches the specific requirements of the requested authorization. These mechanisms are also used to secure any web-based tools that allow authorized registrars to access the registry. Additionally, all write transactions in the registry (whether conducted by authorized registrars or the registry's own personnel) are logged.

EPP connections are encrypted using TLS/SSL, and mutually authenticated using both

certificate checks and login/password combinations. Web connections are encrypted using TLS/SSL for an encrypted tunnel to the browser, and authenticated to the EPP server using login/password combinations.

All systems are monitored for security breaches from within the data center and without, using both system-based and network-based testing tools. Operations staff also monitor systems for security-related performance anomalies. Triple-redundant continual monitoring ensures multiple detection paths for any potential incident or problem. Details are provided in our response to questions #30(b) and #42. Network Operations and Security Operations teams perform regular audits in search of any potential vulnerability.

To ensure that registrar hosts configured erroneously or maliciously cannot deny service to other registrars, Afilias uses traffic shaping technologies to prevent attacks from any single registrar account, IP address, or subnet. This additional layer of security reduces the likelihood of performance degradation for all registrars, even in the case of a security compromise at a subset of registrars.

There is a clear accountability policy that defines what behaviors are acceptable and unacceptable on the part of non-staff users, staff users, and management. Periodic audits of policies and procedures are performed to ensure that any weaknesses are discovered and addressed. Aggressive escalation procedures and well-defined Incident Response management procedures ensure that decision makers are involved at early stages of any event.

In short, security is a consideration in every aspect of business at Afilias, and this is evidenced in a track record of a decade of secure, stable and reliable service.

Independent assessment

Supporting operational excellence as an example of security practices, Afilias performs a number of internal and external security audits each year of the existing policies, procedures and practices for:

- Access control;
- Security policies;
- Production change control;
- Backups and restores;
- Batch monitoring;
- Intrusion detection, and
- Physical security.

Afilias has an annual Type 2 SSAE 16 audit performed by PricewaterhouseCoopers (PwC). Further, PwC performs testing of the general information technology controls in support of the financial statement audit. A Type 2 report opinion under SSAE 16 covers whether the controls were properly designed, were in place, and operating effectively during the audit period (calendar year). This SSAE 16 audit includes testing of internal controls relevant to Afilias' domain registry system and processes. The report includes testing of key controls related to the following control objectives:

- Controls provide reasonable assurance that registrar account balances and changes to the registrar account balances are authorized, complete, accurate and timely.
- Controls provide reasonable assurance that billable transactions are recorded in the Shared Registry System (SRS) in a complete, accurate and timely manner.
- Controls provide reasonable assurance that revenue is systemically calculated by the Deferred Revenue System (DRS) in a complete, accurate and timely manner.
- Controls provide reasonable assurance that the summary and detail reports, invoices, statements, registrar and registry billing data files, and ICANN

transactional reports provided to registry operator(s) are complete, accurate and timely.

- Controls provide reasonable assurance that new applications and changes to existing applications are authorized, tested, approved, properly implemented and documented.
- Controls provide reasonable assurance that changes to existing system software and implementation of new system software are authorized, tested, approved, properly implemented and documented.
- Controls provide reasonable assurance that physical access to data centers is restricted to properly authorized individuals.
- Controls provide reasonable assurance that logical access to system resources is restricted to properly authorized individuals.
- Controls provide reasonable assurance that processing and backups are appropriately authorized and scheduled and that deviations from scheduled processing and backups are identified and resolved.

The last Type 2 report issued was for the year 2010, and it was unqualified, i.e., all systems were evaluated with no material problems found.

During each year, Afilias monitors the key controls related to the SSAE controls. Changes or additions to the control objectives or activities can result due to deployment of new services, software enhancements, infrastructure changes or process enhancements. These are noted and after internal review and approval, adjustments are made for the next review.

In addition to the PricewaterhouseCoopers engagement, Afilias performs internal security audits twice a year. These assessments are constantly being expanded based on risk assessments and changes in business or technology.

Additionally, Afilias engages an independent third-party security organization, PivotPoint Security, to perform external vulnerability assessments and penetration tests on the sites hosting and managing the Registry infrastructure. These assessments are performed with major infrastructure changes, release of new services or major software enhancements. These independent assessments are performed at least annually. A report from a recent assessment is attached with our response to question #30(b).

Afilias has engaged with security companies specializing in application and web security testing to ensure the security of web-based applications offered by Afilias, such as the Web Admin Tool (WAT) for registrars and registry operators.

Finally, Afilias has engaged IBM's Security services division to perform ISO 27002 gap assessment studies so as to review alignment of Afilias' procedures and policies with the ISO 27002 standard. Afilias has since made adjustments to its security procedures and policies based on the recommendations by IBM.

Special TLD considerations

Afilias' rigorous security practices are regularly reviewed; if there is a need to alter or augment procedures for this TLD, they will be done so in a planned and deliberate manner.

Commitments to registrant protection

With over a decade of experience protecting domain registration data, Afilias understands registrant security concerns. Afilias supports a "thick" registry system in which data for all objects are stored in the registry database that is the centralized authoritative source of information. As an active member of IETF

(Internet Engineering Task Force), ICANN's SSAC (Security & Stability Advisory Committee), APWG (Anti-Phishing Working Group), MAAWG (Messaging Anti-Abuse Working Group), USENIX, and ISACA (Information Systems Audits and Controls Association), the Afilias team is highly attuned to the potential threats and leading tools and procedures for mitigating threats. As such, registrants should be confident that:

- Any confidential information stored within the registry will remain confidential;
- The interaction between their registrar and Afilias is secure;
- The Afilias DNS system will be reliable and accessible from any location;
- The registry system will abide by all polices, including those that address registrant data;
- Afilias will not introduce any features or implement technologies that compromise access to the registry system or that compromise registrant security.

Afilias has directly contributed to the development of the documents listed below and we have implemented them where appropriate. All of these have helped improve registrants' ability to protect their domains name(s) during the domain name lifecycle.

- [SAC049]: SSAC Report on DNS Zone Risk Assessment and Management (03 June 2011)
- [SAC044]: A Registrant's Guide to Protecting Domain Name Registration Accounts (05 November 2010)
- [SAC040]: Measures to Protect Domain Registration Services Against Exploitation or Misuse (19 August 2009)
- [SAC028]: SSAC Advisory on Registrar Impersonation Phishing Attacks (26 May 2008)
- [SAC024]: Report on Domain Name Front Running (February 2008)
- [SAC022]: Domain Name Front Running (SAC022, SAC024) (20 October 2007)
- [SAC011]: Problems caused by the non-renewal of a domain name associated with a DNS Name Server (7 July 2006)
- [SAC010]: Renewal Considerations for Domain Name Registrants (29 June 2006)
- [SAC007]: Domain Name Hijacking Report (SAC007) (12 July 2005)

To protect any unauthorized modification of registrant data, Afilias mandates TLS/SSL transport (per RFC 5246) and authentication methodologies for access to the registry applications. Authorized registrars are required to supply a list of specific individuals (five to ten people) who are authorized to contact the registry. Each such individual is assigned a pass phrase. Any support requests made by an authorized registrar to registry customer service are authenticated by registry customer service. All failed authentications are logged and reviewed regularly for potential malicious activity. This prevents unauthorized changes or access to registrant data by individuals posing to be registrars or their authorized contacts.

These items reflect an understanding of the importance of balancing data privacy and access for registrants, both individually and as a collective, worldwide user base.

The Afilias 24/7 Customer Service Center consists of highly trained staff who collectively are proficient in 15 languages, and who are capable of responding to queries from registrants whose domain name security has been compromised—for example, a victim of domain name hijacking. Afilias provides specialized registrant assistance guides, including specific hand-holding and follow-through in these kinds of commonly occurring circumstances, which can be highly distressing to registrants

Security resourcing plans

Please refer to our response to question #30b for security resourcing plans.

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EXHIBIT C-9

ICANN Board Rationales for the Approval of the Launch of the New gTLD Program

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1. ICANN Board Rationale for the Approval of the Launch of the New gTLD Program

1. ICANN Board Rationale for the Approval of the Launch of the New gTLD Program

I. WHY NEW gTLDs ARE BEING INTRODUCED

New gTLDs are being introduced because the community has asked for them. The launch of the new generic top-level domain (gTLD) program will allow for more innovation, choice and change to the Internet's addressing system, now constrained by only 22 gTLDs. In a world with over 2 billion Internet users – and growing – diversity, choice and competition are key to the continued success and reach of the global network. New gTLDs will bring new protections to consumers (as well as brand holders and others) that do not exist today in the Domain Name System (DNS). Within this safer environment, community and cultural groups are already anticipating how they can bring their groups together in new and innovative ways. Companies and consumers that do not use the Latin alphabet will be brought online in their own scripts and languages. Industries and companies will have the opportunity to explore new ways to reach customers. The years of community work in planning have produced a robust implementation plan, and it is time to see that plan through to fruition.

II. FOLLOWING ICANN'S MISSION AND COMMUNITY DEVELOPED PROCESSES

A. Introduction of new TLDs is a core part of ICANN's Mission

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, a purpose was to promote competition in the DNS marketplace, including by developing a process for the introduction of new generic top-level domains while ensuring internet security and stability. The introduction of new top-level domains into the DNS has thus been a fundamental part of ICANN's mission from its inception, and was specified in ICANN's Memorandum of Understanding and Joint Project Agreement with the U.S. Department of Commerce.¹

ICANN initially created significant competition at the registrar level, which has resulted in enormous benefits for consumers. ICANN's community and Board has now turned its attention to fostering competition in the registry market. ICANN began this process with the "proof of concept" round for the addition of a limited number of new generic Top Level Domains ("gTLDs") in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system. Follow on economic studies indicated that, while benefits accruing from innovation are difficult to predict, that the introduction of new gTLDs will bring benefits in the form of increased competition, choice and new services to Internet users. The

¹ ICANN's Bylaws articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. See ICANN Bylaws, Article 1, Section 2.6.

studies also stated that taking steps to mitigate the possibility of rights infringement and other forms of malicious conduct would result in maximum net social benefits.

B. The Community Created a Policy Relating to the Introduction of new gTLDs

After an intensive policy development process, in August 2007, the Generic Names Supporting Organization issued a lengthy report in which it recommended that ICANN expand the number of gTLDs. See <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>. Contributing to this policy work were ICANN's Governmental Advisory Committee ("GAC"), At-Large Advisory Committee ("ALAC"), County Code Names Supporting Organization ("ccNSO") and Security and Stability Advisory Committee ("SSAC"). The policy development process culminated with Board approval in June 2008. See http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171.

III. COMMUNITY INVOLEMENT WAS KEY IN IMPLEMENTATION PLANNING

Since the June 2008 decision, the community has been hard at work creating, commenting on, and refining the implementation of this policy.

Seven versions of the Applicant Guidebook have been published. Fifty-eight explanatory memoranda have been produced. There have been nearly 50 new gTLD-related public comment sessions, over these documents as well as a variety of excerpts and working group reports. Over 2,400 comments were received through those public comment fora, which have been summarized and analyzed, and considered in revisions to the new gTLD program. Over 1,350 pages of summary and analysis have been produced. The community has also participated in numerous workshops and sessions and open microphone public forums at ICANN meetings, providing additional suggestions for the improvement of the new gTLD program. ICANN has listened to all of these community comments in refining the program that is being approved today.

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues. The GNSO and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The ccNSO was particularly active on issues relating to internationalized domain names (IDNs) and the treatment of geographical names in the new gTLD program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, RSSAC and SSAC provided expert analysis that there is no expected significant impact of new gTLDs on the stability and scalability of the root server system.

ALAC members served on nearly every working group and team, and actively participated in all public comment fora, giving the world's Internet users a voice in implementation discussions.

IV. CONSULTATION WITH THE GAC LEAD TO IMPROVEMENTS

Under the ICANN Bylaws, the GAC has an assurance that the Board will take GAC advice into account. The Board, through an extensive and productive consultation process with the GAC, has considered the GAC's advice on the new gTLD program and resolved nearly all of the areas where there were likely differences between the GAC advice and the Board's positions.

The ICANN Board and the GAC held a landmark face-to-face consultation on 28 February – 1 March 2011 and subsequently exchanged written comments on various aspects of the new gTLD Program. On 15 April 2011, ICANN published a revised Applicant Guidebook, taking into account many compromises with the GAC as well as additional community comment. On 20 May 2011, the GAC and the ICANN Board convened another meeting by telephone, and continued working through the remaining differences between the Board and GAC positions. See <http://www.icann.org/en/announcements/announcement-22may11-en.htm>. On 26 May 2011, the GAC provided its comments on the 15 April 2011 Applicant Guidebook, and the GAC comments were taken into consideration in the production of the 30 May 2011 Applicant Guidebook.

On 19 June 2011, the ICANN Board and GAC engaged in a further consultation over the remaining areas where the Board's approval of the launch of the new gTLD program may not be consistent with GAC advice. At the beginning of the GAC consultation process, there were 12 issues under review by the GAC and the Board, with 80 separate sub-issues. The GAC and the Board have identified mutually acceptable solutions for nearly all of these sub-issues. Despite this great progress and the good faith participation of the GAC and the Board in the consultation process, a few areas remain where the GAC and the Board were not able to reach full agreement. The reasons why these items of GAC advice were not followed are set forth in responses to the GAC such as Board responses to item of GAC Advice.

V. MAJOR IMPLEMENTATION ISSUES HAVE BEEN THOROUGHLY CONSIDERED

The launch of the new gTLDs has involved the careful consideration of many complex issues. Four overarching issues, along with several other major substantive topics have been addressed through the new gTLD implementation work. Detailed rationale papers discussing the approval of the launch of the program as it relates to nine of those topics are included here. These nine topics are:

- Evaluation Process
- Fees
- Geographic Names
- Mitigating Malicious Conduct
- Objection Process
- Root Zone Scaling
- String Similarity and String Contention
- Trademark Protection.

Detailed rationales have already been produced and approved by the Board in support of its decisions relating to two other topics, Cross Ownership, at <http://www.icann.org/en/minutes/rationale-cross-ownership-21mar11-en.pdf> and Economic Studies, at <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>, each approved on 25 January 2011.

VI. CONCLUSION

The launch of the new gTLD program is in fulfillment of a core part of ICANN's Bylaws: the introduction of competition and consumer choice in the DNS. After the ICANN community created a policy recommendation on the expansion of the number of gTLDs, the community and ICANN have worked tirelessly to form an implementation plan. The program approved for launch today is robust and will provide new protections and opportunities within the DNS.

The launch of the new gTLD program does not signal the end of ICANN's or the community's work. Rather, the launch represents the beginning of new opportunities to better shape the further introduction of new gTLDs, based upon experience. After the launch of the first round of new gTLDs, a second application window will only be opened after ICANN completes a series of assessments and refinements – again with the input of the community. The Board looks forward to the continual community input on the further evolution of this program.

The Board relied on all members of the ICANN community for the years of competent and thorough work leading up to the launch of the new gTLD program. Within the implementation phase alone, the community has devoted tens of thousands of hours to this process, and has created a program that reflects the best thought of the community. This decision represents ICANN's continued adherence to its mandate to introduce competition in the DNS, and also represents the culmination of an ICANN community policy recommendation of how this can be achieved.

2. ICANN Board Rationale on the Evaluation Process Associated with the gTLD Program

2. ICANN Board Rationale on the Evaluation Process Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, one of the areas that required significant focus is a process that allows for the evaluation of applications for new gTLDs. The Board determined that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.

Following the policy advice of the GNSO, the key goal for the evaluation process was to establish criteria that are as objective and measurable as possible. ICANN worked through the challenge of creating criteria that are measurable, meaningful (i.e., indicative of the applicant's capability and not easily manipulated), and also flexible enough to facilitate a diverse applicant pool. In the end, ICANN has implemented a global, robust, consistent and efficient process that will allow any public or private sector organization to apply to create and operate a new gTLD.

II. Brief History of ICANN's Analysis of the Evaluation Process Associated with the gTLD Program

This section sets forth a brief history of the significant actions on the subject of the evaluation process associated with the gTLD program.

- In December 2005, the GNSO commenced a policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons.

- In August of 2007, the GNSO issued its final report regarding the introduction of new gTLDs.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880
- Starting with the November 2007 Board meeting, the Board began to consider issues related to the selection procedure for new gTLDs, including the need for the process to respect the principles of fairness, transparency and non-discrimination.
- On 20 November 2007, the Board discussed the need for a detailed and robust evaluation process, to allow applicants to understand what is expected of them in the process and to provide a roadmap. The process should include discussion of technical criteria, business and financial criteria, and other specifications. ICANN proceeded to work on the first draft of the anticipated request for proposals.
<http://www.icann.org/en/minutes/minutes-18dec07.htm>
- On 23 October 2008, ICANN posted the Draft Applicant Guidebook, including an outline of the evaluation procedures (incorporating both reviews of the applied-for gTLD string and of the applicant), as well as the intended application questions and scoring criteria. These were continually revised, updated, and posted for comment through successive drafts of the Guidebook.
<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>

- Between June and September 2009, KPMG conducted a benchmarking study on ICANN’s behalf, with the objective of identifying benchmarks based on registry financial and operational data. The KPMG report on Benchmarking of Registry Operations (“KPMG Benchmarking Report”) was designed to be used as a reference point during the review of new gTLD applications.
- In February 2010, ICANN published an overview of the KPMG Benchmarking Report. This overview stated that ICANN commissioned the study to gather industry data on registry operations as part of the ongoing implementation of the evaluation criteria and procedures for the new gTLD program.
<http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf> [Rationale-all -final-20110609.doc](#)
- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board. This lays out in full the proposed approach to the evaluation of gTLD applications.

III. Analysis and Consideration of the Evaluation Process

A. Policy Development Guidance

The GNSO’s advice included the following:

- The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.
- All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- Applicants must be able to demonstrate their financial and organisational operational capability.
- There must be a clear and pre-published application process using objective and measurable criteria.

B. Implementation of Policy Principles

Publication of the Applicant Guidebook has included a process flowchart which maps out the different phases an application must go through, or may encounter, during the evaluation process. There are six major components to the process: (1) Application Submission/Background Screening; (2) Initial Evaluation; (3) Extended Evaluation; (4) Dispute Resolution; (5) String Contention and (6) Transition to Delegation. All applications must pass the Initial Evaluation to be eligible for approval.

The criteria and evaluation processes used in Initial Evaluation are designed to be as objective as possible. With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. The Board determined that the process must provide for an objective evaluation framework, but also allow for adaptation according to the differing models applicants will present.

The Board set out to create an evaluation process that strikes a correct balance between establishing the business and technical competence of the applicant to operate a registry, while not asking for the detailed sort of information that a venture capitalist may request. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.

Furthermore, new registries must be added in a way that maintains DNS stability and security. Therefore, ICANN has created an evaluation process that

asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry.

After a gTLD application passes the financial and technical evaluations, the applicant will then be required to successfully complete a series of pre-delegation tests. These pre-delegation tests must be completed successfully within a specified period as a prerequisite for delegation into the root zone.

C. Public Comment

Comments from the community on successive drafts of the evaluation procedures, application questions, and scoring criteria were also considered by the Board. In particular, changes were made to provide greater clarity on the information being sought, and to more clearly distinguish between the minimum requirements and additional scoring levels.

There was feedback from some that the evaluation questions were more complicated or cumbersome than necessary, while others proposed that ICANN should set a higher bar and perform more stringent evaluation, particularly in certain areas such as security. ICANN has sought to consider and incorporate these comments in establishing a balanced approach that results in a rigorous evaluation process in line with ICANN's mission for what is to be the initial gTLD evaluation round. See <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>.

IV. The Board's Analysis of the Evaluation Process Associated with the gTLD Program

A. Who the Board Consulted Regarding the Evaluation Process

- Legal Counsel
- The GNSO stakeholder groups

- ICANN’s Governmental Advisory Committee
- The At-Large Advisory Committee
- Various consultants were engaged throughout the process to assist in developing a methodology that would meet the above goals. These included InterIsle, Deloitte, KPMG, Gilbert and Tobin, and others.
- All other Stakeholders and Community members through public comment forums and other methods of participation.

B. What Significant Non-Privileged Materials the Board Reviewed

- Public Comments;
<http://icann.org/en/topics/new-gtlds/comments-analysis-en.htm>
- Benchmarking of Registry Operations;
<http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf>

C. What Factors the Board Found to Be Significant

The Board considered a number of factors in its analysis of the evaluation process for the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- the addition of new gTLDs to the root in order to stimulate competition at the registry level;
- the responsibility of ensuring that new gTLDs do not jeopardize the security or stability of the DNS;

- an established set of criteria that are as objective and measurable as possible;
- the selection of independent evaluation panels with sufficient expertise, resources and geographic diversity to review applications for the new gTLD program; and
- an evaluation and selection procedure for new gTLD registries that respects the principles of fairness, transparency and non-discrimination.

V. The Board's Reasons for Concluding the Evaluation Process was Appropriate for the gTLD Program

- The evaluation process allows for any public or private sector organization to apply to create and operate a new gTLD. However, the process is not like simply registering or buying a second-level domain. ICANN has developed an application process designed to evaluate and select candidates capable of running a registry. Any successful applicant will need to meet the published operational and technical criteria in order to ensure a preservation of internet stability and interoperability.
- ICANN's main goal for the evaluation process was to establish criteria that are as objective and measurable as possible while providing flexibility to address a wide range of business models. Following the policy advice, evaluating the public comments, and addressing concerns raised in discussions with the community, the Board decided on the proposed structure and procedures of the evaluation process to meet the goals established for the program.

3. ICANN Board Rationale on Fees Associated With the gTLD Program

3. ICANN Board Rationale on Fees Associated With the gTLD Program

I. Introduction

The launch of the new gTLD program is anticipated to result in improvements to consumer choice and competition in the DNS. However, there are important cost implications, both to ICANN as a corporate entity and to gTLD applicants who participate in the program. It is ICANN's policy, developed through its bottom-up, multi-stakeholder process, that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost of administering the new gTLD process. <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

On 2 October 2009, the Board defined the directive approving the community's policy recommendations for the implementation of the new gTLD policy. That policy included that the implementation program should be fully self-funding. The Board has taken great care to estimate the costs with an eye toward ICANN's previous experience in TLD rounds, the best professional advice, and a detailed and thorough review of expected program costs. The new gTLD program requires a robust evaluation process to achieve its goals. This process has identifiable costs. The new gTLD implementation should be revenue neutral and existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize the new program. See <http://icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>

II. Brief History of ICANN's Analysis of Fees Associated with the gTLD Program

This section sets forth a brief history of the significant Board consideration on the subject of fees associated with the gTLD program.

- In December 2005 – September 2007, the GNSO conducted a rigorous policy development process to determine whether (and the

circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons and that evaluation fees should remain cost neutral to ICANN. The GNSO's Implementation Guideline B stated: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process."

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880
- On 2 November 2007, the Board reviewed the ICANN Board or Committee Submission No. 2007-54 entitled Policy Development Process for the Delegation of New gTLDs. The submission discussed application fees and stated, "[a]pplication fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants."
<http://www.icann.org/en/minutes/minutes-18dec07.htm>.
- On 23 October 2008, ICANN published the initial draft version of the gTLD Applicant Guidebook, including an evaluation fee of USD 185,000 and an annual registry fee of USD 75,000.
<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>
- At the 12 February 2009 Board Meeting, the ICANN Board discussed the new version of the Applicant Guidebook ("AGB"). The Board determined that the application fee should remain at the proposed fee of USD 185,000 but the annual minimum registry fee should be

reduced to USD 25,000, with a transaction fee at 25 cents per transaction. Analysis was conducted and budgets were provided to support the USD 185,000 fee. The decrease in of the registry fee to USD 25,000 was based on a level of effort to support registries.

<http://www.icann.org/en/minutes/minutes-12feb09.htm>

- On 6 March 2009, the Board reviewed ICANN Board Submission No. 2009-03-06-05 entitled Update on new gTLDs. The submission analyzed recent public comments and detailed how ICANN incorporated those comments and changes into the fee structure. It also pointed out that the annual registry fee was reduced to a baseline of USD 25,000 plus a per transaction fee of 25 cents once the registry has registered 50,000 names. Also, the submission highlighted a refund structure for the USD 185,000 evaluation fee, with a minimum 20% refund to all unsuccessful applicants, and higher percentages to applicants who withdraw earlier in the process.
- On 25 June, ICANN Published the New gTLD Program Explanatory Memorandum – New gTLD Budget which broke down the cost components of the USD 185,000 application fee.
<http://www.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf>
- On 30 May 2011, ICANN posted a new version of the Applicant Guidebook, taking into account public comment and additional comments from the GAC.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. Major Principles Considered by the Board

A. Important Financial Considerations

The ICANN Board identified several financial considerations it deemed to be important in evaluating and deciding on a fee structure for the new gTLD program. On 23 October 2008, ICANN published an explanatory memorandum

describing its cost considerations and identified three themes which shaped the fee structure: (1) care and conservatism; (2) up-front payment/incremental consideration; and (3) fee levels and accessibility. See <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

1. Care and Conservatism

ICANN coordinates unique identifiers for the Internet, and particularly important for this context, directly contracts with generic top level domain registries, and cooperates with country code registries around the world in the interest of security, resiliency and stability of the DNS. There are more than 170,000,000 second-level domain registrations that provide for a richness of communication, education and commerce, and this web is reaching ever more people around the world. ICANN's system of contracts, enforcement and fees that supports this system, particularly for the 105,000,000 registrations in gTLDs, must not be put at risk. Therefore, the new gTLD must be fully self funding.

The principle of care and conservatism means that each element of the application process must stand up to scrutiny indicating that it will yield a result consistent with the community-developed policy. A robust evaluation process, including detailed reviews of the applied-for TLD string, the applying entity, the technical and financial plans, and the proposed registry services, is in place so that the security and stability of the DNS are not jeopardized. While the Board thoughtfully considered process and cost throughout the process design, cost-minimization is not the overriding objective. Rather, process fidelity is given priority.

2. Up-Front Payment/Incremental Consideration

ICANN will collect the entire application fee at the time an application is submitted. This avoids a situation where the applicant gets part way through the application process, then may not have the resources to continue. It also assures that all costs are covered. However, if the applicant elects to withdraw its application during the process, ICANN will refund a prorated amount of the fees to the applicant.

A uniform evaluation fee for all applicants provides cost certainty with respect to ICANN fees for all applicants. Further, it ensures there is no direct cost penalty to the applicant for going through a more complex application (except, when necessary, fees paid directly to a provider). A single fee, with graduated refunds, and with provider payments (e.g. dispute resolution providers) made directly to the provider where these costs are incurred seems to offer the right balance of certainty and fairness to all applicants.

3. Fee Levels and Accessibility

Members of the GNSO community recognized that new gTLD registry applicants would likely come forward with a variety of business plans and models appropriate to their own specific communities, and there was a commitment that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination.

Some community members expressed concern that financial requirements and fees might discourage applications from developing nations, or indigenous and minority peoples, who may have different sets of financial opportunities or capabilities relative to more highly developed regions of the world. The Board addressed these concerns with their “Application Support” program (which is discussed more in depth below).

B. Important Assumptions

In the explanatory memorandum on cost considerations published on 23 October 2008, ICANN identified the three assumptions on which it would rely in determining the fee structure for the program: (1) estimating methodology; (2) expected quantity of applications; and (3) the new gTLD program will be ongoing.

1. Estimating Methodology

Estimators for the various costs associated with the application evaluation strove to use a maximum-likelihood basis to estimate the costs. A detailed

approach was taken to get the best possible estimates. The evaluation process was divided into 6 phases, 24 major steps and 75 separate tasks. Twenty-seven separate possible outcomes were identified in the application process, probabilities were identified for reaching each of these states, and cost estimates were applied for each state. Estimates at this detailed level are likely to yield more accurate estimates than overview summary estimates.

Further, whenever possible, sensitivity analysis was applied to cost estimates. This means asking questions such as “How much would the total processing cost be if all applications went through the most complex path? Or “How much would the total processing cost be if all applications went through the simplest path?” Sensitivity analysis also helps to explore and understand the range of outcomes, and key decision points in the cost estimation mode.

2. Expected Quantity of Applications

While ICANN has asked constituents and experts, there is no sure way to estimate with certainty the number of new TLD applications that will be received. ICANN has based its estimates on an assumption of 500 applications in the first round. This volume assumption is based on several sources, including a report from a consulting economist, public estimates on the web, oral comments at public meetings and off-the-record comments by industry participants. While the volume assumption of 500 applications is consistent with many data points, there is no feasible way to make a certain prediction.

If there are substantially fewer than 500 applications, the financial risk is that ICANN would not recoup historical program development costs or fixed costs in the first round, and that higher fixed costs would drive the per unit application costs to be higher than forecast. Still, the total risk of a much smaller-than-anticipated round would be relatively low, since the number of applications would be low.

If there are substantially more than 500 applications, the risk is that application processing costs would again be higher than anticipated, as ICANN would need to bring in more outside resources to process applications in a timely

fashion, driving the variable processing costs higher. In this case, ICANN would be able to pay for these higher expected costs with greater-than-expected recovery of fixed cost components (historical program development and other fixed costs), thus at least ameliorating this element of risk.

3. The New gTLD Program Will Be Ongoing

ICANN’s goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

It is reasonable to expect that various fees may be lower in subsequent application rounds, as ICANN processes are honed, and uncertainty is reduced.

C. Cost Elements Determined by the Board

1. Application Fee

The Board determined the application fee to be in the amount of USD 185,000. The application fee has been segregated into three main components: (a) Development Costs, (b) Risk Costs, and (c) Application Processing (see www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf). The breakdown of each component is as follows (rounded):

Development Costs:	USD 27,000
Risk Costs:	USD 60,000
<u>Application Processing:</u>	<u>USD 98,000</u>
Application Fee:	USD 185,000

The application fee was also extrapolated and further analyzed under several assumptions including receiving 500 applications (see

www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf).

a. Development Costs

These costs have two components:

i) Development costs which are the activities necessary to progress the implementation of the gTLD policy recommendations. This includes resolving open concerns, developing and completing the AGB, managing communication with the Internet community, designing and developing the processes and systems necessary to process applications in accordance with the final Guidebook, and undertaking the activities that have been deemed high risk or would require additional time to complete.

The costs associated with the Development Phase have been funded through normal ICANN budgetary process and the associated costs have been highlighted in ICANN's annual Operating Plan and Budget Documents

ii) Deployment costs which are the incremental steps necessary to complete the implementation of the application evaluation processes and system. Such costs require timing certainty and include the global communication campaign, on-boarding of evaluation panels, hiring of additional staff, payment of certain software licenses, and so on.

b. Risk Costs

These represent harder to predict costs and cover a number of risks that could occur during the program. Examples of such costs include variations between estimates and actual costs incurred or receiving a significantly low or high number of applications. ICANN engaged outside experts to assist with developing a risk framework and determining a quantifiable figure for the program.

c. Application Processing

Application Processing represents those costs necessary to accept and process new gTLD applications, conduct contract execution activities, and conduct pre-delegation checks of approved applicants prior to delegation into the root zone. Application processing costs consist of a variable and fixed costs.

Variable costs are those that vary depending on the number of applications that require a given task to be completed. Whereas fixed costs are necessary to manage the program and are not associated with an individual application.

The application fee is payable in the form of a USD 5,000 deposit submitted at the time the user requests application slots within the TLD Application System (“TAS”), and a payment of USD 180,000 submitted with the full application. See <http://icann.org/en/topics/new-gtlds/intro-clean-12nov10-en.pdf>.

2. Annual Registry Fee

ICANN’s Board has determined to place the Annual Registry Fee at a baseline of USD 25,000 plus a variable fee based on transaction volume where the TLD exceeds a defined transaction volume.

3. Refunds

In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested. Any applicant that has not been successful is eligible for, at a minimum, a 20% refund of the evaluation fee if it withdraws its application.

According to the AGB, the breakdown of possible refund scenarios is as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early Warning	80%	USD 148,000
After posting of applications until posting of Initial Evaluations results	70%	USD 130,000
After posting Initial Evaluation Results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has registered into a registry agreement with ICANN		None

4. Application Support (JAS WG Charter)

As mentioned above, some community members expressed concerned that the financial requirements and fees might discourage applications from developing nations, or indigenous or minority peoples, who may have different financial opportunities. The Board addressed these concerns with their “Application Support” program, and recognized the importance of an inclusion in the new gTLD program by resolving that stakeholders work to “develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs.” See <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#20>.

In direct response to this Board resolution, the GNSO Council proposed a Joint SO/AC Working Group (“JAS WG”), composed by members of ICANN’s Supporting Organizations (“SOs”) and Advisory Committees (“ACs”), to look into applicant support for new gTLDs. See <https://st.icann.org/so-ac-new-gtld-wg/index.cgi>.

IV. The Board’s Analysis of Fees

A. Why the Board Addressed Fees

- ICANN’s mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.
- While the primary implications of the new gTLD program relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to the ICANN corporate entity and to gTLD applicants. The Board initially determined that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.
- Both the Board and members of the community have commented on the application fee structure for the new gTLD program. From those comments the Board has determined that the new gTLD implementation should be fully self-funding and revenue neutral, and that existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.

B. Who the Board Consulted Regarding Fees

- Legal Counsel
- The GNSO
- ICANN’s Supporting Organizations

- The ALAC
- The GAC
- Other ICANN Advisory Committees
- All other Stakeholders and Community members through public comment forums and other methods of participation.

C. Public Comments Considered by the Board

Over 1200 pages of feedback, from more than 300 entities, have been received since the first Draft AGB was published. The Board has analyzed and considered these comments in the context of the GNSO policy recommendations.. The Board received many comments on the fee structure, both the annual registry fee and application evaluation fee. Regarding the annual registry fee, the Board received comments stating that the annual minimum and percentage fee for registries was perceived by some to be too high.

Furthermore, the Board incorporated many suggestions from public comments pursuant to its JAS WG Application Support Program. <http://forum.icann.org/lists/soac-newgtldapsup-wg>.

D. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of fees. The Board found the following factors to be significant:

- The principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- The addition of new gTLDs to the root in order to stimulate competition at the registry level;

- That the new gTLD implementation should be fully self funding and revenue neutral; and
- That existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.
- That any revenue received in excess of costs be used in a manner consistent with community input.
- Evaluation fees will be re-evaluated after the first round and adjusted.

V. The Board's Reasons for Deciding the Proposed Fee Structure is Appropriate

While the primary implications of this new policy relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to ICANN as a corporate entity and to gTLD applicants with regard to the implementation of the policy through the acceptance and processing of applications as set out in the policy adopted by the community and accepted by the Board.

After evaluating public comments, addressing initial concerns and carefully evaluating the twenty-seven separate possible outcomes that were identified in the application process, the Board decided on the proposed fee structure to ensure that the new gTLD implementation would be fully self-funding and revenue neutral.

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, one of the areas of interest to governments and other parties was the treatment of country/territory names and other geographic names. This area has been the subject of stakeholder input and discussion throughout the implementation process.

This memorandum focuses on the Board's consideration of the provisions for geographic names in the new gTLD program. The memorandum summarizes the Board's consideration of the issue, and the Board's rationale for implementing the new gTLD program containing the adopted measures on geographic names.

II. Brief History of ICANN's Consideration of Geographic Names Associated with The New gTLD Program

This section sets forth a brief history of significant actions on the subject of geographic names associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.
- On 28 March 2007, the GAC adopted principles to govern the introduction of new gTLDs (the "GAC Principles"). Sections 2.2 and 2.7 of the GAC Principles address geographic names issues at the top and second level.
 - 2.2 ICANN should avoid country, territory, or place names, and country, territory, or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.
 - 2.7 Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of

governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD, and b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

http://gac.icann.org/system/files/gTLD_principles_0.pdf

- On 23 May 2007, the GNSO Reserved Names Working Group issued its final report. Recommendation 20 of the report stated that: (1) there should be no geographical reserved names; and (2) governments should protect their interests in certain names by raising objections on community grounds.
<http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>
- On 8 August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 20 of the report intended to provide protections for geographical names, stating that an application for a new gTLD should be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be targeted.
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- On 26 June 2008, the Board approved the GNSO's Recommendations for the introduction of new gTLDs and directed staff to develop an implementation plan.
<http://www.icann.org/en/minutes/resolutions-26jun08.htm>
- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook ("Version 1"), which incorporated various concepts set forth in the GAC Principles. Version 1 required applications involving geographic names to be accompanied by documents of support or non-objection from the relevant government authority. Geographic names included country and territory names, sub-national names on the ISO 3166-2 list, city names (if the applicant was intending to leverage the city name), and names of continents and regions included on a UN-maintained

list. <http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>

- The 24 October 2008 posting also included an explanatory memorandum on the topic of geographical names, describing the various considerations used in arriving at the proposed approach. <http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf>
- On 28 December 2008, the ccNSO commented on Version 1. The ccNSO stated that (1) the restriction of protections for country/territory names to the 6 official United Nations languages needed to be amended to translation in any language; and (2) All country names and territory names should be ccTLDs – not gTLDs and should not be allowed until the IDN ccPDP process concluded. <http://forum.icann.org/lists/gtld-evaluation/msg00015.html>
- On 12 February 2009, the Board met to discuss: (1) proposed changes to Version 1; and (2) the implementation of policy recommendations given by the GAC and GNSO. <http://www.icann.org/en/minutes/minutes-12feb09.htm>
- On 18 February 2009, ICANN published an analysis of public comments received <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>
- Also on 18 February 2009, ICANN published Version 2 of the new gTLD Applicant Guidebook (“Version 2”), which clarified the definition of geographic names set forth in Version 1. In addition, Version 2 expanded protection for country and territory names involving meaningful representations in any language, and augmented requirements for documentation of support or non-objection from relevant governments and public authorities. <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm>
- On 6 March 2009, the Board resolved that it was generally in agreement with Version 2 as it related to geographic names, but directed staff to revise the relevant portions of Version 2 to provide greater specificity on the scope of protection at the top level for the

names of countries and territories listed in the ISO 3166-1 standard. The Board also directed ICANN staff to send a letter to the GAC by 17 March 2009 identifying implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution.

<http://www.icann.org/en/minutes/resolutions-06mar09.htm>

- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins that: (1) outlined the Board's 6 March 2009 resolution; (2) stated that ICANN's treatment of geographic names provided a workable compromise between the GAC Principles and GNSO policy recommendations; and (3) sought advice to resolve implementation issues regarding the protection of geographic names at the second level. <http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>
- On 9 April 2009, the ccNSO commented on Version 2. The ccNSO reiterated that all country and territory names are ccTLDs – not gTLDs. <http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf>
- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey stating that: (1) countries should not have to use objection process and should instead wait for the IDN ccTLD PDP to delegate country names; (2) the names contained on three lists be reserved at the second level at no cost for the government; and (3) ICANN should notify registries and request the suspension of any name if the government notifies ICANN that there was a misuse of a second level domain name. <http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf>
- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey. The letter that stated that: (1) the proposed changes to Version 2 in relation to geographic names at the second level were acceptable to the GNSO; and (2) the GNSO and the GAC were not in agreement with regard to other issues relating to Geographic names at the top level. <http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>

- On 31 May, 2009, ICANN published an analysis of the public comments received concerning draft version 2 of the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf>
- On 26 June 2009, the Board discussed proposed changes to the geographic names section of the Applicant Guidebook. These proposed changes were intended to provide greater specificity on the scope of protection at the top level for the names of countries and territories and greater specificity in the support requirements for continent or region names. The changes also provided additional guidance to applicants for determining the relevant government or public authority for the purpose of obtaining the required documentation.
<http://www.icann.org/en/minutes/resolutions-26jun09.htm>
- On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate Thrush that stated that (1) strings that were a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space; and (2) government or public authority should be able to initiate the redelegation process in limited circumstances.
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>
- On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins, responding to GAC comments on draft version 2 of the Applicant Guidebook and describing the rationale for the proposed treatment of country names, as well as the Board's general intention to provide clear rules for applicants where possible with reference to lists.
<http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>
- On 04 October 2009, ICANN published Version 3 of the new gTLD Applicant Guidebook ("Version 3").
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf>
- On 21 November 2009, ccNSO delivered a letter to the Board, raising concerns about the treatment of country and territory

names. ccNSO also submitted these comments via public comments. <http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf>

- On 15 February 2010, ICANN published an analysis of the public comments received. <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>
- On 12 March 2010, the Board resolved that ICANN should consider whether the Registry Restrictions Dispute Resolution Procedure or a similar post-delegation dispute resolution procedure could be implemented for use by government supported TLD operators where the government withdraws its support of the TLD. <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- On 31 May 2010, ICANN published Version 4 of the new gTLD Applicant Guidebook (“Version 4”). Version 4 excluded country and territory names from the first gTLD application round, continuing with the existing definition of country and territory names in Version 3. <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate Thrush that stated that that Version 4 still did not take fully into consideration GAC’s concerns regarding the definition of country/territory names. <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 25 September 2010, the Board met in Trondheim, Norway and decided: (1) not to include translations of the ISO 3166-1 sub-national place names in the Applicant Guidebook, and (2) to augment the definition of Continent or UN Regions in the Applicant Guidebook to include UNESCO’s regional classification list. At the same meeting, the Board resolved that ICANN staff should determine if the directions indicated by the Board regarding geographical names and other issues are consistent with GAC comments, and recommend any appropriate further action in light of GAC’s comments. <http://icann.org/en/minutes/resolutions-25sep10-en.htm>

- On 28 October, 2010, the Board discussed the scope, timing and logistics of a consultation needed with GAC regarding remaining geographic names issues in the new gTLD program. The Board agreed that staff should provide a paper on geographic names to GAC. <http://www.icann.org/en/minutes/prelim-report-28oct10-en.htm>
- On 12 November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the “Proposed Final Guidebook”). <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- On 23 February 2011, the GAC released its Indicative Scorecard on New gTLD Outstanding Issues. This scorecard included advice from the GAC on the topics of Post-Delegation Disputes and Use of Geographic Names. http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf
- On 28 February – 1 March 2011, the Board met with GAC representatives at a meeting in Brussels to discuss the issues raised by the GAC.
- On 4 March 2011, the Board published its notes on the GAC Indicative Scorecard. The Board provided an indication of whether each component of the GAC’s advice was consistent (fully or partially) or inconsistent with the Board’s position on each of the issues. <http://gac.icann.org/system/files/2011-03-04-ICANN-Board-Notes-Actionable-GAC-Scorecard.pdf>
- On 12 April 2011, the GAC published comments on the Board’s response to the GAC Scorecard. http://gac.icann.org/system/files/20110412_GAC_comments_on_the_Board_response_to_the_GAC_scorecard_0.pdf
- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the “Discussion Draft Guidebook”). This version expanded the definition of country names to include “a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization” as well as providing clarification to applicants that in the event of a dispute between a

government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, ICANN will comply with a legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application.

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft.
<http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf>
- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC. This version includes some clarifications but no significant changes from the 15 April 2011 Discussion Draft.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board’s Analysis of Geographic Names Associated with the gTLD Program

A. Brief Introduction to Geographic Names

This section sets forth an overview of the treatment of geographic names in the Applicant Guidebook.

- Section 2.2.1.4 provides the following guidance for applications involving geographic names.
 - Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names.
 - Certain types of applied-for strings are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities. These include:

- An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard;
 - An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name;
 - An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard; and
 - An application for a string which represents a continent or UN region appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.
- Applications for strings that are country or territory names will not be approved, as they are not available under the new gTLD program in this application round.
 - The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds, under which applications may be rejected based on objections showing substantial opposition from the targeted community.
- Section 2.3.1 of the Draft Discussion Guidebook provides additional guidance:
 - If an application has been identified as a geographic name requiring government support, but the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the initial evaluation period, the applicant will have additional time to obtain and submit this information in the extended evaluation period.

B. Why the Board Addressed Geographic Names

- The treatment of geographic names in the new gTLD space was an area of significant concern to many stakeholders.
- The Board received extensive advice from the GAC regarding the protection of geographic names.
- The GNSO, in its policy development work, balanced a number of stakeholder considerations in the formation of advice on the treatment of geographic names.
- The Board recognized that government stakeholders have important interests in protecting certain geographic names.
- The Board wished to create an appropriate balance between the interests of governments in protecting certain geographic names, and the multiple uses possible for various types of names in the namespace.

C. Who the Board Consulted

- Legal Counsel
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community members through public comment forum and other methods of participation.

D. What Significant Non-Privileged Materials the Board Reviewed

- **Communications from GAC**

- On 28 March 2007, GAC adopted the GAC Principles
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- On 31 October 2007, GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2007-communique-30>
- On 26 June 2008, GAC expressed concern to Board and GNSO that the GNSO proposals do not include provisions reflecting GAC Principles regarding new gTLDs
<http://www.icann.org/en/minutes/resolutions-26jun08.htm>
- On 8 September 2008, Paul Twomey participated in a conference call with the GAC to discuss treatment of GAC Principles
- On 2 October 2008, Paul Twomey delivered a letter to Janis Karklins
<http://www.icann.org/en/correspondence/twomey-to-karklins-02oct08.pdf>
- On 8 November 2008: GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2008-communique-33>
- On 4 March 2009, GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2009-communique-34>
- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins
<http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>
- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey
<http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf>

- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey
<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>
 - On 24 June 2009, GAC issued a communiqué
<http://gac.icann.org/communiques/gac-2010-communique-38>
 - On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>
 - On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins
<http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>
 - On 10 March 2010, Janis Karklins delivered a letter to Peter Dengate-Thrush
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf>
 - On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate-Thrush
<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 23 February 2011, the GAC delivered its Indicative Scorecard on New gTLD Outstanding Issues
http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf

- **GNSO Policy Recommendations**

- On 23 May 2007, GNSO Reserved Names Working Group issued its final report

<http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>

- On 8 August 2007, GNSO issued its final report regarding the introduction of new gTLDs
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

- **ccNSO Comments**

- On 28 December 2008, ccNSO commented on Version 1
<http://forum.icann.org/lists/gtld-evaluation/msg00015.html>
- On 9 April 2009, ccNSO commented on Version 2
<http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf>
- On 6 July 2009, ccNSO commented on an excerpt from Version 3
<http://forum.icann.org/lists/e-gtld-evaluation/msg00006.html>
- On 21 November 2009, ccNSO commented on Version 3 again <http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf>

- **Public Comments**

- Comments from the community
<http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>

E. What Concerns the Community Raised

- There is a need for clarification of the geographic names process in the Application Guidebook.
- The new gTLDs should respect the sensitivity regarding terms with national, cultural, geographic and religious significance.

- The enumerated grounds for objection might not provide sufficient grounds to safeguard the interest of national, local and municipal governments in the preservation of geographic names that apply to them.
- Delegation and registration of country and territory names is a matter of national sovereignty.
- There is concern over the fees involved in the dispute resolution process, particularly for governments.
- There is concern over perceived inconsistencies with the GNSO policy recommendations.

F. What Factors the Board Found to Be Significant

- The balance of retaining certainty for applicants and demonstrating flexibility in finding solutions;
- The goals of providing greater clarity for applicants and appropriate safeguards for governments and the broad community;
- The goal of providing greater protections for country and territory names, and greater specificity in the support requirements for the other geographic names;
- The goal of respecting the relevant government or public authority's sovereign rights and interests;
- The risk of causing confusion for potential applicants and others in the user community; and
- The risk of possible misuse of a country or territory name or the misappropriation of a community label.

G. The Board's Reasons For the Proposed Approach to Geographic Names

- ICANN's Core Values include introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

- The Board has accepted GAC advice to require government approval in the case of applications for certain geographic names.
- The Board intended to create a predictable, repeatable process for the evaluation of gTLD applications. Thus, to the extent possible, geographic names are defined with respect to pre-existing lists.
- The Board recognized that the community objection process recommended by the GNSO to address misappropriation of a community label would be an additional avenue available to governments to pursue a case where a name was not protected by reference to a list. The Board discussed this topic extensively with the GAC. As a result of the consultation on this and other topics, the Applicant Guidebook was revised to incorporate an Early Warning process which governments could use to flag concerns about a gTLD application at an early stage of the process. These procedures could also help address any concerns from governments about geographic names not already protected in the process.
- The Board also confirmed that the GAC has the ability to provide GAC Advice on New gTLDs concerning any application. Thus, governments would not be required to file objections and participate in the dispute resolution process, but rather, may raise their concerns via the GAC. This process could be used, for example, for governments to object to an application for a string considered by a government to be a geographic name.
- The formal objection and dispute resolution process does remain available to governments as an additional form of protection. Limited funding support from ICANN for objection filing fees and dispute resolution costs is available to governments.
- The Board adopted GAC recommendations for protections of geographic names in second-level registrations.

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

I. Introduction

Through the development of the new gTLD program and the numerous opportunities for public comment and receipt of community input on the new gTLD program, one of the issues that emerged as a commonly-raised concern was the potential for an increased risk of instances of malicious conduct associated with the introduction of New gTLDs. ICANN committed to (and remains committed to) addressing this issue. The Affirmation of Commitments of the United States Department of Commerce and ICANN includes the following provision:

ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation.

<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. These issues were not newly identified in the Affirmation of Commitments. From the outset, ICANN has sought to address these issues as it has prepared to implement the new gTLD program, and has mechanisms and processes designed to address this concern.

This memorandum focuses on the Board's consideration of the risk of a potential increase in malicious conduct associated with the introduction of new gTLDs. The memorandum summarizes: the Board's consideration of the issue, measures approved to mitigate instances of malicious conduct, and the Board's rationale for implementing the new gTLD program while adopting and implementing measures to mitigate that risk.

II. History of the Board's Consideration of Malicious Conduct

This section contains a brief history of significant actions taken by the ICANN Board to mitigate the potential for malicious conduct associated with the new gTLD program.

- On 26 June 2008, the Board adopted the Generic Names Supporting Organization's ("GNSO") policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt
- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including the security and stability of the Internet generally and the potential risk of malicious conduct in particular. [Rationale-all -final-20110609.doc](#)
- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including the risk of malicious conduct on the Internet.
- On 26 June 2009, the Board resolved that new gTLDs be prohibited from using Domain Name System ("DNS") redirection and synthesized DNS responses; directed ICANN staff to amend the draft Applicant Guidebook accordingly; and further directed ICANN staff to educate the community about the harms associated with DNS redirection and synthesized DNS responses and how to stop them.
See Board Resolution at <https://icann.org/en/minutes/resolutions-26jun09.htm>; see Board Meeting Transcript at <http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt>
- During its study of malicious conduct, ICANN staff solicited and received comments from multiple outside sources, including the Anti Phishing Working Group (APWG), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking/financial and Internet security communities. These parties described several potential malicious conduct issues and encouraged ICANN to consider ways these might be addressed or mitigated in new gTLD registry agreements.
- On 1 October 2009, ICANN announced the launch of the Expedited Registry Security Request ("ERSR") process. ICANN intends that

gTLD registries will use the ERSR process for security incidents that require immediate action by the registry in order to avoid adverse effects upon DNS stability or security. The ERSR, a web-based submission procedure, reflects the result of a collaborative effort between ICANN and existing gTLD registries to develop a process for quick action in cases where gTLD registries: (1) inform ICANN of a present or imminent security threat to their TLD and/or the DNS; and (2) request a contractual waiver for actions they may take or already have taken to mitigate or eliminate the threat.

<http://www.icann.org/en/announcements/announcement-01oct09-en.htm>

- On 3 October 2009, ICANN published an Explanatory Memorandum on Mitigating Malicious Conduct, part of a series of documents published by ICANN to assist the global Internet community in understanding the development of the new gTLD program and the requirements and processes presented in the Applicant Guidebook. <https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>
- On 24 November 2009, ICANN announced that it was soliciting members for two new temporary expert advisory groups to study issues related to the risk of malicious conduct: (1) the establishment of a high security TLD designation; and (2) centralized zone access. <https://icann.org/en/announcements/announcement-03dec09-en.htm>
- On 3 December 2009, ICANN announced that it had formed the High Security Zone Advisory Group and the Centralized Zone File Access Advisory Group. <http://www.icann.org/en/announcements/announcement-03dec09-en.htm>
- On 22 February 2010, ICANN published papers by the High Security Zone Advisory Committee and the Central File Access Advisory Committee and solicited public comments. As the result of the latter paper, a uniform method of accessing registry data is now incorporated into the Guidebook. <http://www.icann.org/en/announcements/announcement-22feb10-en.htm>

- On 28 May 2010, ICANN published an Updated Explanatory Memorandum of Mitigating Malicious Conduct. The paper described specific malicious conduct mitigation measures that were recommended by recognized experts in this area that were subsequently incorporated into the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf>
- On 16 June 2010, ICANN solicited comments on the High Security Zone Advisory Committee's Policy Development Snapshot #2.
<http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf>
- On 22 September 2010, ICANN published a Request for Information on the proposed High Security Zone program and requested that all submissions be made by 23 November 2010.
- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including discussions on background screening, orphan glue records, and the High-Security Top-Level Domain (HSTLD) concept.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.8>
- On 12 November 2010, ICANN published a second Updated Explanatory Memorandum of Mitigating Malicious Conduct.
<https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf>. This memo noted ICANN's adoption of the Zone File Access Advisory Group's [Strategy Proposal](#) for a recommendation to create a mechanism to support the centralization of access to zone-file records. This centralized approach is intended to streamline the access and approval process and standardize the format methodology for zone file consumers (e.g. anti-abuse and trademark protection organizations, researchers, academia, etc.). The Centralized Zone Data Access Provider pilot program was deployed for testing in June 2011 and a

production version program is anticipated to be deployed before any new gTLDs are delegated in the root. [Rationale-all -final-20110609.doc](#)

- On 9 December 2010, the GAC provided ICANN with a list of issues it considered to be “outstanding” and requiring further consideration, including consumer protection/the risk of malicious conduct.
http://gac.icann.org/system/files/Cartagena_Communique.pdf
- On 10 December 2010, the Board resolved that ICANN had addressed the issue of the risk of increased malicious conduct in new gTLDs by adopting and implementing various measures, including centralized zone file access. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at <https://icann.org/en/minutes/resolutions-10dec10-en.htm>; see Board Meeting Minutes at <https://icann.org/en/minutes/minutes-10dec10-en.htm>
- On 21 February 2011, ICANN published a briefing paper on issues the GAC had identified as “outstanding” in September 2010, including certain issues related to the risk of increased malicious conduct.
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>
- On 28 February 2011 and 1 March 2011, the GAC and the Board conferred about remaining outstanding issues related to the new gTLD program, including certain issues related to the risk of increased malicious conduct.
<http://www.icann.org/en/announcements/announcement-23feb11-en.htm>
- On 4 March 2011, the Board published its comments on the GAC Scorecard.
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>
- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the “Discussion Draft Guidebook”).

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft.
<http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf>
- The GAC-Board discussions resulted in additional forms of background checks and requirements for new registries to cooperate with law enforcement.
- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board's Analysis of the Risk of Increased Malicious Conduct Associated with the New gTLD Program

A. Why the Board is Addressing This Issue Now

- ICANN's mission statement and one of its founding principles is to promote competition. The expansion of TLDs will allow for more innovation and choice in the Internet's addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to mitigate the risk of increased malicious conduct on the Internet.
- ICANN committed to the U.S. Department of Commerce that it would address the risk of malicious conduct in new gTLDs prior to implementing the program.
- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B. Who the Board Consulted

- The GNSO
- The GAC
- The At-Large Community and ALAC

- The ICANN Implementation Recommendation Team (“IRT”)
- The Anti-Phishing Working Group
<http://www.antiphishing.org/>
- The Registry Internet Safety Group
<http://registrysafety.org/website/>
- The ICANN Security and Stability Advisory Committee
<http://www.icann.org/en/committees/security/>
- Computer Emergency Response Teams (“CERTs”)
See, e.g., <http://www.us-cert.gov/>
- The ICANN Zone File Access Advisory Group
<http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm>
- The ICANN High Security Zone TLD Advisory Group
<http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm>
- The Registration Abuse Policies Working Group
<https://st.icann.org/reg-abuse-wg/>
- The Registrar Stakeholder Group
<http://www.icannregistrars.org/>
- The Registries Stakeholder Group
<http://www.gtldregistries.org/>
- Members of the banking and financial community, including the BITS Fraud Reduction Program, the American Bankers Association, the Financial Services Information Sharing and Analysis Center (“FS-ISAC”), and the Financial Services Technology Consortium (“FSTC”)
See, e.g., www.icann.org/en/correspondence/bell-to-beckstrom-11aug09-en.pdf; and
<http://www.icann.org/en/correspondence/evanoff-to-beckstrom-13nov09-en.pdf>
- Members of the Internet security community, including the Worldwide Forum of Incident Response and Security Teams (“FIRST”), which consists of computer and network emergency response teams from 180 corporations, government bodies,

universities and other institutions spread across the Americas, Asia, Europe, and Oceania; as well as various law enforcement agencies

- Other stakeholders and members of the community
- Legal counsel

C. What Significant Non-Privileged Materials the Board Reviewed

- Reports and Comments from Committees and Stakeholders
 - Centralized Zone File Access:
 - 18 February 2010 gTLD Zone File Access in the Presence of Large Numbers of TLDs: Concept Paper <https://icann.org/en/topics/new-gtlds/zfa-concept-paper-18feb10-en.pdf>
 - 12 May 2010 gTLD Zone File Access For the Future: Strategy Proposal <http://www.icann.org/en/topics/new-gtlds/zfa-strategy-paper-12may10-en.pdf>
 - Wild Card Resource Records:
 - 10 November 2006 ICANN Security and Stability Advisory Committee Paper: Why TLDs Should Not Use Wild Card Resource Records <http://www.icann.org/en/committees/security/sac015.htm>
 - Phishing Attacks:
 - 26 May 2008 ICANN Security and Stability Advisory Committee Paper: Registrar Impersonation Phishing Attacks <http://www.atlarge.icann.org/files/atlarge/ssac-registrar-impersonation-24jun08.pdf>
 - 17 June 2009 Anti-Phishing Working Group Paper https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:

[20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20us%20issues%2020090617.pdf](https://www.icann.org/files/paris/PiscitelloNXDOMAIN.20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20us%20issues%2020090617.pdf)

- DNS Response Modification:
 - 20 June 2008 ICANN Security and Stability Advisory Committee Paper: DNS Response Modification
<https://par.icann.org/files/paris/PiscitelloNXDOMAIN.pdf>
- Centralized Malicious Conduct Point of Contact:
 - 25 February 2009 ICANN Security and Stability Advisory Committee Paper: Registrar Abuse Point of Contact
<http://www.icann.org/en/committees/security/sac038.pdf>
- High Security Zone:
 - 18 November 2009 A Model for High Security Zone Verification Program: Draft Concept Paper
<https://icann.org/en/topics/new-gtlds/high-security-zone-verification-04oct09-en.pdf>
 - 17 February 2010 High Security Zone TLD: Draft Program Development Snapshot
<https://icann.org/en/topics/new-gtlds/hstld-program-snapshot-18feb10-en.pdf>
 - 13 April 2010 High Security TLD: Draft Program Development Snapshot
https://st.icann.org/hstld-advisory/index.cgi?hstld_program_development_snapshot_1
 - 16 June 2010 High Security Zone TLD: Draft Program Development Snapshot
<http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf>
- Redirection and Synthesized Responses:

- 10 June 2001 ICANN Security and Stability Advisory Committee Paper: Recommendation to Prohibit Use of Redirection and Synthesized Responses (*i.e.*, Wildcarding) by New TLDs
<http://www.icann.org/en/committees/security/sac041.pdf>
- Thick vs. Thin WHOIS:
 - 30 May 2009 ICANN Explanatory Memorandum on Thick vs. Thin WHOIS for New gTLDs
<http://www.icann.org/en/topics/new-gtlds/thick-thin-whois-30may09-en.pdf>
- Trademark Protection:
 - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board
<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
 - See the Board Rationale Memorandum on Trademark Protection for a more detailed summary of non-privileged materials the Board reviewed on this topic.
- Malicious Conduct Generally:
 - 15 April 2009 ICANN Plan for Enhancing Internet Security, Stability and Resiliency
<http://www.icann.org/en/topics/ssr/ssr-draft-plan-16may09-en.pdf>
 - 19 May 2009 Registry Internet Safety Group's Paper: Potential for Malicious Conduct in New TLDs
https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:20090519220555-0-2071/original/RISG_Statement_on_New_TLDs-20090519.pdf
 - 19 August 2009 ICANN Security and Stability Advisory Committee Paper: Measures to Protect Domain

Registration Services Against Exploitation or Misuse
<http://www.icann.org/en/committees/security/sac040.pdf>

- 3 October 2009 ICANN’s Explanatory Memorandum on Mitigating Malicious Conduct
<https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>
- 30 November 2009 Online Trust Alliance’s Comments on the New gTLD Program
<http://www.icann.org/en/correspondence/spiegle-to-pritz-30nov09-en.pdf>
- 28 May 2010 ICANN’s Updated Memorandum on Mitigating Malicious Conduct
<http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf>
- 29 May 2010 Registration Abuse Policies Working Group Final Report
<http://www.gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf>
- 13 September 2010 ICANN’s Updated Plan for Enhancing Internet Security, Stability and Resiliency
<http://icann.org/en/topics/ssr/ssr-draft-plan-fy11-13sep10-en.pdf>
- 12 November 2010 ICANN’s Second Updated Memorandum on Mitigating Malicious Conduct
<https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf>
- 21 February 2011 ICANN briefing paper on issues the GAC had identified as “outstanding” in September 2010, including certain issues related to the risk of increased malicious conduct
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>

- Comments from the Community

D. What Concerns the Community Raised

- There was concern expressed that the new gTLD program will lead to an expansion of crime on the Internet, including look-alike domains, drop catching, domain tasting, domain hijacking, malware distribution, identity theft and miscellaneous deceptive practices.
- Wrongdoers may apply to operate registries.
- Wrongdoers may exploit technical weaknesses in the Internet, including automated registration services.
- End user confusion about new gTLDs may lead to increased fraud. For example, end users may be confused about TLDs whose mere names raise expectations of security.
- Certain new gTLDs may not comply with some national laws.
- There is a need for an enhanced control framework for TLDs with intrinsic potential for abuse, including those involving e-service transactions requiring a high confidence infrastructure (such as electronic financial services or electronic voting) and those involving critical assets (such as energy infrastructures or medical services).
- There is a need for better and more efficient identification of domain name resellers.
- There is a need to ensure the integrity and utility of registry information.
- The new gTLD program should safeguard the privacy of personal and confidential information.
- New gTLDs may adversely affect trademark owners.
- ICANN and others should better enforce provisions in agreements with registries and registrars.
- ICANN should impose new requirements on TLD operators.

- There is a need for systemic processes to combat abuse on the Internet.

E. What Steps the Board Resolved to Take to Mitigate Malicious Conduct

The Board believes the following measures will greatly help to mitigate the risk of increasing malicious conduct arising from new gTLDs. ICANN has incorporated the majority of these measures in the current version of the Applicant Guidebook and/or the registry agreement, and its efforts to implement the remaining measures are ongoing.

<http://www.icann.org/en/topics/new-gtlds/dag-en.htm>

- Required vetting of registry operators: The application process includes standardized, thorough background and reference checks for companies and individuals (key officers) to mitigate the risk that known felons, members of criminal organizations or those with histories of bad business operations (including cybersquatting) will become involved in registry operations or gain ownership or proxy control of registries.
- Required demonstrations of plans for Domain Name System Security Extensions (“DNSSEC”) deployment: DNSSEC is designed to protect the Internet from most attacks, including DNS cache poisoning. It is a set of extensions to the DNS which provide: (1) origin authentication of DNS data; (2) data integrity; and (3) authenticated denial of existence.
- Prohibition on wildcarding: The prohibition on wildcarding bans DNS redirection and synthesized DNS responses to reduce the risk of DNS redirection to a malicious site.
- Required removal of orphan glue records: Removal of orphan glue records destroys potential name server “safe havens” that abusers can use to support criminal domain registrations. Registry operators will be required to remove orphan glue records when presented with evidence in written form that such records are present in connection with malicious conduct.
- Mandatory thick WHOIS records: Registry Operators must maintain and provide public access to registration data using a thick WHOIS data model. Thick WHOIS will help mitigate malicious conduct and

trademark abuse by ensuring greater accessibility and improved stability of records.

- Centralization of zone file access: Central coordination of zone file data will allow the anti-abuse community to efficiently obtain updates on new domains as they are created within each zone, and to reduce the time necessary to take corrective action within TLDs experiencing malicious activity. The program is designed to reduce differences in and complexities of contractual agreements, standardize approaches and improve security and access methods.
- Mandatory documentation of registry level abuse contacts and procedures: Registry operators will provide a single abuse point of contact for all domains within the TLD who is responsible for addressing and providing timely responses to abuse complaints received from recognized parties, such as registries, registrars, law enforcement organizations and recognized members of the anti-abuse community. Registries also must provide a description of their policies to combat abuse.
- Required participation in the Expedited Registry Security Request (“ERSR”) process: ICANN developed the ERSR process in consultation with registries, registrars and security experts, based on lessons learned in responding to the Conficker worm, to provide a process for registries to inform ICANN of a present or imminent “security situation” involving a gTLD and to request a contractual waiver for actions the registry might take or has taken to mitigate or eliminate the security concerns. “Security situation” means: (1) malicious activity involving the DNS of a scale and severity that threatens the systematic security, stability and resiliency of the DNS; (2) potential or actual unauthorized disclosure, alteration, insertion or destruction of registry data, or the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards; or (3) potential or actual undesired consequences that may cause or threaten to cause a temporary or long-term failure of one or more of the critical functions of a gTLD registry as defined in ICANN’s gTLD Registry Continuity Plan.
- Framework for High Security Zones Verification: The concept of a voluntary verification program is a mechanism for TLDs that desire

to distinguish themselves as secure and trusted, by meeting additional requirements for establishing the accuracy of controls for the registry, registrar and registrant processing, as well as periodic independent audits. A draft framework was created by the HSTLD working group.. The working group’s Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of the potential for malicious conduct associated with the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base Policy on solid factual investigation and expert analysis;
- whether new gTLDs would promote consumer welfare;
- certain measures intended to mitigate the risk of malicious conduct may raise implementation costs for new gTLD registries;
- the creation of new TLDs may provide an opportunity for ICANN to improve the quality of domain name registration and domain resolution services in a manner that limits opportunities for malicious conduct;
- most abuse takes place in larger registries because that is where abusive behavior “pays back,”; a more diverse gTLD landscape makes attacks less lucrative and effective;
- the risk of increasing exposure to litigation; and
- the lack of reported problems concerning increased criminal activity associated with ICANN’s previous introductions of new TLDs.

IV. The Board's Reasons for Proceeding with the New gTLD Program While Implementing Measures to Mitigate the Risk of Malicious Conduct

- Modest additions to the root have demonstrated that additional TLDs can be added without adversely affecting the security and stability of the domain name system.
- ICANN's "default" position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate. New gTLDs offer new and innovative opportunities to Internet stakeholders.
- Most abuse takes place in larger registries. A more diverse gTLD landscape makes attacks less lucrative and effective.
- New gTLD users might rely on search functions rather than typing a URL in an environment with many TLDs, lessening the effectiveness of forms of cyber-squatting.
- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.
- ICANN has worked with the community to address concerns relating to potential malicious conduct in the new gTLD space. New and ongoing work on these issues in the policy development arena may provide additional safeguards recommended as a result of the bottom-up process, and ICANN will continue to support these efforts.
- Data protection is best accomplished by data protection tools, including audits, contractual penalties such as contract termination, punitive damages, and costs of enforcement, as well as strong enforcement of rules.
- The measures adopted by ICANN, including centralized zone file access, and other mechanisms, address the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space. A combination of verified security measures and the implementation of DNSSEC will

allow users to find and use more trusted DNS environments within the TLD market.

- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

I. Introduction

Recommendation 12 of the Generic Names Supporting Organization (GNSO) Final Report on the Introduction of New gTLDs (<http://gnsso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>), and approved by the Board in June 2008 (http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171) states that, “[D]ispute resolution and challenge processes must be established prior to the start of the process.” Further, Implementation Guideline H, also set forth by the GNSO, states “External dispute providers will give decisions on objections.”

Based on the GNSO Policy and implementation planning, it was determined that four of the GNSO recommendations should serve as a basis for an objection process managed by external providers. Those include the following:

- (i) Recommendation 2 “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name” (String Confusion Objection);
- (ii) Recommendation 3 “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law” (Legal Rights Objection);
- (iii) Recommendation 6 “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law” (Limited Public Interest Objection); and
- (iv) Recommendation 20 “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted” (Community Objection).

Thus, a process allowing third parties to object to applications for new gTLDs on each the four grounds stated above was developed.²

Subsequent to the development and refinement of the original Objection Procedures based on the GNSO recommendations and set out in Module 3 of the Applicant Guidebook (see <http://www.icann.org/en/topics/new-gtlds/objection-procedures-clean-30may11-en.pdf>) a separate process has been established for the GAC. That process is also set out in Module 3 of the Applicant Guidebook. In short, there is now a formal process for the GAC to provide advice in relation to the approval of an application.

II. History of the Development of the Objection Processes and Procedures Associated with the New gTLD Program

This section sets forth a history of significant actions taken on the subject of the objection process associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.
- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 12 of the report (“Recommendation 12”) states that “[d]ispute resolution and challenge processes . . . must be established prior to the start of the process” and Implementation Guideline H states that “External dispute providers will give decisions on objections.” <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- In December 2007, ICANN posted a call for expressions of Interest from potential Dispute Resolution Service Providers (DSRP) for the new gTLD Program. <http://www.icann.org/en/announcements/announcement-21dec07.htm>

² The International Centre for Dispute Resolution (ICDR) has agreed to administer disputes brought pursuant to String Confusion Objections. The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) has agreed to administer disputes brought pursuant to Legal Rights Objections. The International Center of Expertise of the International Chamber of Commerce (ICC) has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

- Throughout 2008, external dispute resolution service providers were evaluated and selected. As noted above in footnote 1, the ICDR will administer disputes brought pursuant to String Confusion Objections, WIPO will administer disputes brought pursuant to Legal Rights Objections and the ICC will administer disputes brought pursuant to Limited Public Interest and Community Objections.
- Also throughout 2008, ICANN conducted public consultations, as well as thorough and global research to help define the standing requirements and standards to be used by dispute resolution panels to resolve the disputes on the various Objection grounds.
- In October 2008, ICANN published draft version 1 of the Applicant Guidebook, including Module 3, which laid out the Dispute Resolution Procedures. At that same time, ICANN posted a paper for community discussion entitled “Morality and Public Order Objection Considerations in New gTLDs,” which summarized the implementation work that had been accomplished in response to Recommendation 6 (now called Limited Public Interest Objection).
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf>
- In February 2009, the Board discussed who would have standing to object to an applied-for string on the basis of morality and public order. There was a sense that an objection-based dispute resolution process was the appropriate method for addressing possible disputes. There was also a sense that any injured party would have standing to object. Limiting standing to governments or other official bodies might not address the potential harm.
<http://www.icann.org/en/minutes/minutes-12feb09.htm>
- Also in February 2009, with the second draft version of the Applicant Guidebook, ICANN posted the separate “New gTLD Dispute Resolution Procedure”. <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf>
- Also in February 2009, ICANN posted a paper for community discussion entitled “Description of Independent Objector for the New gTLD Dispute Resolution Process,” which explored the potential benefits of

allowing an “Independent Objector” to object within the dispute resolution process.

<http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf>

- In May 2009, along with revised excerpts of the Applicant Guidebook, ICANN posted a paper for community discussion entitled “Standards for Morality and Public Order Research,” which summarized the research relating to the development of standards for morality and public order (now Limited Public Interest) objections.
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>
- In May 2010, ICANN posted a paper entitled “‘Quick Look’ Procedure for Morality and Public Order Objections,” which summarized a procedure requested by community members by which morality and public order objections could be dismissed if they are determined to be “manifestly unfounded and/or an abuse of the right to object.”
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-quick-look-28may10-en.pdf>
- In August 2010, Heather Dryden, Chair of the GAC, delivered a letter to Peter Dengate Thrush, Chairman of the Board, requesting that the proposed procedure for morality and public order objections be replaced with an alternative mechanism.
<http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>
- Also in August 2010, the Board considered Submission No. 2010-08-05-15, which discussed the feedback received by the GAC with regard to the proposed procedure for morality and public order objections.
<http://www.icann.org/en/minutes/board-briefing-materials-2-05aug10-en.pdf>
- In September 2010, the cross-stakeholder group known as the New gTLD Recommendation 6 Cross-Community Working Group (“Rec6 CWG”) published a report on the Implementation of the Recommendation (the “Rec6 CWG report”). The report provided guidance to the Board with regard to procedures for addressing culturally objectionable and/or sensitive strings, while protecting internationally recognized freedom of expression rights. This report

was posted for public comment. [See link at http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm](http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm)

- Also in September 2010, the Board met in Trondheim, Norway and stated that they would “accept the [Rec6 CWG] recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and [would] work to resolve any inconsistencies.” At the same meeting, the Board agreed that it had “ultimate responsibility for the new gTLD program ... however, [that it wished] to rely on the determination of experts on these issues.”
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm>
- In October 2010, the Board again discussed the Rec6 CWG report, indicating that several of the working group recommendations could be included in the Guidebook for public discussion and that the working group recommendations should be discussed publicly at ICANN’s upcoming meeting in Cartagena.
<http://www.icann.org/en/minutes/resolutions-28oct10-en.htm>
- In November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the “Proposed Final Guidebook”), which adopted several of the recommendations set forth in the Rec6 CWG report.
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- Also in November 2010, ICANN posted an explanatory memorandum entitled “Limited Public Interest Objection,” which described the recommendations set forth in the Rec6 CWG report, ICANN’s responses to those recommendations and ICANN’s rationale for its responses.
<http://www.icann.org/en/topics/new-gtlds/explanatory-memorality-public-order-12nov10-en.pdf>
- In December 2010 in Cartagena, Columbia, the Board had two separate sessions with the Rec6 CWG to help achieve further understanding of the working group’s positions.
- On 23 February the GAC issued the “GAC indicative scorecard on new gTLD issues listed in the GAC Cartagena Communique” (“Scorecard”)

identifying the Objection Process as one of twelve areas for discussion.
<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>

- On 28 February and 1 March 2011, the Board and the GAC had a two-day consultation in Brussels, Belgium to discuss the issues raised in the Scorecard, including the suggestion that the GAC should not be subject to the Objection Procedures for Limited Public Interest Objections. Instead, a process was discussed by which the GAC could provide public policy advice on individual gTLD applications directly to the Board
- On 12 April 2011, the GAC issued “GAC comments on the ICANN’s Board’s response to the GAC Scorecard” that also addressed the Objection Procedures. <http://www.icann.org/en/topics/new-gtlds/gac-comments-board-response-gac-scorecard-12apr11-en.pdf>
- On April 15 2011, ICANN posted the April 2011 Discussion Draft of the Applicant Guidebook, containing a new “GAC Advice” section detailing the procedure by which the GAC could provide advice to the Board concerning gTLD applications. <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-redline-15apr11-en.pdf>
- Also on 15 April 2011, ICANN posted an Explanatory Memorandum entitled ‘GAC and Government Objections; Handling of Sensitive Strings; Early Warning’ to describe details of the new procedures. <http://www.icann.org/en/topics/new-gtlds/gac-objections-sensitive-strings-15apr11-en.pdf>
- [Also on 15 April 2011, ICANN posted](http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf) “Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response” discussing its response to the GAC’s concerns on the Objection Process. <http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf>
- [On 20 May the Board and GAC had further consultations that included discussion on the Objection Process.](http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf) <http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf>

- [On 30 May, ICANN posted the current version of the Applicant Guidebook with additional refinements to the Objection Process as it relates to the GAC. http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm](http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm)
- [On 19 June 2011, the Board and the GAC had additional consultations.](#)

III. The Board’s Analysis of the Objection Process Associated with the New gTLD Program

A. Brief Introduction to the Objection Process

1. Brief Overview of the Objection Process for all except the GAC.

- The new gTLD process is an objection-based process, in which parties with standing may file with an identified independent dispute resolution provider a formal objection to an application on certain enumerated grounds (see footnote 1 for list of providers). The grounds for filing a formal objection to an application are:
 - the gTLD string is confusingly similar to an existing TLD or another applied-for gTLD string in the same round of applications (“String Confusion Objection”)
 - the gTLD string infringes the existing legal rights of the objector (“Legal Rights Objection”)
 - the gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law (“Limited Public Interest Objection”)
 - there is substantial opposition to the application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted (“Community Objection”).

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- If the objectors have standing, their objections will be considered by a panel of qualified experts, that will issue a Determination.

- Specific standards under which each of the four types of objections will be evaluated are set forth in detail in Module 3 of the current Applicant Guidebook.
- There will be objection fees (fixed for String Confusion and Community Objections and hourly for Limited Public Interest and Community Objections) that will be refundable to the prevailing party.

2. Brief Overview of the GAC Advice Process.

- The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.
- For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period
- Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.
- ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.
- The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

B. Why the Board Addressed the Objection Process as it has

- The GNSO Policy Recommendations called for the creation of a dispute resolution or objection process in the new gTLD program.

- The GNSO also provided implementation guidelines suggesting that external dispute resolution providers should be utilized.
- A fully established objection process, with uniform standing requirements and standards available to the dispute resolution service providers, ensures that a reasonably objective process is in place. It further ensures that experts in dispute resolution make any determinations on the disputes after considering all of the evidence.
- A fully established dispute resolution process provides parties with a cost-effective alternative to initiating action in court, if there is a valid objection.
- The GAC advised the Board that it was not amendable to utilizing the standard Objection Process established for the new gTLD program. Accordingly, the Board worked closely with the GAC to develop a mutually acceptable “objection” mechanism, in the form of GAC Advice.

C. Who the Board Consulted

- Legal Counsel
- International arbitration experts
- Judges from various international tribunals such as the International Court of Justice
- Attorneys who practice in front of international tribunals such as the International Court of Justice
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community Members

D. Significant Non-Privileged Materials the Board Reviewed

- GAC Principles Regarding New gTLDs.
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- GNSO “Final Report – Introduction of new generic top-level domains.” <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- Report on Implementation of GNSO New GTLD Recommendation #6. See link to Report from <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>
- All materials related to the Board/GAC consultation. See <http://www.icann.org/en/topics/new-gtlds/related-en.htm>
- All relevant GAC letters and Communiqués. See <http://www.icann.org/en/correspondence/> and <http://gac.icann.org/communiqués>.
- Applicant Guidebook, related explanatory memoranda, other related documents and related comment summaries and analyses:
 - Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with numerous pages of public comment summaries and analysis related to the Objection Procedures. See (i) <http://www.icann.org/en/topics/new-gtlds/comments-en.htm>; (ii) <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem>; (iii) <http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm>; (iv) <http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm>; (v) <http://www.icann.org/en/topics/new-gtlds/gns0-consultations-reports-en.htm>; (vi) <http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>; (vii) <http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm>; (viii) <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>; (ix)

<http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>; (x) <http://www.icann.org/en/topics/new-gtlds/dag-en.htm>; (xi) <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>; and (xii) <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

E. Significant Concerns the Community Raised

- What will be done if there is an application for a highly objectionable name, but there are no objectors within the process?
- There is a need for clarification on what type of string would be considered to be “contrary to generally accepted legal norms relating to morality and public order . . . recognized under international principles of law.”
- Are the standards set out for each objection appropriate?
- How will fees be determined?
- Will ICANN fund certain stakeholders’ objections?
- Should it be a dispute process rather than a mere objection process?
- Are the independent dispute resolution providers the rights ones to handle the specific objections?
- Neither Governments nor the GAC should be required to utilize the Objection Procedures.

F. Factors the Board Found to Be Significant

- The Dispute Resolution Process is designed to protect certain interests and rights, those interests identified by the GNSO in their policy recommendations that were approved by the ICANN Board.
- The Dispute Resolution Process will be more cost effective and efficient than judicial proceedings. Fees will be paid directly to the dispute resolution providers.

- The Dispute Resolution Process should be independent as possible so that the applicants, the community and ICANN have the benefit of neutral expert opinion.
- It is critical to address risk to the established processes and to ICANN by providing a path for considering controversial applications that might otherwise result in litigation or attacks to the process or to the ICANN model.
- Governments have a particular interest in having an unencumbered process to provide advice to the Board without having to utilize the formal independent objection process.

G. The Board’s Reasons for Supporting the Two-pronged Objection Process Established for the New gTLD Program

- The Dispute Resolution Process complies with the policy guidance provided by the GNSO.
- The Dispute Resolution Process provides a clear, predictable path for objections and objectors.
- The Dispute Resolution Process provides clear standards that will lead to predictable, consistent results.
- The Dispute Resolution Process provides for an independent analysis of a dispute.
- The Dispute Resolution Process provides a bright line between public comment and a formal objection process so parties understand the manner in which a challenge to a particular application should be brought (a lesson learned from previous rounds).
- The Dispute Resolution Process appropriately limits the role for the Board.
- The Dispute Resolution Process limits involvement to those who truly have a valid objection.
- The Dispute Resolution Process provides for a more efficient and cost effective approach to dispute resolution than judicial proceedings.

- The Dispute Resolution Process, which provide for an “Independent Objector” to object is an important step to achieving the goal of independence and ensuring the objectionable strings are challenged.
- The GAC Advice process provides an avenue for the GAC to provide public policy advice to the Board on individual applications in a relatively timely fashion and consistent manner.
- The GAC Advice process was developed after close consultations with the GAC and provides a prescribed manner and time frame in which the Board will be able to consider GAC advice with respect to a particular string or applicant.

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

I. Introduction

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, its primary purpose was to promote competition in the domain name system ("DNS") marketplace while ensuring internet security and stability. ICANN's Bylaws and other foundational documents articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. See ICANN Bylaws, Article 1, Section 2.6.

One part of this mission is fostering competition by allowing additional Top Level Domains ("TLDs") to be created. ICANN began this process with the "proof of concept" round for a limited number of new gTLDs in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system.

After an extensive policy development process, in August 2007, the GNSO issued a lengthy report in which it recommended that ICANN permit a significant expansion in the number of new gTLDs. The report recognized that the introduction of new gTLDs would require the expansion of the top-level DNS zone in the DNS hierarchy known as the DNS root zone ("root zone"). This expansion of the root zone, along with ICANN's recent and concurrent implementation of other changes to the root of the DNS, caused some members of the community to ask ICANN to review how the expansion of the root zone could impact root zone stability. <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

Between 2004 and 2010, the root of the DNS underwent significant changes, both in content as well as support infrastructure. These changes included the addition of Internationalized Domain Names ("IDNs") to the root, the deployment of IPv6 and implementation of Domain Name System Security

Extensions (“DNSSEC”). The broad scope of these changes was unprecedented. Now with new gTLDs on the horizon, further substantive changes in the root of the DNS are expected.

In response to comments from members of the community, ICANN commissioned a number of studies to address the capacity and scaling of the root server system with the goal of ensuring the stable and secure addition of new gTLDs. The studies improved ICANN’s understanding of the scalability of the root zone as it pertains to new gTLDs, and they reinforced confidence in the technical capability and stability of the root zone at the projected expansion rates. The studies also helped to inform and improve ICANN’s approach to monitoring the scalability and stability of the root zone.

II. Brief History of ICANN’s Consideration of Root Zone Scaling Associated with the New gTLD Program

This section sets forth a brief history of significant Board actions on the subject of root zone scaling associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.
- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO’s policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- On 6 February 2008, ICANN published a paper entitled DNS Stability: The Effect of New Generic Top Level Domains on the Internet Domain Name System which addressed TLD Strings, technical stability and the capacity of the root zone.

<http://www.icann.org/en/topics/dns-stability-draft-paper-06feb08.pdf>
- On 6 February 2008, in response to ICANN's publication of the paper entitled DNS Stability: The Effect of New Generic Top Level Domains in the Internet Domain System, the Board requested public comments and community feedback regarding technical issues relevant to the addition of new gTLDs. The Board also requested guidance on how best to facilitate transparency in implementing the recommendations of the paper.

<http://www.icann.org/en/announcements/announcement-06feb08.htm>
- In February 2009, the Board resolved that the Security and Stability Advisory Committee ("SSAC") and the DNS Root Server System Advisory Committee ("RSSAC") should jointly conduct a study analyzing the aggregate impact of the proposed implementation of various changes to the root zone and any potential effects on the security and stability within the DNS root server system. These changes include the still-recent addition of IPv6 access to the root servers, the planned addition of IDNs at the root level, signing the root zone with DNSSEC, and the provisioning of new country code IDN TLDs and new gTLDs.
- On 7 September 2009, the Root Zone Scaling Team ("RSST") released its study entitled Scaling the Root.

<http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf>
- On 17 September 2009, the DNS Operations Analysis and Research Center ("DNS-OARC") released the "L" Root Study entitled Root Zone Augmentation and Impact Analysis.

<http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>

- On 29 September 2009, the Netherlands Organization for Applied Scientific Research (“TNO”) released a report directed by the RSST to develop a quantitative model of the DNS Root Server System to analyze the impact of the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. That study is entitled Root Scaling Study: Description of the DNS Root Scaling Model. <http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>
- On 14 October 2009, the Chair of the Internet Architecture Board (“IAB”), Olaf Kolkman, sent a letter to ICANN’s Board in response to the publication of the RSST Study. He stated that the report’s recommendations were accurate and that security, stability and resiliency are the most important properties of the system and they need to continue to be monitored and safeguarded by ICANN. <http://www.icann.org/en/correspondence/kolkman-to-ceo-board-14oct09-en.pdf>
- On 3 March 2010, ICANN released its Draft Delegation Rate Scenarios for New gTLDs, laying out the plan for limiting delegation rates and outlining expected demand for new gTLDs based on: (1) current participation in the new gTLD process; (2) brand and famous mark holders; and (3) regional, national and other geographic regions that are not currently participating. <http://www.icann.org/en/announcements/announcement-03mar10-en.htm>
- On 25 September 2010, the Board adopted a resolution approving a model and a rationale for the maximum rate of applications. It set the number at 1,000 applications per year. The Board noted that the initial survey of the root server operator’s ability to support growth was successful and directed ICANN staff to revisit that estimate on a regular basis. The Board directed ICANN to consult with root zone operators

to define, monitor and publish data on root zone stability.

<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3>

- On 6 October 2010, ICANN released its Delegation Rate Scenarios for New gTLDs, laying out in final form the plan for limiting delegation rates for new gTLDs.
- On 5 November 2010, the ICANN Board received a letter from the Chair of ICANN's Board Risk Committee, Bruce Tonkin, stating that the Risk Committee is seeking advice from RSSAC on the capability of the root server system to support the planned introduction of new gTLDs in 2011/2012.
<http://www.icann.org/en/correspondence/tonkin-to-murai-05nov10-en.pdf>
- On 25 November 2010, the ICANN Board received a letter from the Chair of RSSAC, Jun Murai, stating that the recent successful implementation of DNSSEC in the root zone was a good example of how to proceed with new capabilities. He further stated that in the case of the proposed gradual expansion of no more than 1,000 new gTLD entries per year for the next several years, the RSSAC expected the system to remain stable and robust.
<http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf>
- On 10 December 2010, the Board indicated that the overarching issue of root zone scaling had been addressed through expert consultation and study. The studies indicate that rate-limited addition of TLDs can be implemented without any expected impact on the stability of the root zone system. The Board also agreed to implement communications and monitoring systems to oversee the new gTLD program.
<http://www.icann.org/en/minutes/minutes-10dec10-en.htm>

III. Major Root Zone Scaling Studies Commissioned by the Board

On 3 February 2009, the ICANN Board unanimously directed the RSSAC and SSAC to jointly study “the impact to security and stability within the DNS root server system of [the IPv6, IDN TLDs, DNSSEC and new gTLDs] proposed implementations.” The Board resolution stated that the joint studies should: (1) address the implications of the initial implementation of these changes occurring during a compressed time period; (2) address the capacity and scaling of the root server system to address a wide range of technical challenges and operational demands that might emerge as part of the implementation of proposed changes; and (3) ensure that the process for establishing the study terms, design and implementation will address technical and operational concerns regarding expanding the DNS root zone. <http://www.icann.org/en/minutes/minutes-03feb09.htm>.

In response to the Board’s 3 February 2009 Resolution, ICANN commissioned two studies. The “L” Root Study focused on the impact of the scaling of the root on one server. The RSST Study modeled the processes in the root management system and analyzed the results of scaling the system.

The studies made important observations about possible limits to the root system, including limits to the pace of scaling and limitations other than purely technical, e.g. in processing TLD applications through ICANN, NTIA and VeriSign. Neither study found meaningful technical limitations in system scaling. The RSST Study recommended ongoing system modeling and monitoring, and encouraged improved communication with ICANN staff on gTLD forecasts and plans. To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software.

A. The “L” Root Study

The DNS-OARC released the “L” Root Study on 17 September 2009. The DNS-OARC conducted the study pursuant to a contract with ICANN. The study focused specifically on the impact of adding IPv6, DNSSEC and new TLDs to a laboratory simulation of the “L” Root Server. See

<http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.

The DNS-OARC performed a number of simulations and measurements with BIND and NSD server software and varying zone sizes to better understand how the new gTLD program changes may affect the performance of, and resource requirements for, the root DNS server infrastructure. The analysis looked at five key areas that would have an impact on operations: (1) zone size; (2) name server reload and restart times; (3) DNS response latency; (4) inter-nameserver bandwidth utilization; and (5) potential increases in Transmission Control Protocol usage.

The “L” Root Study concluded that at least that one root server could easily handle both the deployment of the new technologies as well as the new gTLD program.

B. The RSST Study

The RSST released their study on 7 September 2009. It undertook to determine if, how, and to what extent “scaling the root” will affect the management and operation of the root system. The RSST Study considered the “L” Root Study as part of its input and outsourced the development of a simulation of root management processes and conducted interviews with root server operators, IANA staff, VeriSign, NTIA and others. The RSST Study reviewed the impact on the root servers, and on the provisioning systems that lead up to the root zone being propagated to the root servers. See <http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.

The study provided qualitative and quantitative models of the root system that show how the root zone’s different parts are related and how the root zone responds to changes in the parameters that define its environment. The RSST Study’s conclusions assume that the estimate of less than 1,000 new gTLDs being added to the root zone per year is accurate. The study also assumes that other parameters relating to the management of the DNS root will not be substantively

altered. With these assumptions in mind, the RSST Study concluded that normal operational upgrade cycles and resource allocations will be sufficient to ensure that scaling the root, both in terms of new technologies as well as new content, will have no significant impact on the stability of the root system.

The principal results of the study are qualitative and quantitative models. These models enable the static simulation of popular “what-if” scenarios—*e.g.*, “what would happen if the size of the root zone increased by three orders of magnitude (assuming that everything in the system remained as it is today)?”—but also a far more useful dynamic analysis of the way in which the system responds and adapts to changes in the DNS environment over time. The analysis allows the community to anticipate the consequences of scaling the root, identify and recognize “early warning signs” of system stress, and plan ahead for any mitigating steps that may be necessary to keep the system running smoothly if and when signs of stress appear. The RSST Study also recommended that the Board call on ICANN’s staff to take on a monitoring role in collaboration with other system partners as an element of the new gTLD program rollout.

C. The TNO Report

To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software. The TNO Report was able to simulate several cases for the purpose of model validation and to illustrate typical use of the simulation model. More specifically, this study was directed by the RSST to apply quantitative modeling expertise to develop a quantitative model of the DNS Root Server System to analyze ways it responds to the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. The TNO suggested that the model be fine-tuned as the new gTLD program is implemented, and that the model be used as a tool by ICANN in order to give ICANN more accurate boundaries for the scalability of the root. See <http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>.

IV. The Board’s Analysis of Root Zone Scaling

A. Why the Board Commissioned Studies on Root Zone Scaling

- ICANN’s mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.
- Both the Board and members of the community have commented that the introduction of new gTLDs would require the expansion of the root zone and could impact root zone stability. To address these comments, on 3 February 2009, the Board adopted a resolution approving the SSAC/RSSAC Stability Studies which led to the commissioning of the “L” Root Study and RSST Study.

B. Who the Board Consult Regarding Root Zone Scaling

- Legal Counsel
- The GNSO
- The GAC
- DNS-OARC
- The SSAC
- The RSSAC
- The TNO

- All other Stakeholders and Community members through public comment forum and other methods of participation.

C. What Significant Non-Privileged Materials the Board Reviewed

In evaluating the issue of root zone scaling, the ICANN Board reviewed various materials to determine the stability of the root zone: (1) Deployment Experience; (2) Studies and Models; and (3) Public Comments.

1. Deployment Experience

In order to determine the stability of the root zone with the implementation of the new gTLD program, the Board closely evaluated the impact of the significant changes that had already been implemented or were in the process of being implemented into the root zone. Since February 2008, there have been significant additions to the root zone with the adoption and implementation of IDNs, IPv6 and DNSSEC. In fact, during the period between July 2004 when the first IPv6 addresses were added to the root zone for TLD name servers, until July 2010 when the root was DNSSEC-signed and Delegation Signer Records were inserted, the root DNS service continued with no reported or publicly visible degradation of service. The Board evaluated the impact of each individual addition to the root zone to date, and determined that the addition of IPv6 to the root system, IDN TLDs and the deployment of DNSSEC had no significant harmful effects that were observed by or reported to ICANN’s Board. Below is a timeline of the various additions to the root zone since July 2004:

Date	Technology	Event
July 2004	IPv6	First IPv6 addresses added to the root zone for top-level domains (KR and JP).
November 2005	DNSSEC	First top-level domain (.SE) signed.
June 2007	DNSSEC	IANA DNSSEC-signed root test bed made available.

August 2007	IDNs	Test IDN top-level domains added to the root.
February 2008	IPv6, gTLDs	First IPv6 addresses added for root servers (A, F, J, K, L and M). A limit of a maximum of less than 1,000 new gTLDs per year is derived from estimates of gTLD processing times.
January 2010	DNSSEC	Deliberately Unvalidatable Root Zone (DURZ) published on first root server ("L").
May 2010	IDNs, DNSSEC	First production IDNs added to the root (for Egypt, Saudi Arabia and United Arab Emirates). DURZ deployed on all 13 root servers.
June 2010	DNSSEC	First DS records are published in the root zone (for .UK and .BR).
July 2010	DNSSEC	Root is DNSSEC-signed and the root trust anchor is published.

<http://icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf>

The deployment of new technologies continues without any significant impact to root zone stability. Deployment of IPv6 in the root, which began in 2004, caused no significant harmful effects. Insertion of IDNs into the root in 2007 similarly was a non-event from the perspective of stability of the DNS, and deployment of DNSSEC in the root starting in January 2010 resulted in no observable or reported negative consequences. The empirical data drawn from the deployment of these new technologies can be used to validate the observations. Furthermore, the Board looked at this data, and the continued stability of the root zone throughout the implementation of these programs, as a demonstration that the introduction of the new gTLD program at the proposed max rate of 1,000 applications per year would similarly not impact the stability of the root zone.

2. Studies and Models

As previously mentioned, the ICANN Board commissioned two studies in order to analyze any impact the new gTLD program might have on the root zone. Both of these studies took a different approach to evaluate the possible impact the new gTLD program might have on root zone stability. Along with the TNO Report, the studies concluded that if the proposed new gTLD program is implemented pursuant to the adopted model of a maximum of 1,000 applications per year, the program will have no significant impact on the stability of the root system.

3. Public Comments and the Board's Response

Throughout the Board's analysis of the new gTLD program, in particular with respect to its possible impact to root zone stability, the Board considered public comments made by individuals both in public comment forums and in direct response to the release of the two root zone stability studies. The universe of comments pertaining to root zone scaling is still available. See <http://forum.icann.org/lists/scaling/index.html>.

The ICANN Board's responses to those comments made in response to the RSST Study were published for the public. See <http://icann.org/en/committees/dns-root/summary-analysis-root-scaling-study-tor-04oct09-en.pdf>.

D. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of root zone scaling. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- the addition of new gTLDs to the root in order to stimulate competition at the registry level;
- the stable and secure addition of addition of new gTLDs to the DNS;

- the continued security, stability and resiliency of the root zone; and
- the continued monitoring of the root zone system.

V. The Board’s Reasons for Concluding the Introduction of New gTLDs Will Not Harm the Root Zone

The overarching issue of root zone scaling has been addressed through conversations with the public, expert consultation and expert analysis of the impact of the new gTLD program. These studies, consultations and interactions with the community facilitated the Board’s study of the possible impacts the introduction of new gTLDs may have on root zone stability. The Board concluded that the additional gTLDs may be delegated without any significant impact on the stability of the root zone system.

The Board will continue to closely monitor the stability of the root zone and will call on its staff to take on a monitoring regime along with other system partners as an element of the new gTLD program roll-out. Furthermore, the Board will ensure that ICANN staff and system partners establish effective communication channels with root zone operators and RSSAC to ensure a timely response to any changes in the root zone environment.

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, the Board has given consideration to issues of potential user confusion resulting from the delegation of many similar TLD strings, as well as to creating procedures for resolving contention cases (i.e., where there is more than one qualified applicant for a TLD).

The foundational policy guidance for the program contains the principle that strings likely to cause user confusion should be avoided. Additionally, policy guidance recommended that there should be a preference for community applications in contention situations.

This memorandum focuses on the Board's review of these issues in implementing these principles in the new gTLD program. The memorandum summarizes the Board's consideration of these issues, and the Board's rationale for implementing the new gTLD program with the provisions on string contention and string similarity.

II. Brief History of ICANN's Analysis of String Similarity and String Contention Associated With the gTLD Program

This section sets forth a brief history of significant actions on the subject of string contention associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.
- In February 2007, Bruce Tonkin sent an email to the GNSO Council, describing the type of contention resolution methods under discussion for the gTLD process, including self-resolution, among the parties, third-party mediation, a bidding process, auctions, and testing for community affiliations.

<http://forum.icann.org/lists/gtld-council/msg00358.html>;
<http://forum.icann.org/lists/gtld-council/msg00359.html>

- In March 2007, the Governmental Advisory Committee issued its GAC Principles regarding New gTLDs. This included: 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced.
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs, including Recommendation 2, which stated that “strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- The GNSO’s Final Report also included Implementation Guideline F, which stated: If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe; ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.
- In March 2008, ICANN reported on preliminary work with SWORD to develop a potential algorithm that could help to automate the process for assessing similarity among proposed and existing TLD strings. <http://www.icann.org/en/minutes/prelim-report-27mar08.htm>
- On 26 June 2008, the Board adopted the Generic Names Supporting Organization’s (“GNSO”) policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
See Board Resolution at
<http://www.icann.org/en/minutes/resolutions->

[26jun08.htm# Toc76113171](#); see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- In August 2008, ICANN considered the use of auctions as a tie-breaking mechanism within the new gTLD process. <https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm>
- Also in August 2008, ICANN posted a paper for community discussion, entitled “The Economic Case for Auctions,” which explores the potential benefits of auctions as a tie-breaking mechanism. <https://www.icann.org/en/topics/economic-case-auctions-08aug08-en.pdf>
- Also in August 2008, ICANN considered the use of a string similarity algorithm to help automate the process for assessing similarity among the proposed and existing TLD strings. SWORD completed a beta algorithm and reviewed several test cases with ICANN staff to refine the parameters and discuss how the algorithm could be successfully integrated as a tool to help implement the GNSO's recommendation that new gTLD strings should not result in user confusion. <https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm>; <http://www.icann.org/en/announcements/announcement-08aug08-en.htm>
- In October 2008, the Board passed a resolution, authorizing the CEO, COO and/or General Counsel of ICANN to enter into an agreement for algorithm related services with SWORD. <https://www.icann.org/en/minutes/prelim-report-01oct08.htm>
- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook (“Version 1”), as well as an explanatory memorandum, “Resolving String Contention,” <http://www.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf>, describing the reasons for the contention procedures found in the draft Guidebook. The Guidebook included a preliminary establishment of contention sets based on similarity between strings, opportunities for applicants to self-resolve such contention, a comparative evaluation process, and an objective

mechanism as a last resort.

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>

- These procedures have been continually revised, updated, and posted for comment through successive drafts of the Guidebook. In February 2009, auctions were identified as an objective mechanism of last resort for resolving string contention, included in an updated memorandum, <http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf>, and beginning in draft version 2 of the Guidebook. <http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-18feb09-en.pdf>
- Comments on successive drafts of the Guidebook expressed a desire for greater clarity around the standards to be used for comparative evaluation, including requests for examples of applications that would and would not meet the threshold. In response to these comments, ICANN developed detailed explanatory notes for each of the scoring criteria to give additional guidance to applicants. These were included beginning in draft version 3 of the Guidebook. <http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-04oct09-en.pdf>
- In May 2010, ICANN issued draft version 4 of the Guidebook. The comparative evaluation was renamed the Community Priority Evaluation, to more accurately convey the purpose and nature of the evaluation (i.e., not comparing applicants to one another but comparing each against a common set of criteria). Version 4 also included definitions for terms used in the explanatory notes as well as clarifications and expanded guidance in several areas. <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- In June 2010, the GNSO Council and the Registries Stakeholder Group requested that exceptions be granted from findings of confusing similarity. The reason for granting an exception would be that a string pair that was found to be confusingly similar constituted a case of "non-detrimental confusion."
<http://gns0.icann.org/mailling-lists/archives/council/msg09379.html>;
<http://forum.icann.org/lists/string-similarity->

[amendment/msg00002.html](#);
<http://www.icann.org/en/minutes/board-briefing-materials-1-25sep10-en.pdf>

- In September 2010, the Board discussed the subject of string similarity and resolved to encourage policy development as needed to consider any exceptions from findings of confusing similarity.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.4>
- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board.
<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board's Analysis of String Similarity and String Contention

A. Brief Introduction to String Similarity and String Contention

1. String Similarity

This section sets forth an overview of the string similarity determination:

- What is the Concern over String Similarity?
 - The Board determined that delegating highly similar TLDs in the new gTLD program created the threat of detrimental user confusion.
- How Is It Determined that String Similarity Exists?
 - The preliminary similarity review will be conducted by a panel of String Similarity Examiners, who will use the following standard to test for whether string confusion exists:

String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

- The examination will be informed by human judgment assisted by criteria and an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. <http://icann.sword-group.com/algorithm/>
- What Happens Once the Determination is Made that String Similarity Exists?
 - In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will not allow the application to be submitted.
 - An application that fails the string confusion review and is found too similar to an existing TLD string will not pass the Initial Evaluation stage of the evaluation process, and no further reviews will be available.
 - An application that passes the string similarity review in the Initial Evaluation is still subject to challenge regarding string similarity in the current application round. That process requires that a specific string similarity objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity may be claimed by an objector, visual, phonetic, and semantic similarity.
 - An application that passes the string similarity review and is not subject to a string confusion objection would proceed to the next relevant stage of the process.

2. String Contention

This section sets forth an overview of the string contention process:

- What is String Contention?
 - String contention is said to occur when the strings of two or more applications are identical or found to be so similar that delegation of both will create a threat of user confusion.
- What Components Are Involved in the String Contention Process?

- Identifying gTLD strings that are likely to deceive or cause user confusion in relation to either existing TLDs or reserved names or applied-for gTLDs; and
- Resolving the string contention.
- How is a Contention Set Identified?
 - In the initial evaluation of an applied for gTLD, a string similarity panel, using the procedures described above, will determine whether two or more applications for gTLDs are in direct string contention. The applications that are determined to be in direct string contention will be marked for later resolution of the contention and proceed to the subsequent process steps. Applications that are not part of a contention set can proceed to the next stage of the evaluation process without further action.
 - Applications are in direct string contention if their proposed strings are identical or so similar that string confusion would occur if both were to be delegated as TLDs. The determination is based on human judgment assisted by an algorithmic test performed on applications.
 - Two applications are in indirect string contention if they are both in direct string contention with a third application, but not with each other.
 - During the objection process, an applicant may file a string confusion objection to assert string confusion. If the objection is upheld by the panel adjudicating the objection, the applications will be deemed to be in a direct string contention and the relevant contention sets will be modified accordingly.
 - The final contention sets are established once the extended evaluation and objection process have been concluded, because some applications may be excluded in those steps.
- How is a Contention Set Resolved?

- Voluntary settlements or agreements can occur between applications that result in the withdrawal of one or more applications. These can occur at any stage of the process, once ICANN has posted the applications received. However, material changes to an application may require a re-evaluation.
- Community priority evaluation can be used only if at least one of the applications involved is community-based and has expressed a preference for community priority evaluation. A panel will receive and score the community-based applications against the established criteria for: (1) community establishment; (2) nexus between the proposed string and community; (3) dedicated registration policies; and (4) community endorsement. If one application is a “clear winner” (i.e., meets the community priority criteria), the application proceeds to the next step and its direct contenders are eliminated. If there is no “clear winner,” the contention set will be resolved through negotiation between the parties or auction. It may occur that more than one application meets the community priority criteria, in which case time will be allowed for resolving the remaining contention by either applicant withdrawing, otherwise an auction between those applicants will resolve the contention.
- A community application that prevails in a community priority evaluation eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria. Arriving at the best outcome in a contention situation requires careful balancing of several variables, and this is the reason that a number of factors are included in the analysis.
- Auction is available as a last resort mechanism for resolving string contention when (1) contending applicants successfully complete all evaluations; (2) contending applicants elect not to use community priority evaluation, were not eligible for community priority evaluation, or

community priority evaluation did not provide a “clear winner”; and (3) contending applications have not resolved the contention among themselves.

B. Why The Board Addressed String Similarity and String Contention

- The new gTLD program will increase the number of domain names available, implying a risk that “confusingly” similar strings will appear.
- It is in the interests of consumer confidence and security to protect against the threat of user confusion and to avoid increasing opportunities for bad faith entities who wish to defraud users.
- Measures should be in place to protect internet users from the potential harm in delegating confusingly similar strings in the new gTLD program.
- The Board wants to create greater certainty in the domain name marketplace by crafting a fair and practical approach on how to identify and how best to resolve contention sets.
- The Board adopted the GNSO policy recommendations, including the implementation guideline implying that a community-based TLD application could be given a priority in cases of contention.

C. Who the Board Consulted

- Legal Counsel
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community members through public comment forum and other methods of participation.

D. What Significant Non-Privileged Materials the Board Reviewed

- **GNSO Policy Recommendations**
 - Recommendation 2: Strings must not be confusingly similar to an existing top-level domain or a Reserved Name
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
 - Implementation Guideline F: If there is contention for strings, applicants may:
 - i) resolve contention between them within a pre-established timeframe
 - ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and
 - iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.
- **GAC Principles**
 - Recommendation 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- **Comments from the Community**
 - <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>

E. What Concerns the Community Raised

- There is a need for clarification on the definition of “confusing similarity.”
- There are questions about the definitions for “standard” vs. “community-based” TLD types.
- There is a need for objective procedures and criteria for the community priority evaluation.

- A special form of resolution should be considered for a contention set involving two community-based applicants of equal strength, so that such a contention set is not required to go to auction.
- There is concern over using the auction process (and the receipt of auction proceeds) as a means to resolve contention for TLDs.
- There is concern that the string similarity algorithm only accounts for visual similarity, and does not accurately gauge the human reaction of confusion.
- Proceeds from auctions may be used for the benefit of the DNS and be spent through creation of a foundation that includes oversight by the community.

F. What Factors the Board Found to Be Significant

- There should be a consistent and predictable model for the resolution of contention among applicants for gTLD strings;
- The process should be kept as straightforward as possible to avoid unnecessary risks;
- There is potential harm in confusingly similar TLD strings that extends not only to the interests of existing TLD operators, but also to Internet users; and
- The protections set forth in the current string similarity process will safeguard both user and operator interests;

IV. The Board’s Reasons for Supporting the String Contention Process Contemplated in the new gTLD Program

- The Algorithm is a tool to aid the string similarity analysis.
 - The algorithm will be a consistent and predicable tool to inform the string confusion element of the new gTLD program. The algorithm will provide guidance to applicants and evaluators;
 - The role of the algorithm is primarily indicative; it is intended to provide informational data to the panel of examiners and expedite their review.

- The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes
- Human judgment will be the determining factor in the final decisions regarding confusing similarity for all proposed strings.
- Contending applicants should be given the opportunity to settle contention among themselves – this will result in innovative and economic solutions.
- The community priority evaluation stage of the string contention process features sufficient criteria to: (a) validate the designation given to community-based applications; and (b) assess a preference for community-based applications in a contention set. Both the GNSO Final Report and GAC Principles encourage the special consideration of applications that are supported by communities. <http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://gac.icann.org/system/files/gTLD_principles_0.pdf
- The GAC Principle that two-letter TLDs should not be delegated to avoid confusion with ccTLDs was adopted.
- There are advantages to an auction as a resolution mechanism of last resort.
 - It is an objective test; other means are subjective and might give unfair results, are unpredictable, and might be subject to abuses.
 - It assures the round will finish in a timely way.
 - It is thought that few auctions will actually occur. A negotiated settlement will be a lower-cost solution for the parties than an auction. The availability of auctions will encourage parties to settle. Even if there are proceeds from auctions, these will be expended in a process that includes independent oversight.
 - Ascending clock auctions typically employ an “activity rule,” where a bidder needs to have been “in” at early prices in the auction in order to continue to stay “in” at later prices. This is useful because in an ascending clock auction, bidders are

informed of the number of contending applications that have remained “in” after each round, but not their identities. With the specified activity rule, this demand information has real significance, as a competitor who has exited the auction cannot later re-enter.

- The auctioneer in ascending clock auctions has the ability to pace the speed at which prices increase. This facet has greatest importance if related items are auctioned simultaneously, as their prices can then be paced to increase together in relation to the level of demand. This has the advantage of providing bidders with information about the level of demand for other new gTLDs—and hence the value of a new gTLD—while the auction is still in progress.

9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

I. Introduction

One of ICANN's core values is "[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest." <http://www.icann.org/en/general/bylaws.htm>. In furtherance of this core value, ICANN is committed to ensuring that the concerns of all community members, including trademark holders, are considered and addressed to the extent practicable before launching the new generic top level domain ("gTLD") program.

ICANN has long recognized the importance of ensuring that the introduction of new gTLDs is conducted consistently with the protection of the rights of trademark holders, communities and other rights holders from abusive registration and infringement. In each previous expansion to the domain name system ("DNS"), the protection of legal rights of third parties was a feature of the application and evaluation process. For the new gTLD Program, ICANN has sought input from numerous stakeholders, including trademark holders, trademark lawyers, businesses, other constituencies and governments, to devise a multi-layered approach to protecting the rights of third parties. The approach includes a pre-delegation dispute resolution process for protecting existing legal rights at the top level. Also included in this approach are numerous rights protection mechanisms at the second level such as: (i) the establishment of a trademark clearinghouse to support both sunrise and trademark claims processes, a trademark post-delegation dispute resolution procedure (PDDRP), the Uniform Rapid Suspension System (URS) and the requirement for registries to maintain a thick Whois database. Of course, also available to all is the existing, long-standing and tested Uniform Domain Name Dispute Resolution Policy (UDRP).

II. History of the Board's Consideration of Trademark Protection

This section contains a brief history of significant actions taken to address trademark protection in the new gTLD program.

- On 1 February 2007, the Generic Names Supporting Organization ("GNSO") Council approved a request to form a Working Group on

Protecting the Rights of Others.

<http://gns0.icann.org/meetings/minutes-gns0-01feb07.html>

- On 15 March 2007, the GNSO Council ratified a Statement of Work for the newly-formed GNSO Working Group on Protecting the Rights of Others. <http://gns0.icann.org/meetings/minutes-gns0-15mar07.html>
- On 26 June 2007, the GNSO Working Group on Protecting the Rights of Others published its Final Report. gns0.icann.org/drafts/pro-wg-final-report-26jun07.pdf
- On 8 August 2008, the GNSO issues its “Final Report – Introduction of New Generic Top-Level Domains,” including a recommendation that “Strings must not infringe the existing legal rights of others”. <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- On 21 December 2007, ICANN requested “expressions of interest from potential dispute resolution service providers for the new gTLD program.” <http://www.icann.org/en/topics/drsp-call-for-expressions-of-interest.pdf>
- On 26 June 2008, the Board adopted the GNSO’s Policy recommendations for the introduction of new gTLDs. See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt
- On 22 October 2008, ICANN published an Explanatory Memorandum on Protection of Rights of Others in New gTLDs and solicited comments. <http://www.icann.org/en/topics/new-gtlds/protection-rights-22oct08-en.pdf>
- After receiving significant community input, on 6 March 2009, the Board recognized trademark protection in the new gTLD program as an issue requiring additional input and analysis, the resolution of which would benefit the new gTLD program. The Board requested that the GNSO’s Intellectual Property Constituency convene an Implementation Recommendation Team (“IRT”) to solicit input,

analyze the issue, and prepare draft and final reports.

<http://www.icann.org/en/minutes/resolutions-06mar09.htm#07>

- On 24 April 2009, the IRT published its Preliminary Report for public comment.
<http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf>; see public comments at <http://forum.icann.org/lists/irt-draft-report/>
- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including trademark protections in particular.
- On 29 May 2009, the IRT published its Final Report and an “Open Letter from the IRT Introducing our Work.” ICANN and the IRT recognized that a significant intersection exists in between strategies to facilitate trademark protection and strategies to mitigate the risk of increased malicious conduct on the Internet.
<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including trademark protection.
- On 21 June 2009, the IRT presented its Final Report to the ICANN Board at the ICANN Sydney Open Meeting and provided briefings to the GNSO, interested constituencies and others.
<http://syd.icann.org/full-sched>
- On 26 June 2009, the Board acknowledged and thanked the IRT for its “intensive engagement” and its “detailed and articulate proposals.”
<http://www.icann.org/en/minutes/resolutions-26jun09.htm>
- Also on 26 June 2009, the Board acknowledged that ICANN staff had posted material on the new Draft Applicant Guidebook for public comment; thanked the community; and requested that all further comments be submitted by the close of the comment period on 20 July 2009. The Board also requested that the ICANN staff prepare a comprehensive set of implementation documents before the Board’s meeting on 30 October 2009. See Board

Resolution at <https://icann.org/en/minutes/resolutions-26jun09.htm>; see Board Meeting Transcript at <http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt>

- On 12 September 2009, the Board continued its discussion about trademark protection in new gTLDs at a Board Retreat.
- On 12 October 2009, the Board sent a letter to the GNSO, requesting that it review trademark protection policy for the new gTLD program as described in the Draft Applicant Guidebook and accompanying memoranda, including the proposals for a Trademark Clearinghouse and a Uniform Rapid Suspension System. <http://www.gnso.icann.org/correspondence/beckstrom-to-gnso-council-12oct09-en.pdf>
- On 28 October 2009, the GNSO adopted a resolution creating the Special Trademarks Issues review team (“STI”), which included representatives from each stakeholder group, the At-Large community, nominating committee appointees, and the Governmental Advisory Committee (“GAC”). <http://gnso.icann.org/resolutions/#200910>
- On 30 October 2009, the Board issued a resolution encouraging additional comments on the Draft Applicant Guidebook and new gTLD program. See Board Resolution at <https://icann.org/en/minutes/resolutions-30oct09-en.htm>; see Board Meeting Transcript at <https://icann.org/en/minutes/index-2009.htm>
- On 11 December 2009, the STI published its Report. See link to Report in <http://gnso.icann.org/resolutions/#200912>
- On 18 December 2009, the GNSO unanimously approved the recommendations contained in the STI’s report. <http://gnso.icann.org/resolutions/#200912>
- On 15 February 2010, ICANN published for public comment proposals for trademark protection in the new gTLD program, including the Trademark Clearinghouse, a Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.

<http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>

- On 10 March 2010, the GAC outlined to the Board some concerns and recommendations for the new gTLD program and its comments on version 3 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf>
- On 12 March 2010, the Board acknowledged the community recommendations for trademark protections in the new gTLD program, including the development of a Trademark Clearinghouse and a Uniform Rapid Suspension System; resolved that the proposals for both be incorporated into version 4 of the Draft Applicant Guidebook; and directed ICANN staff to review any additional comments and develop final versions of the proposals for inclusion in the Draft Applicant Guidebook.
<http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- Also on 12 March 2010, the Board approved the concept of a post-delegation dispute resolution procedure; and directed ICANN staff to review any additional comments and synthesize them, as appropriate, into a final draft procedure, and include the procedure in version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- On 28 May 2010, in response to further comments from the community, ICANN published for public comment revised proposals for the Trademark Clearinghouse, Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.
<http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- On 5 August 2010, the Board responded to the GAC's comments on version 3 of the Draft Applicant Guidebook and described the steps it took to protect trademarks in version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf>
- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.

<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>

- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including trademark protections and passed some resolutions specifically addressing trademark protections.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>
- On 12 November 2010, ICANN posted for public comment version 5 of the Draft Applicant Guidebook, incorporating a number of protections for the rights of others, and a series of papers explaining certain aspects of the current proposals for the Trademark Clearinghouse, the Uniform Rapid Suspension System and related comments and analysis.
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- On 10 December 2010, the Board resolved that ICANN had addressed the issue of trademark protection in new gTLDs by adopting and implementing various measures, including the establishment of a Trademark Clearinghouse, the Uniform Rapid Suspension System and the Post-Delegation Dispute Resolution Procedure. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at <https://icann.org/en/minutes/resolutions-10dec10-en.htm>; see Board Meeting Minutes at <https://icann.org/en/minutes/minutes-10dec10-en.htm>
- On 21 February 2011, ICANN published numerous briefing papers on the trademark issues the GAC had identified as “outstanding” in September 2010.
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>
- On 23 February 2011, the GAC issued its “Indicative Scorecard” which included 30 specific recommendations relating to trademark protections on which it intended to consult with the.

<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>

- On 28 February 2011 and 1 March 2011, the GAC and the Board participated in a special two-day consultation to address the remaining outstanding issues related to the new gTLD program, including certain issues related to trademark protection.
<http://www.icann.org/en/announcements/announcement-23feb11-en.htm>
- On 4 March 2011, the Board published its comments on the GAC Scorecard.
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>
- On 15 April 2011, ICANN published an Explanatory Memorandum on Trademark Protection in the new gTLD program.
<http://www.icann.org/en/topics/new-gtlds/trademark-protection-claims-use-15apr11-en.pdf>
- Also on 15 April 2011, ICANN posted for comment version 6 of the Draft Applicant Guidebook, incorporating additional protections for the rights of others.
<http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>
- Also on 15 April 2011, ICANN issued “Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response”
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf>
- On 19 April 2011, the GAC issued “Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms”
http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf
- On 26 May 2011, the GAC issued “GAC comments on the Applicant Guidebook (April 15th, 2011 version)”
<http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>

- On 30 May 2011, ICANN posted the current version of the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board’s Analysis of Trademark Protection in the New gTLD Program

A. Why the Board is Addressing This Issue Now

- ICANN’s mission statement and one of its founding principles is to promote competition. The expansion of gTLDs will allow for more innovation and choice in the Internet’s addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to protect the rights of others on the Internet.
<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>
- The Board endorsed GNSO policy recommendation states that gTLD strings should not infringe the rights of others. The Board took that recommendation as an emphasis on the need to protect intellectual property rights.
- ICANN committed to the Internet community and governments, including the U.S. Department of Commerce that it would address trademark protection in new gTLDs prior to implementing the program.
- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B. Who the Board Consulted

- The GNSO
<http://gns0.icann.org/>
- The GAC
<http://gac.icann.org/>
- The ICANN Implementation Recommendation Team (“IRT”)
https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf

- The GNSO’s Special Trademark Issues Working Team (“STI”)
- The At-Large Advisory Committee (“ALAC”) <http://www.icann.org/en/committees/alac/>
- All other stakeholders and members of the community
- Legal counsel

C. What Significant Non-Privileged Materials the Board Reviewed

- In addition to all public comments received on all versions of the Applicant Guidebook, as well as all relevant GAC Communiqués (see <http://gac.icann.org/communiques>), the ICANN Board reviewed the following reports from Stakeholders:
 - 1 June 2007 GNSO Working Group on Protecting the Rights of Others’ Final Report <http://www.gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>
 - 8 August 2007 GNSO Final Report – Introduction of New Generic Top Level Domains. <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
 - 24 April 2009 IRT Draft Report and Public Comment Summary <http://forum.icann.org/lists/irt-draft-report/pdfuyqR57X82f.pdf>
 - 24 April 2009 IRT Preliminary Report, and public comment thereon <http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf>; see public comments at <http://forum.icann.org/lists/irt-draft-report/>
 - 29 May 2009 IRT Final Report <http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
 - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board

<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>

- 4 October 2009 ICANN Comment and Analysis on IRT Report: Post-Delegation Dispute Mechanism and Other Topics
<http://www.icann.org/en/topics/new-gtlds/summary-analysis-irt-final-report-04oct09-en.pdf>
- 11 December 2009, STI Report
See link to Report in
<http://gnso.icann.org/resolutions/#200912>
- 12 December 2009 letter from the members of the former IRT to ICANN unanimously supporting the work of the STI process and recommendations concerning a trademark clearinghouse and a mandatory Uniform Rapid Suspension system
<http://www.icann.org/en/correspondence/irt-group-to-dengate-thrush-15dec09-en.pdf>
- 23 February 2011 GAC “Indicative Scorecard”
<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>
- 19 April 2011 GAC issued “Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms”
http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf
- 26 May 2011, the GAC issued “GAC comments on the Applicant Guidebook (April 15th, 2011 version)”
<http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>
- ICANN prepared materials
 - Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with hundreds of pages of public comment summaries and analysis related to trademark protections.
(i) <http://www.icann.org/en/topics/new-gtlds/comments->

[en.htm](http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem); (ii) <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem>; (iii) <http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm>; (iv) <http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm>; (v) <http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm>; (vi) <http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>; (vii) <http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm>; (viii) <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>; (ix) <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>; (x) <http://www.icann.org/en/topics/new-gtlds/dag-en.htm>; (xi) <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>; and (xii) <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

D. What Concerns the Community Raised

- There is a need for adequate protection of intellectual property rights in new and existing gTLDs.
- If the introduction of new gTLDs leads to increased malicious conduct on the Internet, then trademark owners may pay a disproportionate percentage of costs associated with enforcing standards of behavior.
- Defensive domain name registrations in new gTLDs generate substantial costs for trademark owners.
- Registry behavior may cause or materially contribute to trademark abuse, whether through a TLD or through domain name registrations in the TLD.
- Legal rights that a party seeks to protect through Rights Protection Mechanisms should be capable of being authenticated, at least if the authenticity of such rights is challenged.

- Administrative dispute resolution procedures provide trademark owners with relatively swift and inexpensive alternatives to arbitration and litigation.
- Recurring sanctions may not be a sufficient remedy for wrongful conduct; suspension and termination may be necessary remedies.
- Policies developed to prevent and remedy trademark abuses in the DNS are expected to build upon the framework of existing intellectual property laws to minimize burdens on trademark owners and contribute to the orderly functioning of the DNS.
- The introduction of new gTLDs may lead to consumer confusion if one trademark owner registers its mark in one gTLD while another registers an identical or similar mark in another gTLD. To the extent that Internet users are unable (or become unaccustomed) to associate one mark with a specific business origin, the distinctive character of the mark will be diluted.

E. What Steps ICANN Has Taken or Is Taking to Protect the Rights of Others in New gTLDs

The Board believes the following measures will significantly help to protect the rights of others on the Internet. ICANN has incorporated the majority of these measures into the current version of the Applicant Guidebook and the registry agreement, and its efforts to implement the remaining measures are ongoing:

- Pre-delegation objection procedures.
- Mandatory publication by new gTLDs of policy statements on rights protection mechanisms, including measures that discourage registration of domain names that infringe intellectual property rights, reservation of specific names to prevent inappropriate name registrations, minimization of abusive registrations, compliance with applicable trademark and anti-cyber squatting legislation, protections for famous name and trademark owners and other measures.
- Mandatory maintenance of thick Whois records to ensure greater accessibility and improved stability of records.

- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars
- The requirement for all new registries to offer both a Trademarks Claims service and a Sunrise period.
- Post-delegation dispute resolution procedures that allow rights holders to address infringing activity by a registry operator that may be taking place after delegation.
- Implementation of the Uniform Rapid Suspension System that provides a streamline, lower-cost mechanism to suspend infringing names
- The continued application of the Uniform Domain Name Dispute Resolution Policy on all new gTLDs.

F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of trademark protection in the new gTLD program. The Board found the following factors to be significant:

- The GNSO’s Working Group on Protecting the Rights of Others was not able to reach consensus on “best practices” for Rights Protection Mechanisms;
- While economic studies revealed that there will be both benefits and cost to trademark holders associated with new gTLDs, no determination could be made that the costs outweigh the benefits.
- New gTLDs would promote consumer welfare.
- The availability and efficacy of dispute resolution mechanisms and appropriately-designed modifications of ICANN procedures for protecting intellectual property.
- The need for dispute resolution mechanisms to be comprehensive enough to expand with the addition of new gTLDs.

- The need to balance the protection of trademark rights with the practical interests of compliant registry operators to minimize operational burdens and the legitimate expectations of good faith domain name registrants.
- The risk of increasing exposure of participants to litigation.
- The lack of reported problems with ICANN’s previous introductions of new TLDs.

IV. The Board’s Reasons for Proceeding to Launch the New gTLD Program While Implementing Measures to Protect Trademarks and Other Rights

- ICANN’s “default” position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate.
- New gTLDs offer new and innovative opportunities to Internet stakeholders.
- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.
- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.
- ICANN has addressed the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space by implementing measures to mitigate that risk, including centralized zone file access, a high security TLD designation and other mechanisms. A combination of verified security measures and the implementation of DNSSEC will allow users to find and use more trusted DNS environments within the TLD market.
- ICANN has addressed the principal concerns raised by stakeholders about the protection of trademarks in the new gTLD space by

implementing other measures to enhance protections for trademarks and other rights, including pre-delegation dispute resolution procedures, a trademark clearinghouse, and post-delegation dispute resolution procedures.

- To the extent that there are costs to trademark owners or others, ICANN has worked with the community to address those concerns, and ICANN pledges to continue that effort.

EXHIBIT C-10

August 12, 2016

The Honorable Renata B. Hesse
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20230

Dear Acting Assistant Attorney General Hesse:

The National Telecommunications and Information Administration (NTIA) in the Department of Commerce (DOC) is considering whether to relinquish its oversight of the process for registering Internet domain names. As part of its oversight responsibility, the NTIA oversees the Internet Corporation for Assigned Names and Numbers (ICANN), which reviews and approves requests to register, delete, or modify top-level domain names, and Verisign, Inc. which administers the changes that ICANN approves by making the necessary additions, deletions, or modifications to the authoritative root zone file—i.e., the list of domain names and corresponding IP addresses.¹ Verisign's responsibilities in managing the authoritative root zone file are governed by Cooperative Agreement No. NCR 92-18742 with the United States Government.²

In addition to administering the authoritative root zone file, Verisign exercises exclusive control of the registry for .com domain names. Verisign's right to manage the .com registry and, in particular, the fee Verisign charges for registering .com domain names are governed by the .com Registry Agreement between Verisign and ICANN³ as well Amendment 32 to the Cooperative Agreement between NTIA and Verisign.⁴ Both the .com Registry Agreement and the Cooperative Agreement contain an important provision that limits Verisign's ability to increase prices in the .com Top Level Domain (TLD). Neither the Cooperative Agreement nor the .com Registry Agreement are scheduled to expire until November 30, 2018. Yet despite the fact that both agreements are nowhere near expiration, ICANN, Verisign, and the NTIA are working to, in effect, amend both agreements to provide a six-year extension to Verisign—to 2024—to manage the .com registry in conjunction with the proposed plan to transition domain name

¹ National Telecommunications and Information Administration. Verisign Cooperative Agreement No. NCR-9218742. Web. <<https://www.ntia.doc.gov/page/verisign-cooperative-agreement>>.

² National Telecommunications and Information Administration. Verisign Cooperative Agreement No. NCR-9218742. Web. <<https://www.ntia.doc.gov/page/verisign-cooperative-agreement>>.

³ Atallah, Akram. "Root Zone Management Transition Update: Preservation of Security, Stability and Resiliency." The Internet Corporation for Assigned Names and Numbers, 28 June 2016. Web. <<https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency>>.

⁴ National Telecommunications and Information Administration. Verisign Amendment 32 to Cooperative Agreement No. NCR-9218742. Web. <https://www.ntia.doc.gov/files/ntia/publications/amendment_32_11292012.pdf>

oversight responsibility from the NTIA to ICANN. According to the NTIA, the “root zone management aspects of the IANA functions contract [between the NTIA and ICANN] are ‘inextricably intertwined’ with the Cooperative Agreement.”⁵ The proposed amendment to the .com Registry Agreement is currently on ICANN’s website for public comment, which is set to close on August 12, 2016 and will be followed by the release of an ICANN staff report on August 26, 2016.⁶

If the .com Registry Agreement is extended to 2024 and the NTIA subsequently relinquishes its oversight of the process for registering Internet domain names, it appears that the Department of Justice (DOJ) may be prevented from having meaningful input into the prices that Verisign charges for registering a domain name within the .com domain for an extended period. We therefore write to urge the DOJ to conduct a thorough competition review of the agreement before any oversight transition is undertaken and any agreement extension is approved.

As background, Verisign has had exclusive control of the .com registry since acquiring Network Solutions on March 7, 2000 for \$21 billion.⁷ As part of this acquisition, Verisign obtained the exclusive right to control and profit from the operation of the .com registry, which Network Solutions had maintained since entering into a Cooperative Agreement with the United States Government in 1993.⁸ Because of Verisign’s exclusive control of the .com registry—a responsibility that benefitted an arrangement between ICANN and the NTIA—American businesses and consumers with an interest in registering or renewing a .com domain name have had no meaningful competitive alternatives within the .com registry marketplace.

In effect, Verisign’s government-approved control of the .com registry allows it to operate as a monopoly—a fact that has not gone unnoticed in the financial services industry and the stock market. For example, in 2013, financial research and publishing company, StreetAuthority, declared that Verisign “had a virtual monopoly on Internet domains” that gives it “unrivaled power” in “the fastest-growing industry in the world—the Internet.”⁹ Brian Katz, Chief Investment Officer of The Colony Group similarly observed in 2009 that Verisign “holds a legal monopoly on the DNS industry” that “adds to the appeal of [Verisign’s] business model” because “[v]irtually every business requires a unique web site for competitive reasons.”¹⁰ More recently, on June 29, 2016, Seeking Alpha published an analysis stating that “VeriSign’s

⁵ Atallah, Akram. “Root Zone Management Transition Update: Preservation of Security, Stability and Resiliency.” The Internet Corporation for Assigned Names and Numbers, 28 June 2016. Web. <<https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency>>.

⁶ Papac, Krista. “Public Comment on Proposed Amendment to .COM Registry Agreement.” The Internet Corporation for Assigned Names and Numbers, 30 June 2016. Web. <<https://www.icann.org/public-comments/com-amendment-2016-06-30-en>>.

⁷ VeriSign, Inc. Verisign Acquires Network Solutions to Form World’s Largest Provider of Internet Trust Services. N.p., 7 Mar. 2000. Web. <<https://investor.verisign.com/secfiling.cfm?filingid=950103-00-362&cik=>>.

⁸ National Science Foundation. Network Information Services Manger(s) for NSFNET and the NREN: INTERNIC Registration Services Cooperative Agreement No. NCR-9218743. 1 Jan. 1993. Web. <<http://archive.icann.org/en/nsi/coopagmt-01jan93.htm>>.

⁹ StreetAuthority. “Profit From A ‘Monopoly On The Internet’ With 100% Upside.” Editorial. NASDAQ.com, 6 Nov. 2013. Web. <<http://www.nasdaq.com/article/profit-from-a-monopoly-on-the-internet-with-100-upside-cm297233>>.

¹⁰ Interview. VeriSign Is Brian Katz’s Highest Conviction Holding - Here’s Why. Seeking Alpha, 29 Dec. 2009. Web. <<http://seekingalpha.com/article/180092-verisign-is-brian-katzs-highest-conviction-holding-heres-why>>.

exclusive contract with the Internet Corporation for Assigned Names and Numbers (ICANN) gives the company a significant barrier to entry for competitors”¹¹ and characterizing Verisign as a “regulated monopoly.”

To put Verisign’s unique position into perspective, the fourth quarter of 2015 closed with approximately 314 million domain name registrations across *all* TLDs.¹² The .com and .net TLDs, both exclusively operated and controlled by Verisign, accounted for approximately 139.8 million domain names in the fourth quarter of 2015. Simply put, 44.5 percent of all registrants across the entire Internet pay Verisign to secure or renew a .com or .net domain name. Verisign’s exclusive control of .com and .net allowed the company to end 2015 with cash, cash equivalents, and marketable securities of \$1.9 billion, an increase of \$491 million compared to 2014.¹³

Verisign has achieved a 61.5 percent operating margin¹⁴ despite the Government’s imposition of a mandatory price cap on registration fees. When ICANN and Verisign last negotiated the renewal of the .com registry agreement in 2012, the parties reached an agreement that not only would have extended Verisign’s exclusive control of the .com registry for six years but would have also enabled Verisign to increase the cost of registration fees by as much as seven percent per year in four out of six years of the agreement. This agreement, which, in effect, pre-authorized rate increases without any showing of justification or reasonableness, understandably raised concerns among the public that led the DOJ, along with the DOC, to initiate a competition review. This review resulted in a mandatory \$7.85 price cap until the end of the .com registry agreement in 2018.

In light of ICANN and Verisign’s history, the unique nature of the .com registration market, and its susceptibility to anti-competitive outcomes that could harm businesses and consumers, the public would be well served by continuing and active oversight. As Acting Assistant Attorney General Deborah Garza explained in a 2008 letter to the NTIA:

We also concluded that existing gTLDs likely would not become a competitive threat to .com registrations because the network effects that make .com registrations so valuable to consumers will be difficult for other TLDs to overcome. Due to a first-mover advantage and high brand awareness, .com registrations account for the overwhelming majority of gTLD registrations. As a result, when users do not know the TLD in which a domain is registered, they most often simply append ‘.com’ to a product or a company name when attempting to find the desired website. This phenomenon creates a strong preference for .com. Accordingly there will continue to be a need for Section 7.3 of the .com registry agreement [which sets price conditions for domain name registrations and registry services] to replace the discipline that market

¹¹ Better Investor Co. “Verisign: Time To Make Some Real Money.” Seeking Alpha, 29 June 2016. Web. <<http://seekingalpha.com/article/3985169-verisign-time-make-real-money>>.

¹² The Domain Name Industry Brief. Rep. no. Volume 1- Issue 13. Verisign, Apr. 2016. Web. <<http://www.verisign.com/assets/domain-name-report-april2016.pdf>>.

¹³ VeriSign, Inc. Verisign Reports Fourth Quarter and Full Year 2015 Results. N.p., 11 Feb. 2016. Web. <<https://investor.verisign.com/releasedetail.cfm?releaseid=954588>>.

¹⁴ VeriSign, Inc. Verisign Reports Fourth Quarter and Full Year 2015 Results. N.p., 11 Feb. 2016. Web. <<https://investor.verisign.com/releasedetail.cfm?releaseid=954588>>.

competition does not provide in this setting, as well as continuing DOC oversight of the .com registry under the Cooperative Agreement [between Verisign and the United States Government], which precludes VeriSign from amending or renewing the .com agreement without DOC approval.¹⁵

Given these concerns, it appears that American businesses, consumers, and all those who rely upon a .com domain for communication and commerce will be ill-served by a process that precludes the DOJ from considering the appropriateness of Verisign receiving an extension of its critical monopoly control over .com for another six years. It is especially imperative to conduct the review before the proposed transition of oversight responsibility is executed because it is unclear whether or not the Government will retain the authority to conduct such a review in 2024 if the transition is completed. A robust and formal competition review would allow the Government, policy-makers and, most importantly, the public, to assess Verisign's pricing practices since the last review and to determine whether the current price cap is artificially high as some have suggested in the past. For example, in 2012, the Internet Commerce Association suggested that Verisign's price cap be reduced to \$5.86.¹⁶

A competition review is also timely and necessary in light of Verisign's recent efforts to increase its presence in the global domain marketplace. According to reports, Verisign has used a subsidiary, Nu Dot Co LLC, to place a successful \$135 million bid to secure the exclusive right to operate the new .web registry.¹⁷ There is a strong belief within the domain name industry that Verisign's bid to secure the .web registry may have been undertaken to protect its position in the .com market from additional competition.^{18 19}

The DOJ has a responsibility to ensure that there is adequate competition in the domain registry market. We therefore respectfully request that you respond to the following questions no later than 5:00 pm on August 15, 2016:

- (1) Has the DOJ conducted a competition review of Verisign's .com Registry Agreement with ICANN to assist the NTIA in determining whether the agreement should be extended to 2024? If so, please provide a complete copy and summary of the review.
- (2) If not, will the DOJ conduct a competition review of the .com Registry Agreement before the agreement is extended and the NTIA transfers its oversight authority to ICANN? Please explain.

¹⁵ Garza, Deborah A., Acting Assistant Attorney General, Antitrust Division, Department of Justice. "Re: ICANN's Draft RFP for New GTLDs." Letter to Meredith Baker, Acting Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. 3 Dec. 2008. Web. <<https://www.icann.org/en/system/files/files/baker-to-dengate-thrush-18dec08-en.pdf>>.

¹⁶ Corwin, Philip. "ICA To DOC: Slash .Com Pricing by \$2+, and Tie Future Price Hikes to CPI." Internet Commerce Association, 27 Nov. 2012. Web. <<http://www.internetcommerce.org/SlashDotComPricing/>>.

¹⁷ Murphy, Kevin. "Verisign Confirms It Did Fund \$135 Million .web Bid." Domain Incite. N.p., 1 July 2016. Web. <<http://domainincite.com/20833-verisign-confirms-it-did-fund-135-million-web-bid>>.

¹⁸ Andrew Allemann. "Why Verisign Paid \$135 Million for the .web Top Level Domain." Domain Name Wire, 29 July 2016. Web. <<http://domainnamewire.com/2016/07/29/verisign-paid-135-million-web-top-level-domain/>>.

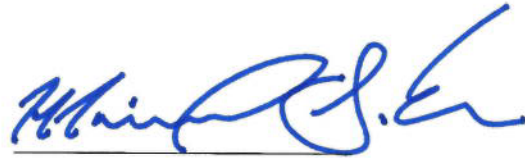
¹⁹ Berkens, Michael. "Thoughts About Verisign's \$135 Million Dollar .Web Acquisition & What It Means For Domainers." The Domains, 31 July 2016. Web. <<http://www.thedomains.com/2016/07/31/thoughts-verisigns-135-million-dollar-web-acquisition-means-domainers/>>.

Please contact Sean McLean (Senator Cruz), Andy Reuss (Senator Lee), and Ryan McCormack (Congressman Duffy) of our staffs if there are any questions regarding this request.

Sincerely,



Ted Cruz
Chairman
Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts
Senate Committee on the Judiciary



Michael S. Lee
Chairman
Subcommittee on Antitrust, Competition Policy
and Consumer Rights
Senate Committee on the Judiciary



Sean P. Duffy
Chairman
Subcommittee on Oversight and Investigations
House Financial Services Committee

EXHIBIT C-11

Profit From A 'Monopoly On The Internet' With 45% Upside

There are few legal monopolies.#-ad_banner-#

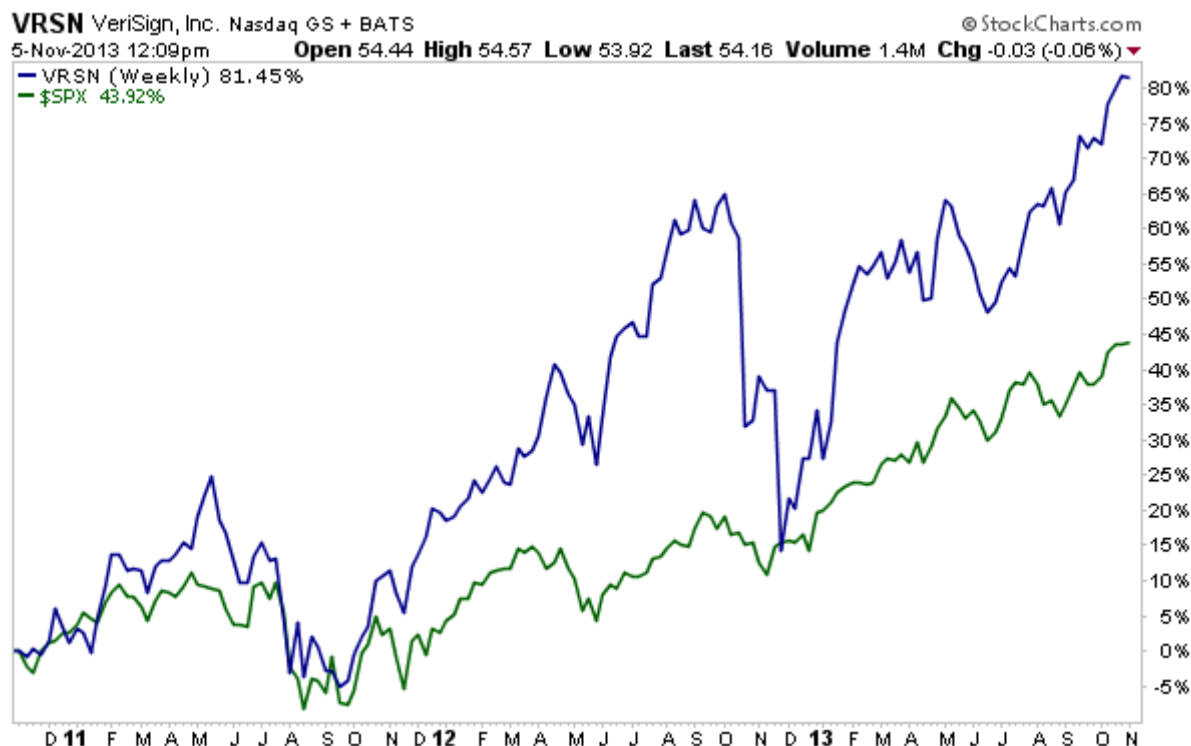
One commonly cited example in the public markets is **Sirius XM (Nasdaq: [SIRI](#))**. Sure, Sirius is the only satellite operator in the market, but radio listeners have alternatives -- including the likes of local broadcast radio. Even other common monopolies have alternatives, such as the U.S. Postal Service, where you can opt to use **FedEx (NYSE: [FDX](#))** or **UPS (NYSE: [UPS](#))**. However, is there any market in which customers don't have a choice?

But what if there were a legal monopoly that embodied "customer captivity"? Imagine a company that has agreements that give it unrivaled power. And imagine that this same company operates in the fastest-growing industry in the world -- the Internet.

That company is **VeriSign (Nasdaq: [VRSN](#))**, which has a virtual monopoly on Internet domains.

This company has a high level of customer captivity, meaning that its customers rely heavily on its services and cannot get said services elsewhere. VeriSign offers domain name registry services. What this means is that VeriSign operates the authoritative directory of dot-com, dot-net, dot-cc, dot-tv and dot-name domains.

The company saw a sizable pullback in late 2012, after the Internet Corporation for Assigned Names and Numbers (ICANN) approved its agreement as the primary registry for dot-com domains but disallowed the company's request for pricing increases. So dot-com domain fees will remain flat through 2018. The market initially took this as bad news but soon realized that VeriSign still has a monopoly on the domain registry industry. VRSN is now back on an upward trend.



Again, the real beauty with VeriSign is that it has agreements that make it the exclusive register of dot-com, dot-net and dot-name domains. The agreement ensures VeriSign's recurring revenue stream, and although the dot-com domain fees are fixed, VeriSign can boost dot-net fees by 10% annually through mid-2017. Just last quarter,

the company increased its domain fee by \$0.56 to \$6.18 for its dot-net domain names, which will go into effect in February 2014.

Although the company doesn't pay a dividend, it does have a robust share buyback plan.

Going into the third quarter, VeriSign had around \$1 billion remaining under its buyback program. With its robust cash-flow generation, there's no reason the company can't continue snatching up shares. Over the past 12 months, VeriSign managed to generate almost \$520 million in free cash flow. That's nearly \$3.80 in free cash flow per share, or nearly 7% free cash flow yield.

VeriSign's impressive cash hoard of more than \$2 billion helps protect on the downside, but 85% of it is held overseas. However, VeriSign is looking get that cash to shareholders. One option is for the company to take advantage of low rates and increase its borrowing, using its overseas cash as collateral. (This is essentially what activist investor [Carl Icahn](#) is pushing **Apple (Nasdaq: AAPL)** to do with its massive pile of cash.) Given the complications of repatriating cash, VeriSign has promised to put a plan to shareholders by year end.

Risks to Consider: One of the biggest risks is that the level of growth for dot-com and dot-net domain names could hit a level of saturation, meaning growth would begin to slow. There's also the continued weakness in Europe, where the company gets around 15% of revenues from Europe, the Middle East and Africa. Another potential risk is that the company is unable to repatriate its overseas cash hoard in such a way that's advantageous to shareholders.

Action to Take → Buy VeriSign with upside to \$78, which is 45% above current trading levels. That's a price-to-earnings (P/E) ratio of 30 on 2014 earnings estimates, which compares favorably to VRSN's five-year average P/E of 40 and the industry P/E of 33. The risk/reward trade-off for VeriSign is appealing, as given its monopolistic stranglehold on the domain registry business and large cash balance, the downside appears limited.

EXHIBIT C-12

Seeking Alpha^α

Long Ideas | Tech | Editors' Picks

VeriSign Is Brian Katz's Highest Conviction Holding - Here's Why

Dec. 29, 2009 4:20 AM ET

by: Brian Katz, CFA

Brian Katz is the Chief Investment Officer of The Colony Group and is the lead Portfolio Manager for the company's large-cap equity strategy, which has assets under management of almost \$300mm. The Colony Group's large-cap strategy invests in approximately 30 – 40 securities with market caps generally greater than \$5bb. Brian and his analysts endeavor to find growth companies with defendable competitive positions that generate strong free cash flow.

We asked Brian to share his single highest conviction position and provide his investment thesis.

•••

What is your highest conviction stock position in your fund - long or short?

We purchased **VeriSign (NASDAQ: VRSN)** this summer shortly after the stock dropped more than 14% in a day on word that an organization called the Coalition for Internet Transparency (CFIT) won its appeal to force the district court to hear its antitrust lawsuit challenging the legality of VRSN's key contract. The stock has since recovered those losses, and we believe the management team has multiple levers to pull that could send the stock price higher from here.

Tell us a bit about the company and what it does.



VRSN is a provider of Internet infrastructure services. It is best known for its domain naming services (DNS) business (56% of 2008 sales). VRSN, through an exclusive contract with Internet Corporation of Assigned Names and Numbers (ICANN), the overseer of the World Wide Web, operates the authoritative directory of all dot.com and dot.net domain names (as well as other generic top level domains, or tGLDs). Its next largest segment sells SSL certificates that enable enterprises and Internet merchants to conduct secure transactions online. This segment also operates an identity protection business, called VeriSign Identity Protection, which helps enable consumer-facing applications to provide a secure online experience for end users. In total, this segment accounted for 36% of 2008 sales (29% SSL, 7% IP). The remaining 8% of sales are from VeriSign Japan.

Can you talk a bit about the industry/sector? How much is this an "industry pick" as opposed to a pure bottom-up pick?

We are attracted to VRSN primarily for stock-specific reasons. VRSN holds a legal monopoly on the DNS industry and has the leading brand and market share in SSL certification. The overall growth of the Internet's role in commerce adds to the appeal of VRSN's business model. Virtually every business requires a unique web site for competitive reasons, and the number of businesses enabling customers to buy online will continue to expand for the foreseeable future.

Can you describe the company's competitive environment? How is this company positioned vis a vis its competitors?

We touched on VRSN's monopoly position in DNS and leading share/recognition in SSL in the previous section. As a result, VRSN holds one of the stronger competitive positions of any stock in our portfolio. The DNS contracts for managing the dot.com and dot.net domain naming registries were granted by ICANN in 2006 and 2005, respectively. The agreements expire in 2012 and 2011, respectively, but call for a "presumptive right of renewal," i.e., the contracts should automatically renew with similar terms for another six years as long as VRSN meets its contractual obligations. Under the contracts, VRSN is allowed to take price increases of up to 7% and 10% (for dot.com and dot.net, respectively) in as many as four of the six years in the term. The SSL business also has a sustainable competitive advantage, albeit not as strong as DNS. Its VeriSign Secured checkmark logo is one of the most trusted security marks on the Internet according to

some studies. As a result, it has greater than a 50% market share of the SSL certificate market.

Can you talk about valuation? How does valuation compare to the competitors?

We believe VRSN's stock price is depressed at current levels. Its NTM P/E ratio had consistently stayed above 20x until last fall, and at 16.4x currently it is well below its 5-year average of 23.0x. The current multiple is a significant discount to a nominal peer group of Internet firms, although there is no direct comparable. Using a discounted cash flow framework, we believe VRSN may be as much as 30% undervalued at the current price. We estimate that the stock could trade north of \$40 in the next three to five years.

What is the current sentiment on the stock? How does your view differ from the consensus?

The above valuation discount is likely a function of two issues. First, on June 8, 2009, the 9th Circuit Court of Appeals remanded CFIT's previously dismissed antitrust suit back to the district court. CFIT claims that the 2006 contract between ICANN and VRSN to maintain the dot.com registry was awarded non-competitively and that the presumptive right of renewal is anticompetitive. While we take the ruling seriously, we believe VRSN should ultimately win the case. The agreement between ICANN and VRSN was reviewed by members of the Department of Commerce and approved. VRSN had won the dot.net contract in a competitive process a year earlier and had demonstrated technological and scale superiority.

Second, VRSN was hurt by the economic slowdown in both its DNS and SSL businesses, which crimped new business formations and e-commerce transactions. VRSN's DNS business appears to have stabilized over the past couple of quarters.

Does the company's management play a role in your position? If so, how?

One of the theses supporting our investment in VRSN was the return of Chairman and founder Jim Bidzos to the role of President and CEO in 2008. Mr. Bidzos returned after an ill-fated attempt by the prior CEO to diversify VRSN into several businesses outside its core competency. Mr. Bidzos promptly began to divest those 13 businesses, a process recently completed, and VRSN is a more focused company now. Mark McLaughlin, who

held a number of key positions at the company from 2000-2007, returned to the company in January 2009 and took over the roles of President and CEO from Mr. Bidzos in August.

What catalysts do you see that could move the stock?

VRSN has several catalysts on the horizon that could get the stock moving higher. Under its agreement with ICANN, VRSN is allowed to increase prices in four of the six contract years by 7% and 10% for dot.com and dot.net, respectively. VRSN opted not to take the increase in 2009 due to the weak economy, then on December 17th VRSN announced the maximum price increases to take effect in July 2010, sending the stock up +10% immediately.

EXHIBIT C-13

Verisign: Time To Make Some Real Money

Jun.29.16 | About: VeriSign, Inc. (VRSN)

Summary

- Shares are up 35% over the past 12 months.
- The company is essentially a regulated monopoly in domain names.
- The company's competitive advantages and reasonable valuation should allow it to break out to all-time highs.

VeriSign (NASDAQ:VRSN) is a provider of domain registrations for many common Internet address suffixes, such as .com and .net. Shares have steadily increased over the years with better-than-expected revenue and profit margin results. The advent of additional series of domain names for international markets and other domain suffixes should be a tailwind for the industry for some time to come.


VeriSign's exclusive contract with the Internet Corporation for Assigned Names and Numbers (ICANN) gives the company a significant barrier to entry for competitors. The company's recurring revenue model has proven to be a beacon in volatile and uncertain markets. With the stock now up 35% over the past 12 months and poised to breakout above the all-time high set in December, this could be a good time for long-term investors to buy shares.



Business model

The domain name industry is highly regulated, and VeriSign acts as a regulated monopoly in the .com and .net domain industry. Even with its limitations from regulations, this industry continues to grow tremendously with 314 million domain names registered globally in Q4 2015, a 9% increase from the year prior. Individuals and businesses will continue to secure domain names through VeriSign's platform for themselves and brands well into the future. We expect this to continue.

Of the 139.6 million .com and .net domain names in the world, VeriSign controls all of them. As you'll see below, VeriSign's stranglehold on the .com and .net domain names should give the company a solid recurring revenue model for some time to come, as well as participating in the growth of other domain name add-ons such as .edu, .co, and .gov. Its current user base and the potential for additional users make this company one to watch. *(barring any change in its exclusive relationship with the government for .com and .net domains)*

 Like this article

Verisign: Time To Make Some Real Money

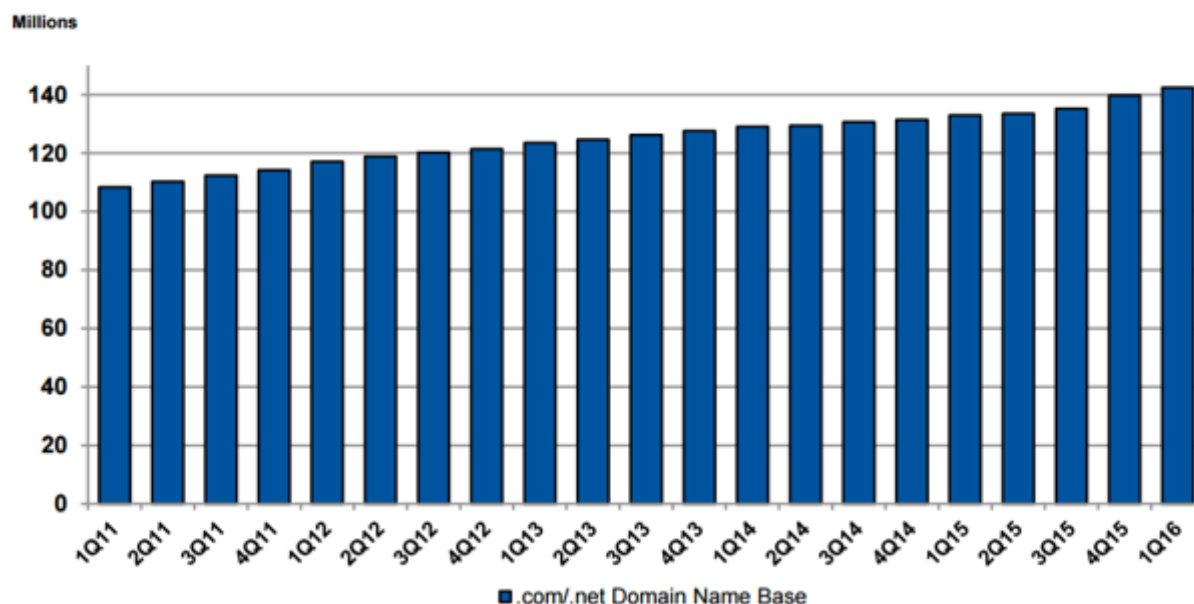
Jun.29.16 | About: VeriSign, Inc. (VRSN)

Global leader in domain names registration services acts as a regulated monopoly

As we mentioned briefly, VeriSign has an exclusive contract with ICANN (regulatory agency for the internet) and the U.S. Department of Commerce that gives the company a unique competitive advantage and barrier to entry for competitors. In the domain name registration services industry, VeriSign is essentially a regulated monopoly in top-level domains (TLDs), such as .com (126.6 million names) and .net (15.9 million names), which you can see in the figure below. These figures make VeriSign the ONLY player in these highly sought after domain suffixes. It also operates two of the thirteen Internet root servers in the world, which are highly regulated by U.S. agencies.

Domain Name Base⁽¹⁾ at 142.5 Million Names, Up 7.1% Y/Y

126.6 Million .com Names and 15.9 Million .net Names



Second-level domain names in the TLDs are also maintained in VeriSign's master directory. The company also has an exclusive registry for .tv and .cc TLDs, and operates the .gov, .jobs, and .edu TLDs' back-end registry systems. As you can see, the company is tied in directly and completely to purchasing and registering domain names that is vital to the internet. Because of the company's contracts with U.S. agencies, it creates high barriers to entry that make its systems almost impossible to replicate and provide for limited competition.

Solid position to provide additional products and services

VeriSign has an incredible user base, and with this user base, it should be able to leverage its positions to introduce additional services and products that have higher margins and are less regulated. .Com and .net domain are difficult to increase fees because of how regulated the industry is for those domains. However, other domains such as .cc, .co, and .tv do not have the same restrictions on pricing.



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Verisign: Time To Make Some Real Money

Jun.29.16 | About: VeriSign, Inc. (VRSN)

The company already has incredible infrastructure, as well as unique expertise in the industry which should allow it to create value-added services and products for its current and future user base. This makes any additional services and products incredibly scalable since the infrastructure is already in place. Such services and products include security and marking intelligence and service and domain protection. The vital and low-cost nature of the business model makes this a recurring revenue, high margin business.

Shares are reasonably valued and management is shareholder friendly

VeriSign has a very strong balance sheet with cash and marketable securities of \$1.89 billion and long-term debt of \$1.23 billion. The company's debt has increased over the past five years, but its debt levels appear reasonable based on increases in revenue and free cash, with interest expense eating up a bit less than 20% of operating income. And, for such a high-quality business, shares appear to be reasonably priced at an FCF yield of 5.48%.

Because VeriSign generates so much free cash flow - about \$629.3 million during 2015 - the company can buy back quite a few of its shares in addition to paying a sizable dividend sometime in the future. The share count has declined by about 26% since the end of 2010, and VeriSign continues to spend heavily on buybacks, shelling out \$622 million during the 2015 fiscal year (9.3 million shares).

Free Cash Flow (\$M)	FY12	Q113	Q213	Q313	Q413	FY13	Q114	Q214	Q314	Q414	FY14	Q115	Q215	Q315	Q415	FY15	Q116
Cash Flow from Operating Activities	537.6	150.6	146.8	134.5	147.4	579.4	141.6	121.1	167.7	170.5	600.9	132.7	175.0	155.3	188.5	651.5	143.6
Excess Tax Benefits from Stock-Based Awards	18.4	11.8	5.8	12.5	(10.8)	19.3	0.0	15.3	(6.7)	(2.5)	6.1	6.0	5.4	8.1	(1.0)	18.5	6.0
Total	556.0	162.4	152.6	147.0	136.7	598.7	141.6	136.4	161.0	168.0	607.0	138.7	180.4	163.4	187.6	670.0	149.6
Acquisition of Property and Equipment, Net	(53.0)	(17.1)	(20.4)	(12.7)	(15.4)	(65.6)	(11.3)	(7.5)	(11.3)	(9.2)	(39.3)	(13.0)	(8.8)	(6.8)	(12.0)	(40.7)	(7.1)
Total Free Cash Flow	503.0	145.3	132.2	134.3	121.3	533.1	130.3	128.9	149.7	158.8	567.7	125.6	171.5	156.6	175.6	629.3	142.6

The company has proven itself to be incredibly shareholder friendly in the past, returning capital of about \$3.5 billion to shareholders in the form of share repurchases over the past 5 years. And there appears to be no end in sight. As long as the company continues to

generate free cash, and can repurchase shares at a reasonable price, we should continue to see a share buyback in place for the company.



Like this article

Verisign: Time To Make Some Real Money

Jun.29.16 | About: VeriSign, Inc. (VRSN)

VeriSign has generated over \$2.1 billion of free cash flow in the past 5 years. It's been able to accomplish this level of success through managing working capital at a highly disciplined level. And its CapEx discipline has helped it focus on reinvesting on things that drive the growth of the business.

Also, management has been able to generate returns on capital of over 150% in each of the past three years, which shows its ability to allocate capital efficiently and effectively. Also, SG&A has declined steadily over the years as a percentage of revenue, proving that management keeps a close eye on costs. The returns on capital and cost control show just how strong the management team and the business are in the industry.

Concerns

VeriSign still operates in a highly regulated industry. Regulation is great because it decreases competition and makes it difficult for new incumbents, but it's also an issue because it reduces margins unnaturally. It always makes us nervous to see a company's top revenue source tied to contracts with regulatory authorities, especially the renewal of the deal with regulators ending in November of 2018. While we foresee an extension of the deal, it still makes investors nervous.

As with any technology company, the risk of cyber attacks continues to grow drastically. If a security breach were to occur, it could alienate the current user base and cause them to change to another domain service company and harm its reputation.

Lastly, the negative tangible book value is somewhat of a concern, but not a deal killer. We could see tangible book turn positive if the company choose to accumulate cash on the balance sheet instead of repurchasing shares.

Technical analysis

Shares are up 35% in the past 12 months alone, and look poised to breakout above the all-time highs of \$93.94 set in December of last year. As we can see in the figure below, the stock appears to have room to run from the RSI indicator and has decent support at the \$77-\$80 level. Also, 50 and 200-day moving averages are trending upwards. The stock looks poised to break the recent resistance area of \$90-92.50 per share. A break of that level and we would not be surprised to see \$100 in short order.



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Verisign: Time To Make Some Real Money

Jun.29.16 | About: VeriSign, Inc. (VRSN)



Investor takeaway

VeriSign is a long-term play - its shares aren't for those looking to make a quick buck. The company is relatively unchanged year to date, but its stock looks poised to break out to new highs. VeriSign has the scale and technological advantage versus many of its competitors. The company continues to see increases in revenue and cash flow on the back of its strong competitive advantages and business model.

It's not every day you find businesses with a great moat like VeriSign trading at a reasonable valuation. VeriSign looks attractive at current levels with a P/FCF of 18.16, especially for long-term investors with the ability to look past short-term volatility.

Notable shareholders: Berkshire Hathaway | Paul Singer | Ron Baron | Joel Greenblatt

Please share your thoughts in the comments section below, as I learn just as much from you as you do from me. It can be a time-consuming endeavor, but I answer all of your comments and questions myself. Your patience and understanding are greatly appreciated. I will get to your remarks as soon as possible.

Source of Figures and Stats Above: 2015 Annual Report, Q1 2016 Results

Disclosure: I/we have no positions in any stocks mentioned, and no plans to initiate any positions within the next 72 hours.

I wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it (other than from Seeking Alpha). I have no business relationship with any company whose stock is mentioned in this article.

EXHIBIT C-14

THE DOMAIN NAME INDUSTRY BRIEF

VOLUME 15 – ISSUE 1 – FEBRUARY 2018

THE VERISIGN DOMAIN REPORT

AS A GLOBAL LEADER IN DOMAIN NAMES AND INTERNET SECURITY, VERISIGN REVIEWS THE STATE OF THE DOMAIN NAME INDUSTRY THROUGH A VARIETY OF STATISTICAL AND ANALYTICAL RESEARCH. VERISIGN PROVIDES THIS BRIEFING TO HIGHLIGHT IMPORTANT TRENDS IN DOMAIN NAME REGISTRATIONS, INCLUDING KEY PERFORMANCE INDICATORS AND GROWTH OPPORTUNITIES, TO INDUSTRY ANALYSTS, MEDIA AND BUSINESSES.



VERISIGN®



EXECUTIVE SUMMARY

The fourth quarter of 2017 closed with approximately 332.4 million domain name registrations across all top-level domains (TLDs), an increase of approximately 1.7 million domain name registrations, or 0.5 percent from the third quarter of 2017.^{1,2} Domain name registrations have grown by 3.1 million, or 0.9 percent, year over year.^{1,2}

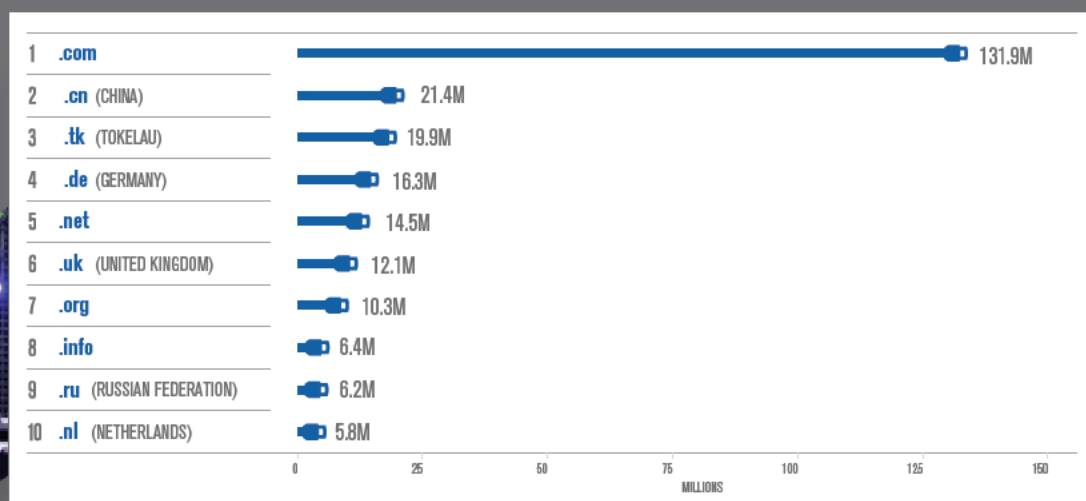
Total country-code TLD (ccTLD) domain name registrations were approximately 146.1 million, a 1.0 percent increase over the third quarter of 2017, and a 2.4 percent increase year over year.^{1,2}

The .com and .net TLDs had a combined total of approximately 146.4 million domain name registrations in the domain name base³ at the end of the fourth quarter of 2017. This represents a 2.9 percent increase year over year. As of Dec. 31, 2017, the .com domain name base totaled 131.9 million domain name registrations, while the .net domain name base totaled 14.5 million domain name registrations.

New .com and .net domain name registrations totaled 9.0 million during the fourth quarter of 2017 compared to 8.8 million for the fourth quarter in 2016.

TOP 10 LARGEST TLDs BY NUMBER OF REPORTED DOMAIN NAMES

Source: Zooknic, Q4 2017; Verisign, Q4 2017; Centralized Zone Data Service, Q4 2017



As of Dec. 31, 2017, the largest TLDs were .com, .cn, .tk, .de, .net, .uk, .org, .info, .ru and .nl.¹

The average sale price for the top 10 .com domain names reported by DN Journal as sold in the aftermarket in Q4 2017.⁴

\$469K
USD



Growth of .com and .net domain names redirecting to popular global social media and e-commerce sites compared to Q4 2016.⁵

INSTAGRAM
44%

YOUTUBE
18%

LINKEDIN
18%

FACEBOOK
17%

ETSY
16%

TWITTER
16%



1 The figure(s) includes domain names in the .tk ccTLD. .tk is a free ccTLD that provides free domain names to individuals and businesses. Revenue is generated by monetizing expired domain names. Domain names no longer in use by the registrant or expired are taken back by the registry and the residual traffic is sold to advertising networks. As such, there are no deleted .tk domain names. http://www.businesswire.com/news/home/20131216006048/en/Freenom-Closes-3M-Series-Funding#_UxeUGNJdV9s. The .tk zone reflected here is based on data from Q3 2016, which is the most recent data available.

2 The generic top-level (gTLD) and ccTLD data cited in this brief: (i) includes ccTLD Internationalized Domain Names, (ii) is an estimate as of the time this brief was developed and (iii) is subject to change as more complete data is received.

3 The domain name base is the active zone plus the number of domain names that are registered but not configured for use in the respective Top-Level Domain zone file plus the number of domain names that are in a client or server hold status.

4 Source: DN Journal (accessed Jan. 12, 2018) <http://www.dnjournal.com/archive/domainsales/2017/2017-top-100-sales-charts.htm>.

5 Source: VeriSign, Inc. data and Q4 2016 DNIB.

LARGEST ccTLDs BY NUMBER OF REPORTED DOMAIN NAMES

Source: Zooknic, Q4 2017

For further information on the Domain Name Industry Brief methodology, please refer to the last page of this brief.

Total ccTLD domain name registrations were approximately 146.1 million in the fourth quarter of 2017, with an increase of 1.4 million domain name registrations, or a 1.0 percent increase compared to the third quarter of 2017.^{1,2} ccTLDs increased by approximately 3.4 million domain name registrations, or 2.4 percent, year over year.^{1,2} Without including .tk, ccTLD domain name registrations increased approximately 0.7 million in the fourth quarter of 2017, a 0.5 percent increase compared to the third quarter of 2017 and ccTLDs increased by approximately 2.3 million domain name registrations, or 1.8 percent, year over year.



The top 10 ccTLDs, as of Dec. 31, 2017, were .cn (China), .tk (Tokelau), .de (Germany), .uk (United Kingdom), .ru (Russian Federation), .nl (Netherlands), .br (Brazil), .eu (European Union), .fr (France) and .au (Australia).^{1,2} As of Dec. 31, 2017, there were 302 global ccTLD extensions delegated in the root, including Internationalized Domain Names (IDNs), with the top 10 ccTLDs composing 65.5 percent of all ccTLD domain name registrations.^{1,2}

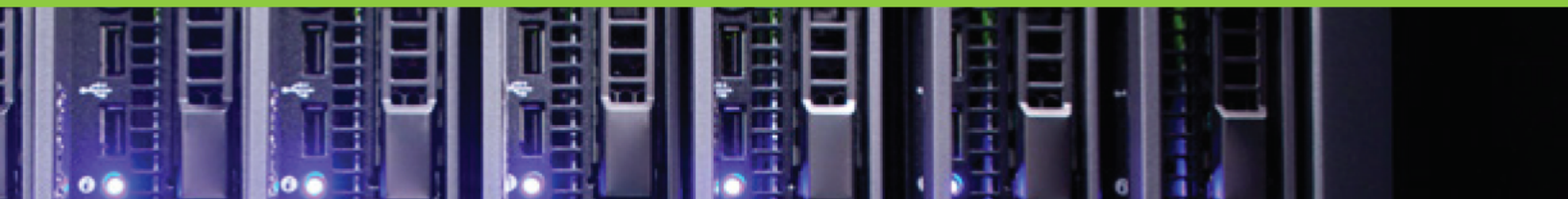
TOP 10 TRENDING KEYWORDS IN .COM AND .NET IN Q4 2017

This chart represents the top 10 trending keywords registered in English in .com and .net domain name registrations for the fourth quarter of 2017.

Verisign publishes a monthly blog post highlighting domain name registration keyword trends that reflects trends from the previous month. Using the same methodology, this list reflects the keywords with the highest percentage of registration growth relative to the preceding quarter.

This method is intended to highlight the new and changing keywords seen in .com and .net domain name registrations. By evaluating the keywords with the largest percentage shift, the top 10 that have seen a significant shift in end-user interest quarter over quarter can be identified.

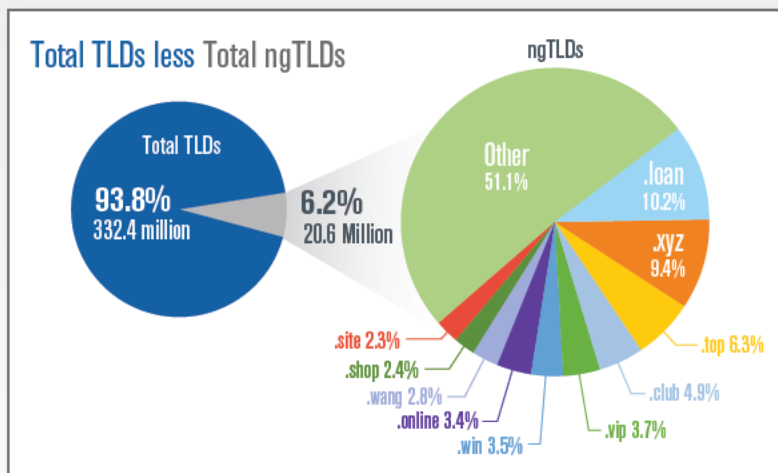
Rank	.com	.net
1	coin	coin
2	crypto	crypto
3	bit	bit
4	block	block
5	chain	bitcoin
6	bitcoin	coins
7	coins	blockchain
8	marijuana	currency
9	blockchain	email
10	currency	cryptocurrency



NEW gTLDs AS PERCENTAGE OF TOTAL TLDs

Source: Centralized Zone Data Service, Q4 2017 and Zooknic, Q4 2017

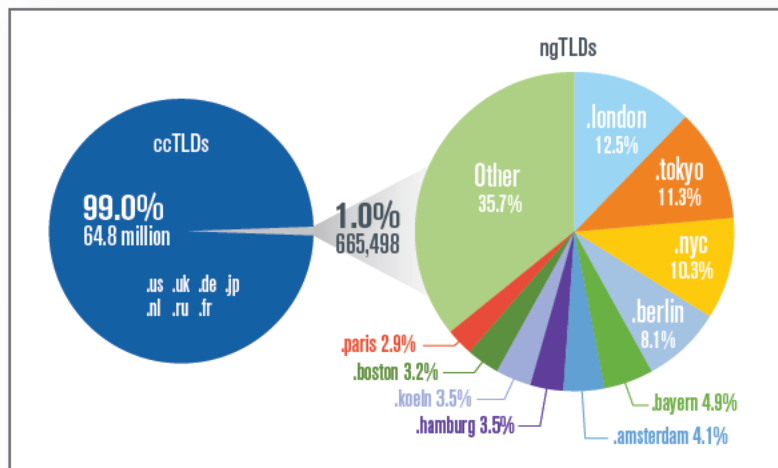
As of Dec. 31, 2017, total new gTLD (ngTLD) domain name registrations were approximately 20.6 million or 6.2 percent of total domain name registrations across all TLDs. This is a decrease of approximately 0.5 million domain name registrations, or 2.4 percent, compared to the third quarter of 2017. ngTLDs decreased by approximately 5.0 million domain name registrations, or 19.5 percent, year over year. The top 10 ngTLDs represented 48.9 percent of all ngTLD domain name registrations. The following charts show ngTLD domain name registrations as a percentage of overall TLD domain name registrations, and also the top 10 ngTLDs as a percentage of all ngTLD domain name registrations for the fourth quarter of 2017.



GEOGRAPHICAL NEW gTLDs AS PERCENTAGE OF TOTAL CORRESPONDING GEOGRAPHICAL gTLDs

Source: Centralized Zone Data Service, Q4 2017 and Zooknic, Q4 2017

As of Dec. 31, 2017, there were 39 ngTLDs delegated that meet the following criteria: 1) has a geographical focus and 2) has more than 1,000 domain name registrations since entering general availability (GA). The chart on the left summarizes the domain name registrations as of Dec. 31, 2017 for the listed geographical ngTLDs and the corresponding ccTLDs within the same geographic region. In addition, the chart on the right highlights the top 10 geographical ngTLDs as a percentage of the total geographical ngTLDs.



ABOUT VERISIGN

Verisign, a global leader in domain names and internet security, enables internet navigation for many of the world's most recognized domain names and provides protection for websites and enterprises around the world. Verisign ensures the security, stability and resiliency of key internet infrastructure and services, including the .com and .net domains and two of the internet's root servers, as well as performs the root-zone maintainer function for the core of the internet's Domain Name System (DNS). Verisign's Security Services include Distributed Denial of Service Protection and Managed DNS. To learn more about what it means to be Powered by Verisign, please visit Verisign.com.

LEARN MORE

To view the average daily number of queries Verisign processes, please go to the "What We Do" section at Verisign.com.⁶ To access the archives for the Domain Name Industry Brief, please go to Verisign.com/DNIBArchives. Email your comments or questions to domainbrief@verisign.com.

METHODOLOGY

The data presented in this brief for ccTLDs, including quarter-over-quarter and year-over-year metrics, reflects the information available to Verisign at the time of this brief and may incorporate changes and adjustments to previously reported periods based on additional information received since the date of such prior reports, so as to more accurately reflect the growth rate of domain name registrations of the ccTLDs. In addition, the data available for this brief may not include data for all of the 302 ccTLD extensions that are delegated to the root, and includes only the data available at the time of the preparation of this brief. For gTLD and ccTLD data cited with Zooknic as a source, the Zooknic analysis uses a comparison of domain name root zone file changes supplemented with Whois data on a statistical sample of domain names, which lists the registrar responsible for a particular domain name, and the location of the registrant. The data has a margin of error based on the sample size and market size. The ccTLD data is based on analysis of root zone files. For more information, see ZookNIC.com.

⁶ The "What We Do" section is located on Verisign.com under the "About Verisign" tab and under the sub-tab "Overview."

EXHIBIT C-15



Verisign Statement on .com Registry Agreement Renewal

RESTON, VA - Nov. 1, 2012 - VeriSign, Inc. (NASDAQ: VRSN), the trusted provider of Internet infrastructure services for the networked world, today provided a statement on the pending review by the Department of Commerce of Verisign's .com Registry Agreement renewal with Internet Corporation for Assigned Names and Numbers (ICANN) to serve as the authoritative registry operator for the .com registry.

The .com Registry Agreement was approved by Verisign's Board of Directors on June 16, 2012, ICANN's Board of Directors on June 23, 2012, and tendered by Verisign to the Commerce Department for its review and approval on June 26, 2012. The Commerce Department is reviewing the .com Registry Agreement as required by the Cooperative Agreement (<http://www.ntia.doc.gov/page/verisign-cooperative-agreement>) between the Commerce Department and Verisign. While the authority to approve the renewal rests exclusively with the Commerce Department, the Commerce Department seeks inputs from other U.S. agencies, which includes the Department of Justice.

Both the Commerce Department and Justice Department were involved in reviewing the current .com Registry Agreement in 2006. The Commerce Department approved the current .com Registry Agreement as being in the public interest in 2006. The approved version of 2006 included pricing terms and the ability to raise prices in four of six years. This price increase structure, among other restrictions, was negotiated with the Justice Department in order to cap Verisign's ability to increase prices, a structure deemed then by the Commerce Department to be in the public interest. The proposed .com Registry Agreement tendered to the Commerce Department for review and approval in June 2012 is virtually identical to the current .com Registry Agreement approved by the Commerce Department in 2006 except for new provisions regarding indemnification, audit rights and more stringent service levels (SLAs).

The Commerce Department and Verisign entered into Amendment 30 (http://www.ntia.doc.gov/files/ntia/publications/amend30_11292006.pdf) to the Cooperative Agreement in 2006 to address renewals of the .com Registry Agreement in 2012 and thereafter. The renewal of the .com Registry Agreement in 2012 is the first exercise of the renewal process described in Amendment 30 of the Cooperative Agreement.

Amendment 30 of the Cooperative Agreement provides that Verisign shall not enter into any renewal of the .com Registry Agreement under Section 4.2 (<http://www.icann.org/en/about/agreements/registries/com>) of the agreement (which is the specific provision of the .com Registry Agreement under which Verisign and ICANN have approved the renewal) without the Commerce Department's prior written approval. Amendment 30 provides that the Commerce Department shall provide such written approval if it concludes that approval will serve the public interest in (a) the continued security and stability of the Internet domain name system and the operation of the .com registry, and (b) the provision of .com registry services offered at reasonable prices, terms and conditions.

Amendment 30 provides that the Commerce Department and Verisign have an expectancy of renewal of the .com Registry Agreement. Amendment 30 requires Verisign to apply to the Commerce Department for approval of the renewal 90 days prior to the expiration of the current term on Nov. 30, 2012, which meant applying on or before Sept. 1, 2012. Verisign completed the renewal of the .com Registry Agreement with ICANN, following a public comment period and approval by the board of directors of ICANN and the board of directors of Verisign, on June 23, 2012. Verisign applied to the Commerce Department on June 26, 2012, over two months ahead of the date for application specified in the Cooperative Agreement. If the Commerce Department does not approve or needs more time to review the renewal prior to Nov. 30, 2012, then Amendment 30 provides that the Commerce Department shall agree to an extension of the term of the .com Registry Agreement for six months or such other term as the Commerce Department and Verisign shall mutually agree.

The Commerce Department has acknowledged Verisign's record on security and stability, the first criteria of the public interest determination under Amendment 30. Verisign was informed in October 2012 that the Commerce Department, with input from

the Justice Department, is reviewing the pricing terms in the .com Registry Agreement under the second prong of the Amendment 30 public interest test: The provision of .com registry services offered at reasonable prices, terms and conditions.

Verisign operates the .com registry at the highest SLAs of any generic Top-Level Domain and the new .com Registry Agreement approved by the Boards of Directors of ICANN and Verisign impose even more stringent SLAs than the current .com Registry Agreement. The .com registry has an unequaled record of achievement, with full availability of DNS resolution in .com for more than 15 consecutive years. The economic activity supported by the .com registry is significant by any measure in an environment where the consequences of a failure of even a very short duration or degradation of the Domain Name System (DNS) resolution service, due to either a cyber attack or failure of hardware, software, or personnel, would have significant economic and non-economic impacts to the global economy. The reliability of .com over the years has provided the stable platform on which stakeholders have made substantial economic investment.

The level of security and stability offered by Verisign is only possible with investments in overcapacity and redundancy, network security, intellectual property (IP) and in human capital: The engineers and employees at Verisign who operate the .com registry and ensure its security and stability. The pricing terms of the .com Registry Agreement enable Verisign to make these investments, develop the necessary IP, know-how and purpose-built systems, respond to new threats to stability as they emerge, and recruit and retain the specialized talent necessary to maintain our network, including dozens of globally distributed constellation sites and data centers in the U.S. and elsewhere.

Verisign believes that under the terms of Amendment 30 the public interest is served in the security and stability of the DNS and through Verisign's operation of the .com registry. The stakeholders that rely on the availability and secure functioning of the DNS are numerous, including businesses large and small, and individual Internet users.

Verisign also believes that under the terms of Amendment 30 the public interest is served by the provision of .com registry services offered at reasonable prices, terms and conditions. Verisign believes that \$7.85 per year for a .com domain name and the increases contemplated by the current pricing terms are reasonable prices for unlimited access to .com resolution services, given the security and stability offered by the .com registry, and particularly in light of accelerating query loads and increasing cyber threats. The current pricing terms are also reasonable because, unlike other registry service providers, Verisign offers performance and reliability under the most stringent contract-mandated SLAs, may not monetize any user registration data, and has the most restrictive price caps on its service of any gTLD. The current price of a .com domain name was anticipated in 2006 when the current .com Registry Agreement was approved by the Commerce Department as in the public interest. Any review of the pricing terms of the .com Registry Agreement by the Commerce and Justice Departments is bounded by the provisions of Amendment 30.

Under Amendment 30's standard that renewal of the .com Registry Agreement serve the public interest in (1) the continued security and stability of the Internet DNS and the operation of the .com registry, and (2) the provision of .com registry services offered at reasonable prices, terms and conditions, coupled with the Amendment 30's expectancy of renewal, Verisign believes it serves the public interest for the Commerce Department to approve the renewal of the .com Registry Agreement as approved by the Board of Directors of ICANN and Verisign in June 2012.

While the review process with the Commerce Department may extend beyond Nov. 30, 2012, it could also be concluded by Nov. 30, 2012. In either case, Verisign expects to continue to run the .com registry. Verisign believes that as of this date, the Department of Justice has substantially concluded its own review process.

Verisign will provide updates when appropriate regarding new information on the .com Registry Agreement renewal.

About VeriSign

VeriSign, Inc. (NASDAQ: VRSN) is the trusted provider of Internet infrastructure services for the networked world. Billions of times each day, Verisign helps companies and consumers all over the world connect between the dots. Additional news and information about the company is available at www.verisigninc.com.

Information available on, or accessible through, websites mentioned in this statement is not incorporated herein by reference.

VRSNF



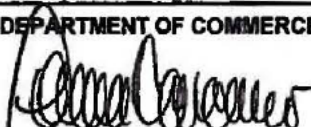
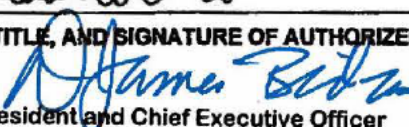
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Statements in this announcement other than historical data and information constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 as amended and Section 21E of the Securities Exchange Act of 1934 as amended. These statements involve risks and uncertainties that could cause Verisign's actual results to differ materially from those stated or implied by such forward-looking statements. The potential risks and uncertainties include, among others, the uncertainty of whether the .com Registry Agreement renewal will occur on or before November 30, 2012, if at all, and if the .com Registry Agreement is renewed, whether it will be renewed on the terms previously approved by ICANN's and Verisign's Board of Directors; the uncertainty of future revenue and profitability and potential fluctuations in quarterly operating results due to such factors as increasing competition, pricing pressure from competing services offered at prices below our prices and changes in marketing and advertising practices, including those of third-party registrars; changes in search engine algorithms and advertising payment practices; challenging global economic conditions; challenges to ongoing privatization of Internet administration; the outcome of legal or other challenges resulting from our activities or the activities of registrars or registrants, or litigation generally; new or existing governmental laws and regulations; changes in customer behavior, Internet platforms and web-browsing patterns; the uncertainty of whether Verisign will successfully develop and market new services; the uncertainty of whether our new services will achieve market acceptance or result in any revenues; system interruptions; security breaches; attacks on the Internet by hackers, viruses, or intentional acts of vandalism; whether Verisign will be able to continue to expand its infrastructure to meet demand; the uncertainty of the expense and timing of requests for indemnification, if any, relating to completed divestitures; and the impact of the introduction of new gTLDs, any delays in their introduction and whether our gTLD applications or the applicants' gTLD applications for which we have contracted to provide back-end registry services will be successful. More information about potential factors that could affect the Company's business and financial results is included in Verisign's filings with the Securities and Exchange Commission, including in the Company's Annual Report on Form 10-K for the year ended December 31, 2011, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Verisign undertakes no obligation to update any of the forward-looking statements after the date of this announcement.

Contacts:Investor Relations: David Atchley, **Contact Information Redacted**Media Relations: Jeannie McPherson, **Contact Information Redacted**

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EXHIBIT C-16

FORM CD-451 (REV 10/98)		U.S. DEPARTMENT OF COMMERCE		
AMENDMENT TO FINANCIAL ASSISTANCE AWARD		GRANT	<input checked="" type="checkbox"/> COOPERATIVE AGREEMENT	
		ACCOUNTING CODE <p style="text-align: center;">**See Attached**</p>		
		AWARD NUMBER NCR-92-18742		
RECIPIENT NAME VeriSign, Inc. VeriSign, Inc.		AMENDMENT NUMBER 32		
STREET ADDRESS Contact Information Redacted		EFFECTIVE DATE		
Contact Information Redacted		EXTEND WORK COMPLETION TO November 30, 2018		
CFDA NO. AND PROJECT TITLE:				
COSTS ARE REVISED AS FOLLOWS:	PREVIOUS ESTIMATED COST	ADD	DEDUCT	TOTAL ESTIMATED COST
FEDERAL SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
RECIPIENT SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL ESTIMATED COST	\$0.00	\$0.00	\$0.00	\$0.00
REASON(S) FOR AMENDMENT <p>This agreement is hereby amended to (1) approve the .com Registry Agreement (as revised); (2) cap the price of .com registrations at \$7.85 and allow VeriSign to take price increases only upon prior written approval of the Department; (3) permit VeriSign to petition the Department for relief from price restrictions if it can demonstrate that it no longer has market power; (4) extend the expiration date until November 30, 2018; and (5) affirm that the Department's approval of the .com Registry Agreement does not confer antitrust immunity.</p> <p>EXCEPT AS SPECIFIED IN THIS AMENDMENT, ALL PREVIOUS TERMS AND CONDITIONS REMAIN IN EFFECT.</p>				
<p>This Amendment approved by the Grants Officer is issued in triplicate and constitutes an obligation of Federal funding. By signing the three documents, the Recipient agrees to comply with the Amendment provisions checked below and attached, as well as previous provisions incorporated into the Award. Upon acceptance by the Recipient, two signed Amendment documents shall be returned to the Grants Officer and the third document shall be retained by the Recipient. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally terminate this Amendment.</p>				
<input checked="" type="checkbox"/> Special Award Conditions <input type="checkbox"/> Line Item Budget <input type="checkbox"/> Other:				
SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER  Jannet Cancino			DATE 11/29/2012	
TYPED NAME, TYPED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL  D. James Bidzos, President and Chief Executive Officer			DATE 11/29/2012	

Award Number: NCR-92-18742

Award ACCS Information

Bureau Code	FCFY	Project-Task	Org Code	Obj Class	Obligation Amount

Award Contact Information

Contact Name	Contact Type	Email	Phone

NIST Grants Officer:

Jannet Cancino

Contact Information Redacted

NIST Grants Specialist:

Nuria Martinez

Contact Information Redacted

SPECIAL AWARD CONDITIONS
Cooperative Agreement No. NCR 92-18742

AMENDMENT NUMBER THIRTY-TWO (32)

Whereas the Department finds that approval of the renewal of the .com Registry Agreement attached hereto as Exhibit A, on the terms and conditions set forth below, is in the public interest; **Therefore**, Verisign and the Department agree as follows:

1. Pursuant to Section I.B.2.A. of Amendment 19, Verisign Relationship with ICANN, as amended by Section 2 of Amendment 30, the .com Registry Agreement attached hereto as Exhibit A is approved.

2. The Maximum Price charged by VeriSign for registration or renewal of a .com domain name during the term of the .com Registry Agreement approved hereby shall not exceed US \$7.85; provided, however, that VeriSign shall be entitled to increases in the Maximum Price in accordance with Section 7.3(d)(ii) of the .com Registry Agreement; provided further that VeriSign shall not exercise such right unless the Department provides prior written approval that the exercise of such right will serve the public interest, such approval not to be unreasonably withheld.

3. (a) At any time after the Effective Date of this Amendment 32, Verisign shall be entitled to seek removal of the pricing restrictions set forth in Section 7.3 of the .com Registry Agreement attached hereto if it demonstrates to the Department that market conditions no longer warrant such restrictions. Verisign shall be deemed to have made such a showing upon demonstrating that competition from other top level domains, use of alternative Internet navigation techniques (including search engines, browsers and URL shorteners, among others), reduced demand for domain names, or other factors are sufficient to constrain Verisign's pricing of Registry Services at the current Maximum Price.

(b) Upon an application by Verisign for removal of pricing restrictions pursuant to Section 3(a) of this Amendment 32, the Department shall consult with Verisign in any evaluation of its application. The Department shall issue a written decision explaining its reasons for granting or denying, in whole or in part, such application within 90 days after submission of the application, or within 90 days after receipt of any additional materials requested by the Department to evaluate the application, whichever date is later. If the Department determines that additional time is needed to complete its review, then the parties shall agree to an extension of time for six months or such other reasonable time as the Department and Verisign may mutually agree.

4. Section 1.B.10 of Amendment 19, Expiration Date, is amended as follows:

The Expiration Date of the Cooperative Agreement shall be November 30, 2018, except that the Department of Commerce may in its sole discretion extend the term of the Cooperative Agreement (1) for a period equal to the length of any term of renewal under Section 4.2 or any other extension or continuation of the Registry Agreement (whether or not the Registry Agreement remains in effect

through that term); (2) for a period equal to the length of the term of a substitute registry agreement; or (3) for one year to permit the Department to exercise its rights under section II.9 of this amendment, as amended, if the Department does not approve any renewal under Section 4.2, or any other extension or continuation of or substitution for, the Registry Agreement.

5. The Department's approval of the .com Registry Agreement is not intended to confer federal antitrust immunity on Verisign with respect to the .com Registry Agreement. Upon signature of both parties, Verisign will provide copies of the Registry Agreement to both the Grants Officer and the Federal Programs Officer.

6. Except as modified by this Amendment, the terms and conditions of this Cooperative Agreement, as previously amended, remain unchanged.

ATTACHMENT – Exhibit A

**.com Registry Agreement
(1 December 2012)**

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of 1 December 2012 by and between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and VeriSign, Inc. a Delaware corporation.

ARTICLE I INTRODUCTION

Section 1.1 Effective Date. The Effective Date for purposes of this Agreement shall be December 1, 2012.

Section 1.2 Top-Level Domain. The Top-Level Domain to which this Agreement applies is .com (“TLD”).

Section 1.3 Designation as Registry Operator. Upon the Effective Date, until the Expiration Date as defined in Section 4.1 hereof, ICANN shall continue to designate VeriSign, Inc. as the sole registry operator for the TLD (“Registry Operator”).

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Registry Operator’s Representations and Warranties.

(a) Organization; Due Authorization and Execution. Registry Operator is a corporation, duly organized, validly existing and in good standing under the laws of Delaware, and Registry Operator has all requisite power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by Registry Operator into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by Registry Operator.

(b) Statements made During Negotiation Process. The factual statements made in writing by both parties in negotiating this Agreement were true and correct in all material respects at the time made. A violation or breach of this subsection shall not be a basis for termination, rescission or other equitable relief, and, instead shall only give rise to a claim for damages.

Section 2.2 ICANN’s Representations and Warranties.

(a) Organization; Due Authorization and Execution. ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of California. ICANN has all requisite corporate power and authority to enter into this Agreement. All corporate approvals and actions necessary for the entrance by ICANN into this Agreement have been obtained and this Agreement has been duly and validly executed and delivered by ICANN.

ARTICLE III COVENANTS

Section 3.1 Covenants of Registry Operator. Registry Operator covenants and agrees with ICANN as follows:

(a) Preserve Security and Stability.

(i) ICANN Temporary Specifications or Policies. Registry Operator shall comply with and implement all specifications or policies established by the ICANN Board of Directors on a temporary basis, if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the ICANN Board of Directors reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the Stability or Security (as defined in Section 3.1(d)(iv)(G)) of Registry Services or the DNS (“Temporary Specification or Policies”). Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately implement the Consensus Policy development process set forth in ICANN’s Bylaws. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the temporary specification or policy and why the Board believes the specification or policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds 90 days, the ICANN Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such policy in effect until such time as it shall become a Consensus Policy as described in Section 3.1(b) below. If during such one year period, the temporary policy or specification does not become a Consensus Policy meeting the standard set forth in Section 3.1(b) below, Registry Operator shall no longer be required to comply with or implement such temporary policy or specification.

(b) Consensus Policies.

(i) At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at <http://www.icann.org/en/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN’s Bylaws and as set forth below.

(ii) “Consensus Policies” are those specifications or policies established (1) pursuant to the procedure set forth in ICANN’s Bylaws and due process, and (2) covering those topics listed in Section 3.1(b)(iv) below. The Consensus Policy development process and procedure set forth in ICANN’s Bylaws may be revised from time to time in accordance with ICANN’s Bylaws, and any Consensus Policy that is adopted through such a revised process and covering those topics listed in Section 3.1(b)(iv) below shall be considered a Consensus Policy for purposes of this Agreement.

(iii) For all purposes under this Agreement, the policies identified at <http://www.icann.org/en/general/consensus-policies.htm> shall be treated in the same manner and have the same effect as “Consensus Policies.”

(iv) Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names). Such categories of issues referred to in the preceding sentence shall include, without limitation:

(A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

(B) prohibitions on warehousing of or speculation in domain names by registries or registrars;

(C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

(D) maintenance of and access to accurate and up-to-date information concerning domain name registrations;

(E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and

(F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

(v) In addition to the other limitations on Consensus Policies, they shall not:

(A) prescribe or limit the price of Registry Services;

(B) modify the standards for the consideration of proposed Registry Services, including the definitions of Security and Stability (set forth below) and the standards applied by ICANN;

(C) modify the terms or conditions for the renewal or termination of this Agreement;

(D) modify ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c);

(E) modify the limitations on Consensus Policies or Temporary Specifications or Policies;

(F) modify the definition of Registry Services;

(G) modify the terms of Sections 7.2 and 7.3, below; and

(H) alter services that have been implemented pursuant to Section 3.1(d) of this Agreement (unless justified by compelling and just cause based on Security and Stability).

(vi) Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Specifications or Policies in which to comply with such policy or specification, taking into account any urgency involved.

In the event of a conflict between Registry Services (as defined in Section 3.1(d)(iii) below), on the one hand, and Consensus Policies developed in accordance with this Section 3.1(b) or any Temporary Specifications or Policies established pursuant to Section 3.1(a)(i) above, on the other hand, the Consensus Policies or Temporary Specifications or Policies shall control, notwithstanding any other provisions contained within this Agreement.

(c) Handling of Registry Data.

(i) Data Escrow. Registry Operator shall establish at its expense a data escrow or mirror site policy for the Registry Data compiled by Registry Operator. Registry Data, as used in this Agreement, shall mean the following: (1) data for domains sponsored by all registrars, consisting of domain name, server name for each nameserver, registrar id, updated date, creation date, expiration date, status information, and DNSSEC delegation signer ("DS") data; (2) data for nameservers sponsored by all registrars consisting of server name, each IP address, registrar id, updated date, creation date, expiration date, and status information; (3) data for registrars sponsoring registered domains and nameservers, consisting of registrar id, registrar address, registrar telephone number, registrar e-mail address, whois server, referral URL, updated date and the name, telephone number, and e-mail address of all the registrar's administrative, billing, and technical contacts; and, (4) domain name registrant data collected by the Registry Operator from registrars as part of or following registration of a domain name. The escrow agent or mirror-site manager, and the obligations thereof, shall be mutually agreed upon by ICANN and Registry Operator on commercially reasonable standards that are technically and practically sufficient to allow a successor registry operator to assume management of the TLD. To this end, Registry Operator shall periodically deposit into escrow all Registry Data on a schedule (not more frequently than weekly for a complete set of Registry Data, and daily for

incremental updates) and in an electronic format mutually approved from time to time by Registry Operator and ICANN, such approval not to be unreasonably withheld by either party. In addition, Registry Operator will deposit into escrow that data collected from registrars as part of offering Registry Services introduced after the Effective Date of this Agreement. The schedule, content, format, and procedure for escrow deposits shall be as reasonably established by ICANN from time to time, and as set forth in Appendix 1 hereto. Changes to the schedule, content, format, and procedure may be made only with the mutual written consent of ICANN and Registry Operator (which neither party shall unreasonably withhold) or through the establishment of a Consensus Policy as outlined in Section 3.1(b) above. The escrow shall be held under an agreement, substantially in the form of Appendix 2, as the same may be revised from time to time, among ICANN, Registry Operator, and the escrow agent.

(ii) Personal Data. Registry Operator shall notify registrars sponsoring registrations in the registry for the TLD of the purposes for which Personal Data (as defined below) submitted to Registry Operator by registrars, if any, is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. "Personal Data" shall refer to all data about any identified or identifiable natural person.

(iii) Bulk Zone File Access. Registry Operator shall provide bulk access to the zone files for the registry for the TLD to ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time. Bulk access to the zone files shall be provided to third parties on the terms set forth in the TLD zone file access agreement reasonably established by ICANN, which initially shall be in the form attached as Appendix 3 hereto. Changes to the zone file access agreement may be made upon the mutual written consent of ICANN and Registry Operator (which consent neither party shall unreasonably withhold).

(iv) Monthly Reporting. Within 20 days following the end of each calendar month, Registry Operator shall prepare and deliver to ICANN a report providing such data and in the format specified in Appendix 4.

(v) Whois Service. Registry Operator shall provide such whois data as set forth in Appendix 5.

(d) Registry Operations.

(i) Registration Restrictions. Registry Operator shall reserve, and not register any TLD strings (i) appearing on the list of reserved TLD strings attached as Appendix 6 hereto or (ii) located at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt> for initial (i.e., other than renewal) registration at the second level within the TLD.

(ii) Functional and Performance Specifications. Functional and Performance Specifications for operation of the TLD shall be as set forth in Appendix 7 hereto, and shall

address without limitation DNS services; operation of the shared registration system; and nameserver operations. Registry Operator shall keep technical and operational records sufficient to evidence compliance with such specifications for at least one year.

(iii) Registry Services. Registry Services are, for purposes of this Agreement, defined as the following: (a) those services that are both (i) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; and (ii) provided by the Registry Operator for the .com registry as of March 31, 2006, as the case may be; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above); (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above. Only Registry Services defined in (a) and (b) above are subject to the maximum price provisions of Section 7.3, below.

(iv) Process for Consideration of Proposed Registry Services. Following written notification by Registry Operator to ICANN that Registry Operator may make a change in a Registry Service within the scope of the preceding paragraph:

(A) ICANN shall have 15 calendar days to make a “preliminary determination” whether a Registry Service requires further consideration by ICANN because it reasonably determines such Registry Service: (i) could raise significant Security or Stability issues or (ii) could raise significant competition issues.

(B) Registry Operator must provide sufficient information at the time of notification to ICANN that it may implement such a proposed Registry Service to enable ICANN to make an informed “preliminary determination.” Information provided by Registry Operator and marked “CONFIDENTIAL” shall be treated as confidential by ICANN. Registry Operator will not designate “CONFIDENTIAL” information necessary to describe the purpose of the proposed Registry Service and the effect on users of the DNS.

(C) ICANN may seek expert advice during the preliminary determination period (from entities or persons subject to confidentiality agreements) on the competition, Security or Stability implications of the Registry Service in order to make its “preliminary determination.” To the extent ICANN determines to disclose confidential information to any such experts, it will provide notice to Registry Operator of the identity of the expert(s) and the information it intends to convey.

(D) If ICANN determines during the 15 calendar day “preliminary determination” period that the proposed Registry Service, does not raise significant Security or Stability (as defined below), or competition issues, Registry Operator shall be free to deploy it upon such a determination.

(E) In the event ICANN reasonably determines during the 15 calendar day “preliminary determination” period that the Registry Service might raise significant competition issues, ICANN shall refer the issue to the appropriate governmental competition authority or authorities with jurisdiction over the matter within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, with notice to Registry Operator. Any such referral communication shall be posted on ICANN’s website on the date of transmittal. Following such referral, ICANN shall have no further responsibility, and Registry Operator shall have no further obligation to ICANN, with respect to any competition issues relating to the Registry Service. If such a referral occurs, the Registry Operator will not deploy the Registry Service until 45 calendar days following the referral, unless earlier cleared by the referred governmental competition authority.

(F) In the event that ICANN reasonably determines during the 15 calendar day “preliminary determination” period that the proposed Registry Service might raise significant Stability or Security issues (as defined below), ICANN will refer the proposal to a Standing Panel of experts (as defined below) within five business days of making its determination, or two business days following the expiration of such 15 day period, whichever is earlier, and simultaneously invite public comment on the proposal. The Standing Panel shall have 45 calendar days from the referral to prepare a written report regarding the proposed Registry Service’s effect on Security or Stability (as defined below), which report (along with a summary of any public comments) shall be forwarded to the ICANN Board. The report shall set forward the opinions of the Standing Panel, including, but not limited to, a detailed statement of the analysis, reasons, and information upon which the panel has relied in reaching their conclusions, along with the response to any specific questions that were included in the referral from ICANN staff. Upon ICANN’s referral to the Standing Panel, Registry Operator may submit additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

(G) Upon its evaluation of the proposed Registry Service, the Standing Panel will report on the likelihood and materiality of the proposed Registry Service’s effects on Security or Stability, including whether the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Security or Stability as defined below:

Security: For purposes of this Agreement, an effect on security by the proposed Registry Service shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

Stability: For purposes of this Agreement, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current

Practice RFCs and relying on Registry Operator's delegation information or provisioning services.

(H) Following receipt of the Standing Panel's report, which will be posted (with appropriate confidentiality redactions made after consultation with Registry Operator) and available for public comment, the ICANN Board will have 30 calendar days to reach a decision. In the event the ICANN Board reasonably determines that the proposed Registry Service creates a reasonable risk of a meaningful adverse effect on Stability or Security, Registry Operator will not offer the proposed Registry Service. An unredacted version of the Standing Panel's report shall be provided to Registry Operator upon the posting of the report. The Registry Operator may respond to the report of the Standing Panel or otherwise submit to the ICANN Board additional information or analyses regarding the likely effect on Security or Stability of the Registry Service.

(I) The Standing Panel shall consist of a total of 20 persons expert in the design, management and implementation of the complex systems and standards-protocols utilized in the Internet infrastructure and DNS (the "Standing Panel"). The members of the Standing Panel will be selected by its Chair. The Chair of the Standing Panel will be a person who is agreeable to both ICANN and the registry constituency of the supporting organization then responsible for generic top level domain registry policies. All members of the Standing Panel and the Chair shall execute an agreement requiring that they shall consider the issues before the panel neutrally and according to the definitions of Security and Stability. For each matter referred to the Standing Panel, the Chair shall select no more than five members from the Standing Panel to evaluate the referred matter, none of which shall have an existing competitive, financial, or legal conflict of interest, and with due regard to the particular technical issues raised by the referral.

(e) Fees and Payments. Registry Operator shall pay the Registry-Level Fees to ICANN on a quarterly basis in accordance with Section 7.2 hereof.

(f) Traffic Data. Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or non-existent domain names for purposes such as, without limitation, the determination of the availability and Security and Stability of the Internet, pinpointing specific points of failure, characterizing attacks and misconfigurations, identifying compromised networks and hosts, and promoting the sale of domain names; provided, however, that such use does not disclose domain name registrant, end user information or other Personal Data as defined in Section 3.1(c)(ii) for any purpose not otherwise authorized by this agreement. In this regard, in the event the TLD registry is a "thick" registry model, the traffic data that may be accessible to and used by Registry Operator shall be limited to the data that would be accessible to a registry operated under a "thin" registry model. The process for the introduction of new Registry Services shall not apply to such traffic data. The process for the introduction of new Registry Services shall not apply to such traffic data. Nothing contained in this Section 3.1(f) shall be deemed to constitute consent or acquiescence by ICANN to a re-introduction by Registry Operator of the SiteFinder service previously introduced by the Registry Operator on or about September 15, 2003, or the introduction of any other service employing a universal wildcard function, except that this sentence shall not prohibit the

provision of nameservice or any other non-registry service for a domain or zone used for other than registration services to unaffiliated third parties by a single entity (including its affiliates) for domain names registered through an ICANN-accredited registrar. To the extent that traffic data subject to this provision is made available, access shall be on terms that are non-discriminatory.

(g) Security and Stability Review. Twice annually Registry Operator shall engage in discussions with executive staff of ICANN and the Chairman of the Board of ICANN on trends impacting the Security and/or Stability of the Registry, the DNS or the Internet pursuant to the terms of confidentiality agreements executed both by the executive staff of ICANN and the Chairman of the Board.

(h) Centralized Whois. Registry Operator shall develop and deploy a centralized Whois for the .com TLD if mandated by ICANN insofar as reasonably feasible, particularly in view of Registry Operator's dependence on cooperation of third parties.

Section 3.2 Covenants of ICANN. ICANN covenants and agrees with Registry Operator as follows:

(a) Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

(b) Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

(c) TLD Zone Servers. In the event and to the extent that ICANN is authorized to set policy with regard to an authoritative root server system, it will ensure that (i) the authoritative root will point to the TLD zone servers designated by Registry Operator for the Registry TLD throughout the Term of this Agreement; and (ii) any changes to the TLD zone server designation submitted to ICANN by Registry Operator will be implemented by ICANN within seven days of submission.

(d) Nameserver Changes. Registry Operator may request changes in the nameserver delegation for the Registry TLD. Any such request must be made in a format, and otherwise meet technical requirements, specified from time to time by ICANN. ICANN will use commercially reasonable efforts to have such requests implemented in the Authoritative Root-Server System within seven calendar days of the submission.

(e) Root-zone Information Publication. ICANN's publication of root-zone contact information for the Registry TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN.

Section 3.3 Cooperation. The parties agree to cooperate with each other and share data as necessary to accomplish the terms of this Agreement.

Section 3.4 Contractual and Operational Compliance Audits.

(a) ICANN may from time to time (not to exceed once per calendar quarter) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article II of this Agreement and its covenants contained in Article III of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its covenants contained in Section 3.1.

(b) Any audit conducted pursuant to Section 3.4(a) will be at ICANN's expense, unless (i) the audit relates to Registry Operator's compliance with Section 3.1(c)(iv) and such audit reveals a material discrepancy or discrepancies in the data provided by Registry Operator, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment. In either such case of (i) or (ii) above, Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit and such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

ARTICLE IV TERM OF AGREEMENT

Section 4.1 Term. The initial term of this Agreement shall expire on November 30, 2018. The Expiration Date shall be November 30, 2018, as extended by any renewal terms.

Section 4.2 Renewal. This Agreement shall be renewed upon the expiration of the term set forth in Section 4.1 above and each later term, unless the following has occurred : (i) following notice of breach to Registry Operator in accordance with Section 6.1 and failure to cure such breach within the time period prescribed in Section 6.1, an arbitrator or court has determined that Registry Operator has been in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 and (ii) following the final decision of such arbitrator or court, Registry Operator has failed to comply within ten days with the decision of the arbitrator or court, or within such other time period as may be prescribed by the arbitrator or court. Upon renewal, in the event that the terms of this Agreement are not similar to the terms generally in effect in the Registry Agreements of the 5 largest gTLDs (determined by the number of domain name registrations under management at the time of renewal), renewal shall be upon terms reasonably necessary to render the terms of this Agreement similar to such terms in the Registry Agreements for those other gTLDs. The preceding sentence, however, shall not apply to the terms of this Agreement regarding the price of Registry Services; the standards for the consideration of proposed Registry Services, including

the definitions of Security and Stability and the standards applied by ICANN in the consideration process; the terms or conditions for the renewal or termination of this Agreement; ICANN's obligations to Registry Operator under Section 3.2 (a), (b), and (c); the limitations on Consensus Policies or Temporary Specifications or Policies; the definition of Registry Services; or the terms of Section 7.3.

Section 4.3 Failure to Perform in Good Faith. In the event Registry Operator shall have been repeatedly and willfully in fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3, and arbitrators in accordance with Section 5.1(b) of this Agreement repeatedly have found Registry Operator to have been in fundamental and material breach of this Agreement, including in at least three separate awards, then the arbitrators shall award such punitive, exemplary or other damages as they may believe appropriate under the circumstances.

ARTICLE V DISPUTE RESOLUTION

Section 5.1 Resolution of Disputes.

(a) Cooperative Engagement. In the event of a disagreement between Registry Operator and ICANN arising under or out of this Agreement, either party may by notice to the other invoke the dispute resolution provisions of this Article V. Provided, however, that before either party may initiate arbitration as provided in Section 5.1(b) below, ICANN and Registry Operator must attempt to resolve the dispute by cooperative engagement as set forth in this Section 5.1(a). If either party provides written notice to the other demanding cooperative engagement as set forth in this Section 5.1(a), then each party will, within seven calendar days after such written notice is deemed received in accordance with Section 8.6 hereof, designate a single executive officer as its representative under this Section 5.1(a) with full authority to act on such party's behalf to resolve the dispute. The designated representatives shall, within 2 business days after being designated, confer by telephone or in person to attempt to resolve the dispute. If they are not able to resolve the dispute during such telephone conference or meeting, they shall further meet in person at a location reasonably designated by ICANN within 7 calendar days after such initial telephone conference or meeting, at which meeting the parties shall attempt to reach a definitive resolution. The time schedule and process set forth in this Section 5.1(a) may be modified with respect to any dispute, but only if both parties agree to a revised time schedule or process in writing in advance. Settlement communications within the scope of this paragraph shall be inadmissible in any arbitration or litigation between the parties.

(b) Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, shall be resolved through binding arbitration conducted as provided in this Section 5.1(b) pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in the English language and shall occur in Los Angeles County, California, USA only following the failure to resolve the dispute pursuant to cooperative engagement discussions as set forth in Section 5.1(a) above. There shall be three arbitrators: each party shall choose one arbitrator and, if the two arbitrators are not able to agree on a third arbitrator, the third shall be chosen by the ICC. The prevailing party in the arbitration shall have the right to recover its costs

and reasonable attorneys' fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 5.1(b) may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate.

Section 5.2 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrators specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

Section 5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to Section 7.2 of this Agreement. Registry Operator's aggregate monetary liability to ICANN for violations of this Agreement shall be limited to an amount equal to the fees and monetary sanctions, if any, due and owing to ICANN under this Agreement within the preceding twelve month period. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided pursuant to Section 4.3 of this Agreement. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, REGISTRY OPERATOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITSELF, ITS SERVANTS, OR ITS AGENTS OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VI TERMINATION PROVISIONS

Section 6.1 Termination by ICANN. ICANN may terminate this Agreement if and only if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 within thirty calendar days after ICANN gives Registry Operator written notice of the breach, which notice shall include with specificity the details of the alleged breach; and (ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in fundamental and material breach and failed to cure such breach within the prescribed time period and (b) following the decision of such arbitrator or court, Registry Operator has failed to comply with the decision of the arbitrator or court.

Section 6.2 Bankruptcy. This Agreement shall automatically terminate in the event Registry Operator shall voluntarily or involuntarily be subject to bankruptcy proceedings.

Section 6.3 Transition of Registry upon Termination of Agreement. Upon any termination of this Agreement as provided in Sections 6.1 and 6.2, the parties agree to work cooperatively to facilitate and implement the transition of the registry for the TLD in accordance with this Section 6.3. Registry Operator shall agree to provide ICANN or any successor registry authority that may be designated for the TLD with any data regarding operations of the registry for the TLD necessary to maintain operations that may be reasonably requested in addition to that data escrowed in accordance with Section 3.1(c)(i) hereof.

Section 6.4 Rights in Data. Registry Operator shall not be entitled to claim any intellectual property rights in Registry Data. In the event that Registry Data is released from escrow as set forth in Section 3.1(c)(i), rights, if any, held by Registry Operator in the data shall automatically be licensed on a non-exclusive, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

Section 6.5 No Reimbursement. Any and all expenditures, capital investments or other investments made by Registry Operator in connection with this Agreement shall be at Registry Operator's own risk and ICANN shall have no obligation to reimburse Registry Operator for any such expense, capital expenditure or investment. Registry Operator shall not be required to make any payments to a successor registry operator by reason of registry fees paid to Registry Operator prior to the effective date of (i) any termination or expiration of this Agreement or (ii) transition of the registry, unless any delay in transition of the registry to a successor operator shall be due to the actions of Registry Operator.

ARTICLE VII SPECIAL PROVISIONS

Section 7.1 Registry-Registrar Agreement.

(a) Access to Registry Services. Registry Operator shall make access to Registry Services, including the shared registration system, available to all ICANN-accredited registrars, subject to the terms of the Registry-Registrar Agreement attached as Appendix 8 hereto. Subject to Section 7.1(d), Registry Operator shall provide all ICANN-accredited registrars following execution of the Registry-Registrar Agreement, provided registrars are in compliance with such agreement, operational access to Registry Services, including the shared registration system for the TLD. Such nondiscriminatory access shall include without limitation the following:

(i) All registrars (including any registrar affiliated with Registry Operator, if any) can connect to the shared registration system gateway for the TLD via the Internet by utilizing the same maximum number of IP addresses and SSL certificate authentication;

(ii) Registry Operator has made the current version of the registrar toolkit software accessible to all registrars and has made any updates available to all registrars on the same schedule;

(iii) All registrars have the same level of access to customer support personnel via telephone, e-mail and Registry Operator's website;

(iv) All registrars have the same level of access to registry resources to resolve registry/registrar or registrar/registrar disputes and technical and/or administrative customer service issues;

(v) All registrars have the same level of access to data generated by Registry Operator to reconcile their registration activities from Registry Operator's Web and ftp servers;

(vi) All registrars may perform basic automated registrar account management functions using the same registrar tool made available to all registrars by Registry Operator; and

(vii) The shared registration system does not include, for purposes of providing discriminatory access, any algorithms or protocols that differentiate among registrars with respect to functionality, including database access, system priorities and overall performance.

Such Registry-Registrar Agreement may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.

(b) Registry Operator Shall Not Act as Own Registrar. Registry Operator shall not act as a registrar with respect to the TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar. In addition, where there is an imminent threat to the Security and Stability of the TLD or the Internet, this provision shall not preclude Registry Operator, for the purpose of protecting the Security and Stability of the TLD or the Internet, from temporarily preventing the registration of one or more names; provided, as soon as practicable but no later than 3 business days of taking such action, Registry Operator provides ICANN with a written notice of such action, which notice shall list all affected names, state the expected length of time that such names will not be available for registration, and explain why Registry Operator took such action. The contents of such notice shall be treated as confidential to the extent permitted by law. If ICANN disagrees with such action, it will instruct Registry Operator to release such names and Registry Operator shall immediately release such names upon receipt of such written instructions from ICANN.

(c) Restrictions on Acquisition of Ownership or Controlling Interest in Registrar. Registry Operator shall not acquire, directly or indirectly, control of, or a greater than fifteen percent ownership interest in, any ICANN-accredited registrar.

(d) Compliance Actions. Registry Operator acknowledges that all ICANN-accredited registrars must enter into a registrar accreditation agreement ("RAA") with ICANN and ICANN may take certain compliance actions in response to an emergency or in accordance with the terms of the RAA, including suspension or termination of a registrar's accreditation or suspension of a registrar's ability to create new registered names or initiate inbound transfers of registered names. ICANN may require Registry Operator to take specific actions consistent with ICANN's authority under the terms of the RAA to: (i) suspend or terminate a registrar's

ability to create new registered names or (ii) transfer registered names to a registrar designated by ICANN.

Section 7.2 Fees to be Paid to ICANN.

(a) Registry Level Fees. As of the Effective Date, Registry Operator shall pay ICANN a Registry-Level Transaction Fee equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another), during the applicable calendar quarter multiplied by US\$0.25. Registry Operator shall pay the Registry-Level Transaction Fee by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN. For the calendar quarter ending December 31, 2012, Registry Operator shall pay an amount equal to the prorated “ICANN Fixed Registry Fee” that would have otherwise been due for the quarter under the Registry Agreement dated March 1, 2006 by and between ICANN and Registry Operator, as amended, plus the prorated Registry-Level Transaction Fee under this Agreement for the period from the Effective Date through December 31, 2012.

(b) Variable Registry-Level Fee. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN. The Registry Operator will invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator and paid to ICANN by the Registry Operator by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

(i) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed US\$0.25.

(ii) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year.

(c) Interest on Late Payments. For any payments ten days or more overdue pursuant to Section 7.2, Registry Operator shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

Section 7.3 Pricing for Domain Name Registrations and Registry Services.

(a) Scope. The Registry Services to which the provisions of this Section 7.3 shall apply are:

(i) the Registry Services defined in Section 3.1(d)(iii)(a), above, and

(ii) other products or services that the Registry Operator is required to provide within the scope of Section 3.1(d)(iii)(b), above, because of the establishment of a Consensus Policy (as defined in Section 3.1(b) above):

- (1) to implement changes in the core functional or performance specifications for Registry Services (as defined in Section 3.1(d)(iii)(a)); or
- (2) that are reasonably necessary to facilitate: (A) Security and/or Stability of the Internet or DNS; (B) Security and Stability of the registry database for the TLD; or (C) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names).

Nothing contained herein shall be construed to apply the provisions of this Section 7.3 to the services enumerated in Appendix 9 of this Agreement.

(b) No Tying. Registry Operator shall not require, as a condition of the provision or use of Registry Services subject to this Section 7.3 in accordance with the requirements of this Agreement, including without limitation Section 7.1 and Appendix 10, that the purchaser of such services purchase any other product or service or refrain from purchasing any other product or service. Notwithstanding any other offering that may include all or any portion of the Registry Services at any price, Registry Operator shall offer to all ICANN-accredited registrars the combination of all Registry Services subject to this Section 7.3 at a total price for those Registry Services that is no greater than the Maximum Price calculated pursuant to Section 7.3(d) and that otherwise complies with all the requirements of Section 7.3.

(c) Price for Registry Services. The price for all Registry Services subject to this Section 7.3 shall be the amount, not to exceed the Maximum Price, that Registry Operator charges for each annual increment of a new and renewal domain name registration and for each transfer of a domain name registration from one ICANN-accredited registrar to another.

(d) Maximum Price. The Maximum Price for Registry Services subject to this Section 7.3 shall be as follows:

- (i) from the Effective Date through 30 November 2018, US \$7.85;
- (ii) Registry Operator shall be entitled to increase the Maximum Price during the term of the Agreement due to the imposition of any new Consensus Policy or documented extraordinary expense resulting from an attack or threat of attack on the Security or Stability of the DNS, not to exceed the smaller of the preceding year's Maximum Price or the highest price charged during the preceding year, multiplied by 1.07.

(e) No price discrimination. Registry Operator shall charge the same price for Registry Services subject to this Section 7.3, not to exceed the Maximum Price, to all ICANN-accredited registrars (provided that volume discounts and marketing support and incentive

programs may be made if the same opportunities to qualify for those discounts and marketing support and incentive programs is available to all ICANN-accredited registrars).

(f) Adjustments to Pricing for Domain Name Registrations. Registry Operator shall provide no less than six months prior notice in advance of any increase for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another and shall continue to offer for periods of up to ten years new and renewal domain name registrations fixed at the price in effect at the time such offer is accepted. Registry Operator is not required to give notice of the imposition of the Variable Registry-Level Fee set forth in Section 7.2(c).

(g) Maximum Price does not include ICANN Variable Registry-Level Fee. The Maximum Price does not include, and shall not be calculated from a price that includes, all or any part of the ICANN Variable Registry-Level Fee set forth in Section 7.2(c), above, or any other per-name fee for new and renewal domain name registrations and for transferring a domain name registration from one ICANN-accredited registrar to another.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to: (a) ICANN's reliance, in connection with its decision to delegate the TLD to Registry Operator or to enter into this Agreement, on information provided by Registry Operator in its application for the TLD; (b) Registry Operator's establishment or operation of the registry for the TLD; (c) Registry Operator's provision of Registry Services; (d) collection or handling of Personal Data by Registry Operator; (e) any dispute concerning registration of a domain name within the domain of the TLD for the registry; and (f) duties and obligations of Registry Operator in operating the registry for the TLD; provided that Registry Operator shall not be obligated to indemnify, defend, or hold harmless ICANN to the extent the claim, damage, liability, cost, or expense arose due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct of ICANN. For avoidance of doubt, nothing in this Section 8.1 shall be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for the costs associated with the negotiation or execution of this Agreement, or with the monitoring or management of the parties' respective obligations under this Agreement. Further, this section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties.

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Section 7.2 hereof for any applicable

quarter) by the total number of domain names under registration within all TLDs for which the registry operators thereof that are engaging in the same acts or omissions giving rise to such claim. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims above, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in 8.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence.

Section 8.2 Indemnification Procedures. If ICANN receives notice of any third-party claim that is indemnified under Section 8.1 above, ICANN shall promptly notify Registry Operator of such claim. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost and expense, provided that in all events ICANN shall be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN policies or conduct. ICANN shall cooperate, at its own cost, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is indemnified shall be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section, Registry Operator may participate in such defense, at its sole cost and expense, and ICANN shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator.

Section 8.3 No Offset. All payments due under this Agreement shall be made in a timely manner throughout the term of this Agreement and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

Section 8.4 Use of ICANN Name and Logo. ICANN grants to Registry Operator a non-exclusive royalty-free license to state that it is designated by ICANN as the Registry Operator for the Registry TLD and to use a logo specified by ICANN to signify that Registry Operator is an ICANN-designated registry authority. This license may not be assigned or sublicensed by Registry Operator.

Section 8.5 Assignment and Subcontracting. Any assignment of this Agreement shall be effective only upon written agreement by the assignee with the other party to assume the assigning party's obligations under this Agreement. Moreover, neither party may assign this Agreement without the prior written approval of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN, to another nonprofit corporation organized for the same or substantially the same purposes. Registry Operator must provide notice to ICANN of any subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements

by Registry Operator hereunder. Any subcontracting of technical operations shall provide that the subcontracted entity become party to the data escrow agreement mandated by Section 3.1(c)(i) hereof.

Section 8.6 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 8.7 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

Section 8.8 Notices, Designations, and Specifications. All notices to be given under or in relation to this Agreement shall be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. Any change in the contact information for notice below shall be given by the party within 30 days of such change. Any notice required by this Agreement shall be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server. Whenever this Agreement shall specify a URL address for certain information, Registry Operator shall be deemed to have been given notice of any such information when electronically posted at the designated URL. In the event other means of notice shall become practically achievable, such as notice via a secure website, the parties shall work together to implement such notice means under this Agreement.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
Telephone: 1-310-301-5800
Facsimile: 1-310-823-8649
Attention: President and CEO
With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

VeriSign, Inc.
12061 Bluemont Way,
Reston, Virginia 20190

Telephone: Contact information Redacted

Facsimile: Contact information Redacted

Attention: VP, Associate General Counsel, Naming

With a Required Copy to: General Counsel

Email: (As specified from time to time.)

Section 8.9 Language. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

Section 8.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 8.11 Entire Agreement. This Agreement (including its Appendices, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject. In the event of a conflict between the provisions in the body of this Agreement and any provision in its Appendices, the provisions in the body of the Agreement shall control.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
Fadi Chehadé
President and Chief Executive Officer

Date:

VeriSign, Inc.

By: _____
D. James Bidzos
Chairman of the Board, Executive Chairman, President and Chief Executive Officer

Date:

EXHIBIT C-17

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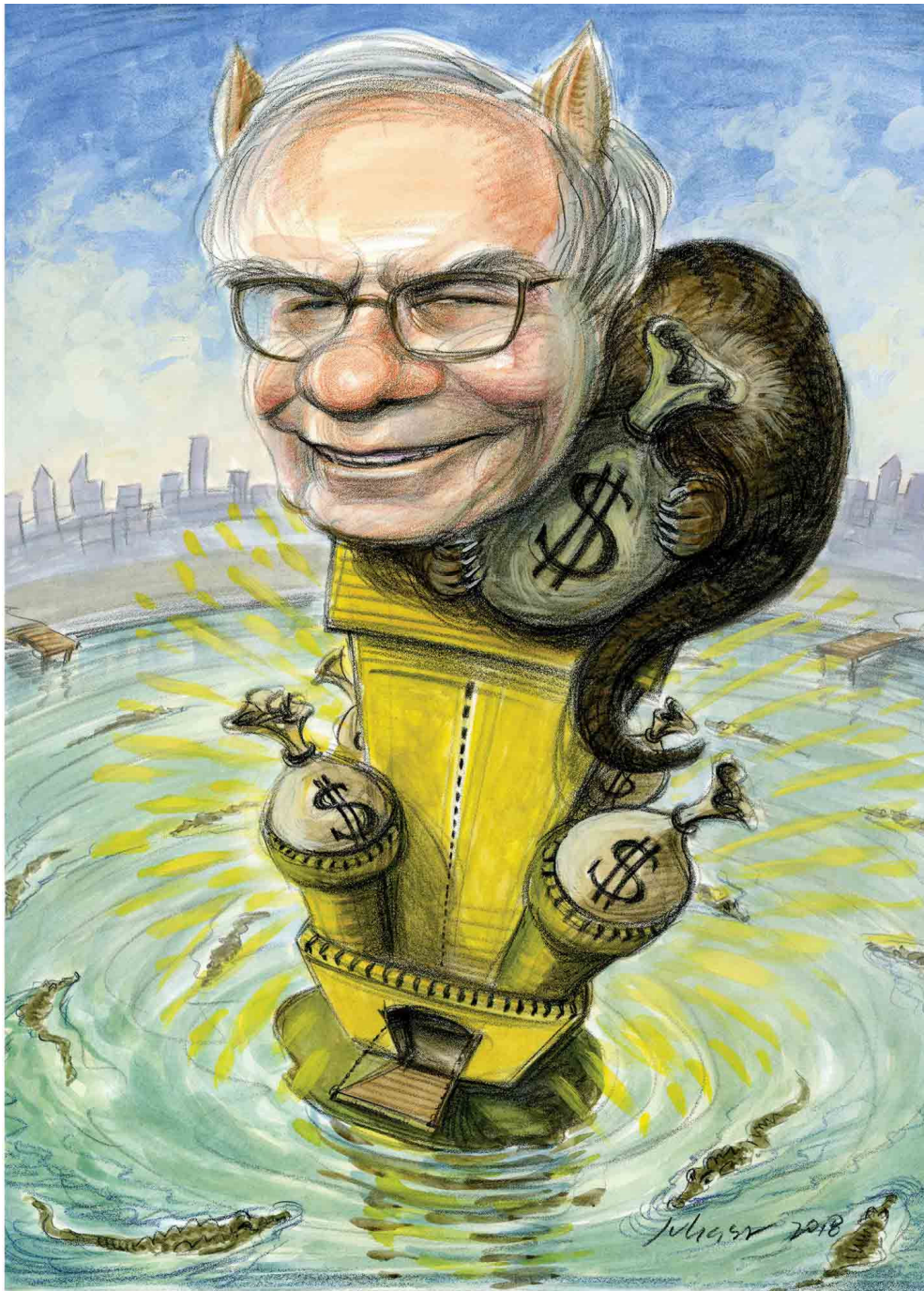
BUSINESS ANTITRUST FEATURE MARCH 12, 2018, ISSUE

Special Investigation: The Dirty Secret Behind Warren Buffett's Billions

America's favorite investor loves monopoly, not free markets.

By David Dayen

YESTERDAY 6:00 AM

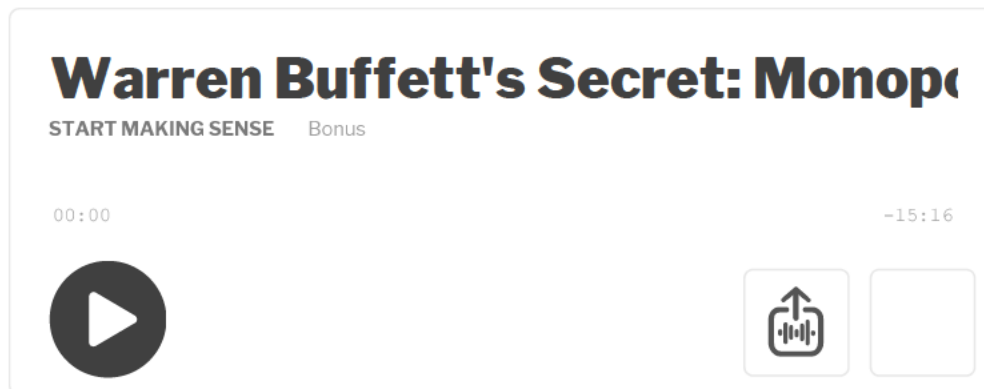


Illustrated by Victor Juhasz.

After the worst financial collapse since the Great Depression, three officials from the Financial Crisis Inquiry Commission visited Warren Buffett at his office in Omaha, Nebraska. They wanted to ask America's most successful investor about his 24 million shares in the credit-

rating agency Moody's. The commission would later identify Moody's and other rating agencies as "key enablers of the financial meltdown," for granting super-safe triple-A ratings to securities that were backed by junk mortgages. Trillions of dollars' worth of rotten financial instruments—the fuel of the crisis—"could not have been marketed and sold without [the rating agencies'] seal of approval," the commission concluded.

During that May 26, 2010, meeting, Buffett deflected responsibility for Moody's actions. "I knew nothing about the management of Moody's," he told the federal investigators, explaining candidly why he owned so much stock: Moody's faced practically no market competition.



Listen to David Dayen discuss Warren Buffet's business strategies on the Start Making Sense podcast.

"The single most important decision in evaluating a business is pricing power," Buffett said. "If you've got the power to raise prices without losing business to a competitor, you've got a very good business." The "big three" rating agencies—Moody's, Standard & Poor's, and Fitch—controlled 95 percent of the rating-agency market,

an insurmountable advantage over would-be competitors. “If you’ve got a good enough business, if you have a monopoly newspaper or if you have a network television station,” Buffett concluded, “your idiot nephew could run it.”

ADVERTISING

Warren Buffett is America’s favorite tycoon. The business community hangs on his every word. The annual meetings at Berkshire Hathaway, Buffett’s conglomerate, have been dubbed “Woodstock for capitalists.” Barack Obama and Hillary Clinton hailed his endorsements in their campaigns for president; even Bernie Sanders has supported Buffett’s position on taxes. The press treats him like a Kardashian, publishing quirky features about his bad eating habits, frugal spending, and hobnobbing with celebrities (an actual headline last November: “Katy Perry Wants to Know What Warren Buffett Thinks of Bitcoin”). An old cartoon show

called *Warren Buffett's Secret Millionaires Club* featured the so-called "Oracle of Omaha" teaching children how to get rich.

This *Nation* investigation documents how Buffett's massive wealth has actually been built: on monopoly power and the unfair advantages it provides. Companies in Buffett's portfolio have extorted windfall profits, evaded US taxes, and abused customers. In the two specific cases discussed below, in the banking and high-tech industries, Buffett's investments have prompted federal investigations for anticompetitive or other illegal practices.

Buffett did not respond to repeated interview requests for this article, nor did he reply to questions submitted to his office at Berkshire Hathaway.

Buffett makes no secret of his fondness for monopoly. He repeatedly highlights the key to his personal fortune: finding businesses surrounded by a monopoly moat, keeping competitors at bay. "[W]e think in terms of that moat and the ability to keep its width and its impossibility of being crossed," Buffett told the annual Berkshire Hathaway meeting in 2000. "We tell our managers we want the moat widened every year."

America isn't supposed to allow moats, much less reward them. Our economic system, we claim, is founded on free and fair competition. We have laws over a century old designed to break up concentrated industries, encouraging

innovation and risk-taking. In other words, Buffett's investment strategy should not legally be available, to him or anyone else.

Over the past 40 years, however, the United States has not only failed to build bridges across monopoly moats; it has stocked those moats with alligators. Two-thirds of all US industries were more concentrated in 2012 than in 1997, *The Economist* has documented. Since the Reagan era, the federal government has abandoned antitrust enforcement, with markets for products like eyeglasses, toothpaste, beef, and beer whittled down to a few suppliers. This consolidation has vastly inflated corporate profits, damaged workers and consumers, stunted economic growth, and supercharged economic inequality.

Buffett professes to be an innocent witness to this perversity, a passive investor observing markets from afar. He is feted as the conscience of American capitalism, a multibillionaire who speaks out about taxing the rich (Democrats even named their tax-fairness plan the "Buffett rule") and donates his fortune to charity. But Buffett's example has helped intensify US monopolization, as other investors mimic his approach of finding companies surrounded by moats. The ownership class has subsequently built up unwarrantedly large holdings, concentrating its investment in companies that further increase market power. In other words, Buffett isn't following America on the road to oligarchy; he's leading it.

Americans falsely look to these oligarchs to solve our problems, allowing them to amass more power. For example, the recent joint effort by Buffett's Berkshire Hathaway, Amazon, and JPMorgan Chase to transform the US health-care system is vague and rather mundane—most large companies try to drive down health-care costs by leveraging their size. But when three of the age's biggest monopolists follow the trend, it's uncritically treated as front-page news, sending health-care stocks plummeting. A stray press release from Buffett can move billions of dollars in his favor.

Bill Gates of Microsoft, Jeff Bezos of Amazon, and Warren Buffett control more wealth than the 160 million poorest Americans combined. And Buffett doesn't mind working the system to keep it that way. His net worth as of January is \$87 billion, but Buffett says he paid only \$1.8 million in taxes in 2015—a mere 0.002 percent of his wealth. According to Barclays, the new Republican tax law is projected to net his business a staggering \$37 billion a year.

Warren Buffett should not be celebrated as an avatar of American capitalism; he should be decried as a prime example of its failure, a false prophet leading the nation toward more monopoly and inequality.

You probably didn't realize that the same avuncular billionaire controls such diverse companies and products as See's Candies, Duracell batteries, Justin Boots, Benjamin Moore Paints, and World Book encyclopedias.

But Buffett has transformed Berkshire Hathaway, initially a relatively small textile manufacturer, into the world's largest non-technology company by market value. Berkshire Hathaway owns over 60 different brands outright. And through Berkshire, Buffett also invests in scores of public corporations. The conglomerate closed 2016 with over \$620 billion in assets.

The money mainly comes from Berkshire's massive insurance business, composed of the auto insurer GEICO, the global underwriter General Reinsurance Corporation, and 10 other subsidiaries. Insurance premiums don't get immediately paid out in claims; while the cash sits, Buffett can invest it. This is known as "float," and Berkshire Hathaway's float has ballooned from \$39 million in 1970 to approximately \$113 billion as of last September. It's a huge advantage over rival investors—effectively the world's largest interest-free loan, helping to finance Buffett's pursuit of monopoly. "[W]e enjoy the use of free money—and, better yet, get paid for holding it," Buffett said in his most recent investor letter. Indeed, as a 2017 *Fortune* article noted, with almost \$100 billion in cash at the end of that year's second fiscal quarter, Buffett's Berkshire Hathaway literally has more money than it knows what to do with.

The dominant narrative around Buffett is that he invests in big, blue-chip companies whose products he enjoys, like Coca-Cola or Heinz ketchup. But Buffett's taste for junk food cannot match his hunger for monopoly, and he scours

the investment landscape to satisfy it. For example, he's a major investor in the most profitable company you've never heard of—one used by hundreds of millions of people worldwide, mostly without their knowledge.

The company is called Verisign, and it operates an essential backbone of the Internet: registries for the domain names .com and .net, among others. If you want to create, for example, MyWebsite.com, you buy the name from a retailer like GoDaddy. But Verisign controls the global registry for .com, so GoDaddy relies on Verisign to connect users to MyWebsite.com. Verisign collects a small fee for this service, usually less than \$10 a year. But drawing that fee from an enormous pool of websites results in a massive revenue stream.

As of September 2017, two of Verisign's domain-name registries, the aforementioned .com and .net, accounted for 145.8 million of the 330.7 million websites in existence, or nearly one in two. Take away the 144.7 million sites tied to a specific country (like .us, or .cn for China), and it's more like four out of five. Any company controlling 80 percent of a given market can safely be termed a monopoly, though a spokesperson for Verisign said in a statement that “we believe competition is thriving in the market.”

The nonprofit Internet Corporation for Assigned Names and Numbers (ICANN), the registry industry's main regulator, granted Verisign exclusive contracts to operate .com and .net. Verisign can automatically renew the

contracts as long as it meets certain performance metrics. The company was also initially permitted to raise prices gradually, despite the fact that the costs of managing a registry decline over time because the necessary infrastructure is already established.

“If you’re giving a near monopoly in an industry where prices are falling, you would think that you would have terms in the contract to lower the price,” said economist Dean Baker, a critic of government-granted monopolies. Instead, prices for .net domain names can rise 10 percent per year; they’ve more than doubled since 2005, from \$3.50 to \$9.02 (Verisign’s statement called this price “lower than most competing legacy [top-level domains]”). Prices for .com domain names have also risen, though they are now frozen at \$7.85 per year, due to an amended contract executed in 2012. Competitors have offered to run registries at significantly cheaper rates, yet ICANN hasn’t altered Verisign’s contract terms.

Normally, companies with regulated prices aren’t profit-making juggernauts. But in the third quarter of 2017, Verisign’s operating income as a percentage of revenue hit 61.9 percent, putting it near the top of all companies in the S&P 500. This number has climbed steadily since 2006. If the trend continues, sometime in the next decade Verisign will post the highest rate of profitability of any public company on earth.

That may explain why Buffett owns nearly 13 million shares of Verisign stock, worth \$1.47 billion as of mid-January 2018. Buffett is famously averse to Internet stocks, but he does like a sure thing. So does the rest of the market: Verisign stock jumped nearly 44 percent in 2017. Buffett's seal of approval tends to boost fortunes on Wall Street, so more money flows into monopolies.

In 2016, ICANN arranged a blind auction to sell the rights to the .web domain name, seen as a promising competitor to .com. To the surprise of industry observers, an obscure company named Nu Dot Co outbid six rivals for .web, offering a record-shattering \$135 million. The mystery was clarified four days later, when Verisign issued a brief press release announcing that it had provided all \$135 million for Nu Dot Co's bid. Already in control of .com and .net, Verisign had wrested control of one of the only plausible alternatives. In its statement, Verisign said that "We intend to launch .web to bring choice and reliability to consumers world-wide."

Though there were signs of Nu Dot Co operating as a straw purchaser before the auction, ICANN refused to delay the proceedings. Competitors cried foul, arguing that they would have bid higher if they'd known a deep-pocketed foe like Verisign was involved. "ICANN has a history of sweetheart deals with Verisign," said Jon Nevett, co-founder of Donuts, a competing registry that unsuccessfully sued ICANN to block the .web auction. (The case is now under appeal.)

The Justice Department opened a yearlong investigation into the potential rigging of the .web auction, but in January, the department closed the case. In a research note, JPMorgan Chase called Verisign's acquisition of the domain name "a very good defensive strategic move, keeping .web out of the hands of the potential competitor." Verisign's monopolies remain well guarded—and a continuing source of profits for Warren Buffett.

In 2007, Buffett joked in an investor letter: "If a farsighted capitalist had been present at Kitty Hawk, he would have done his successors a huge favor by shooting Orville [Wright] down.... I have an 800 number that I can call if I get the urge to buy an airline stock," he added. " 'My name is Warren and I'm an air-acholic,' and then they talk me down."

Nine years later, Buffett shook off his aversion to airlines. A 2016 stock-buying binge led to Buffett holding approximately 47 million shares in American Airlines, 53 million in Delta, 48 million in Southwest, and 28 million in United, for a total investment of over \$9 billion. One day in April 2017, Buffett made \$104 million on his airline holdings in a single trading session. The bet is not predicated on any one airline prospering: Buffett holds close to a 10 percent stake in all four major US carriers. (Investments controlling over 10 percent of company stock trigger various paperwork burdens and disclosures, and Buffett has said he likes to stay beneath that threshold.)

What changed between 2007 and 2016? With the blessing of federal regulators, the airline industry became an oligopoly. Four mega-mergers—combining Delta and Northwest, United and Continental, Southwest and AirTran, and American and US Airways—solidified major-carrier dominance in the United States. Today, four airlines control 80 percent of domestic-seat capacity. In 93 of the top 100 airports, either one or two manage a majority of all seats sold.

Market concentration has resulted in higher profits for the airlines and for Buffett, but misery for the passengers: crowded planes, more connections, and a cascade of nickel-and-dime fees. Perversely, by making flying worse, airlines further loosen passengers' wallets, enticing those who can afford it to buy more legroom, or priority boarding to ensure that their bag gets in the overhead bin. Ancillary fees represented a little over 10 percent of the airlines' total revenue in 1995; today, it's more than 25 percent. The public wouldn't stand for such fleecing if they had a choice, but market consolidation forces customer acceptance.

And it's not just Buffett: Large index-fund providers like Vanguard and BlackRock have significant industry-wide airline holdings, a factor that may distort competition. "It's not crazy to think that the CEO of Delta has figured out that Buffett doesn't like it all that much for him to compete with United," says Martin Schmalz, an assistant professor at the University of Michigan's Ross School of Business. Schmalz, José Azar, and Isabel Tecu revised a research paper last

year showing that airfares on the average route are 3 to 7 percent higher under common ownership by large investors than they would be under separate ownership. “This is not collusion; it’s not a crime,” Schmalz adds. “But it’s an antitrust problem that increases prices.”

David Dao learned the harsh realities of monopoly air travel last April, after refusing to relinquish his seat to solve an overbooking problem on a United flight. Security agents violently dragged Dao, a 69-year-old physician, down the aisle and out of the aircraft, breaking his nose and knocking out two teeth. The incident gave United a public-relations black eye—video of Dao’s ordeal was viewed over 9 million times, and United’s CEO was hauled before Congress—but it didn’t damage the company’s bottom line. The Department of Transportation declined to prosecute, United’s stock price recovered after an initial dip, and seats remained filled to near capacity.

Throughout the controversy, Buffett stood by United. Assaulting Dao was a “terrible mistake,” he said to CNBC, but “it wouldn’t change the investment strategy.”

Buffett has similarly defended Wells Fargo, his largest single investment, through one damaging scandal after another. In 2016, the bank was caught signing up customers for around 3.5 million fake accounts. Since then, Wells Fargo has also been dinged for issuing clients unwanted insurance and home-warranty products, falsifying records to increase fees on mortgage applicants, overcharging

foreign-exchange clients to ring up bonuses, initiating secret changes to mortgage terms for homeowners in bankruptcy, and repossessing the cars of service members while they were on active duty. The federal investigations and fines over this misconduct continue to roll in.

Millions have been harmed by this mix of rank incompetence and outright fraud. But with the five biggest commercial banks—Wells Fargo, Bank of America, Citigroup, JPMorgan Chase, and US Bancorp—controlling nearly half of all assets, as well as robust branch and ATM networks, it can be inconvenient or even impossible not to use their services.

Last August, Buffett called Wells Fargo “a terrific bank.... There were some things that were done very wrong there, but they are being corrected.” In October, he got tougher, blaming Wells Fargo’s board of directors for failing to “remove the stain” on the business and musing about clawing back five years of compensation. But Buffett had supported the same board members for reelection just months earlier. It resembled his decision in 2014 to criticize the board of Coca-Cola for excessive executive compensation, but to abstain from voting on the pay package. At the time, Buffett’s son Howard sat on Coke’s board.

In other words, while Buffett’s wealth and the media attention he attracts enable him to create change inside the boardroom, he takes virtually no responsibility as a major

shareholder for the companies he invests in. “He’s following his wallet, not his conscience,” says David Nelson, chief strategist at Belpointe Asset Management.

In fact, Buffett is completely enamored with the big banks whose actions sparked the Great Recession, despite a rap sheet as large as Wells Fargo’s. Asked to name his favorite bank in a CNBC interview last October, Buffett replied: “What’s your favorite child?”

As of last September, Buffett’s financial-industry holdings approximate an astonishing \$66.9 billion—more than 37 percent of his portfolio. He is Wells Fargo’s largest shareholder, and he recently became the largest shareholder in Bank of America as well, the result of a post-financial-crisis deal allowing Buffett to convert an injection of capital into common stock. That conversion earned him \$12 billion overnight. A similar crisis-era investment in Goldman Sachs spawned a \$3 billion payday.

Buffett also holds major stakes in Bank of New York Mellon, US Bancorp, and M&T Bank. He has a hand in every major credit-card issuer: American Express, Visa, MasterCard, and Synchrony Financial, which provides private-label credit cards to retailers. While Buffett doesn’t own stock in JPMorgan Chase, his top deputy Todd Combs sits on the board, obviously aware of the activities of the leading competitor to his boss’s banking investments.

You may think you have a choice of financial institutions, but when you pull out a piece of plastic to pay for anything, chances are you're enriching Warren Buffett.

It would be one thing if Buffett were passive about investments he doesn't totally control but scrupulous regarding the businesses owned within Berkshire Hathaway's portfolio. But only 25 people work at Berkshire's headquarters, overseeing 63 companies and more than half a trillion dollars in assets. It's impossible for Buffett to be anything but an absentee owner, instructing portfolio managers to gain market share but ignorant of how they do it. And anyone who has watched Buffett operate over the past 40 years knows his preferred path to wealth: through monopoly.

Among his first investments were newspapers, including the 1977 purchase of the *Buffalo Evening News*. Buffett immediately targeted the *News's* rival, the *Courier-Express*, by launching a Sunday edition. By 1982, the *Courier-Express* was out of business, and Buffett's local monopoly became his largest single investment. Even today, despite the Internet, Buffett owns 31 daily newspapers, most of them local monopolies.

A more brutal example involves Berkshire Hathaway subsidiaries Clayton Homes, the nation's largest mobile-home builder, and Vanderbilt Mortgage, its companion lender. A series of journalistic investigations in 2015 found that the companies targeted minorities with high-pressure

sales tactics, issuing loans swollen with hidden fees. African-American, Native American, and Latino borrowers received higher interest rates, even if their fellow white borrowers earned less. When the loans failed, Clayton repossessed and resold the homes, earning more fees each time. The Consumer Financial Protection Bureau's complaint databases are littered with hundreds of comments about Clayton and Vanderbilt. "This type of behavior by any lender is despicable and absolutely intolerable," wrote one complainant.

Buffett has publicly defended the businesses, which earned \$744 million in 2016. He even tried to attack the credibility of a critical reporter, because the reporter's sister worked at a law firm that sued Clayton. In 2017, Buffett vowed that Clayton Homes would grow, despite admitting that it foreclosed on one out of every 40 properties the previous year—over three times the national average.

Last December, the House of Representatives passed a bill to further deregulate the manufactured-home industry, eliminating consumer protections and disclosure requirements under statutes like the Truth in Lending Act. If the bill becomes law, Clayton Homes salespeople could legally steer borrowers to high-cost loans, which traditional mortgage brokers are barred from doing. As Maxine Waters, ranking Democrat on the House Financial Services Committee, said on the House floor, "This bill makes it

easier for financial titans like billionaire Warren Buffett to earn even more profits, at the expense of some of the most vulnerable consumers in this country.”

The disparity between Buffett's words and actions is an enduring feature. His main entry into the political arena involves a plea for tax fairness, to “stop coddling the super-rich.” But Buffett's third most valuable stock holding (after Wells Fargo and Kraft Heinz) is a \$22.8 billion investment in Apple, perhaps America's most notorious corporate-tax evader, famous for stashing profits in offshore tax havens.

Buffett takes full advantage of tax loopholes. He uses Berkshire Hathaway, a valuable tax shelter, for his investments. The Republican tax bill will save Berkshire an estimated \$37 billion, because the firm habitually defers its tax liabilities, which will now be paid off at a much lower rate. Even the infamous “private-jet tax break” in the bill is really an extrajudicial attempt to settle a dispute between the IRS and NetJets, a private-plane company wholly owned by Berkshire Hathaway.

“I think idolizing buffett is unhealthy,” says Robin Harding, Tokyo bureau chief for the *Financial Times*, who offered a rare note of criticism of the billionaire investor in the business press last September. “We should lionize entrepreneurs...who take bold risks by investing to make our lives better,” Harding adds. “Buffett's whole method...is to minimize risk by building moats while investing to buy a greater share of what already exists.”

Former Supreme Court Justice Louis Brandeis called businesses like Buffett's, which use other people's money to create personal fortunes, the "Money Trust." These financier middlemen "bestride as masters of America's business world, so that practically no large enterprise can be undertaken successfully without their participation or approval," Brandeis wrote. Buffett routinely takes advantage of opportunities unavailable to ordinary investors: The mega-bank Goldman Sachs created an internal "brain trust" solely to pitch deals to people like Buffett. "The kind of trades he does today no one else can do—you gotta be that big," explains David Nelson of Belpointe Asset Management.

Buffett's fortune reflects a change in whom modern capitalism serves. Former labor secretary Robert Reich, whose latest book, *Saving Capitalism*, was recently adapted into a Netflix documentary, explained that the wealth generated through corporations used to be shared somewhat more with workers, communities, and the broader economy in what he termed "stakeholder capitalism." "That changed in the 1980s, when the corporate raiders insisted that CEOs only focus on maximizing shareholder returns," Reich says. "Even if companies wanted to be sustainable, they're not able to under the current system."

Amazingly, Buffett has spearheaded an effort to promote "commonsense corporate governance principles," joining the CEOs of America's largest corporations, from General

Motors to JPMorgan Chase. The group's manifesto states that "[o]ur financial markets have become too obsessed with quarterly earnings forecasts," recommending that institutional investors make informed decisions about the direction of the companies they hold. But this is precisely what Buffett never does; he openly ignores management performance in favor of finding businesses with moats. This has become his perfect excuse: Buffett evades responsibility for abuses of market power, preserving his pristine reputation by passing the buck.

Nor does Buffett acknowledge his role in driving further monopolization. The investment-research firm Morningstar has created the "economic moat" index to track the 20 companies with the highest walls around their businesses. The money-management firm VanEck sells an exchange-traded fund based on that index called "MOAT." Companies like Valeant Pharmaceuticals scoop up lifesaving drugs that nobody else makes and jack up the prices; it's the moat strategy taken to its logical extreme. "We're seeing this almost spontaneous decision across whole industries that they're going to milk existing market positions rather than compete aggressively," Harding says.

What's the answer? First off, aggressive antitrust enforcement. "What the framers of the antitrust laws...were concerned about is unreasonable market power that gives companies the chance to engage in predatory behavior of consumers and political power," Reich says. Companies like Verisign, which exploit their monopolies, should face

greater scrutiny. Dominant players in industries like airlines and banks should be downsized. Sprawling investors like Buffett also present concerns. “If we didn’t allow Buffett to own substantial stakes in all air carriers, the problem would be significantly reduced,” says the University of Michigan’s Martin Schmalz.

We must also consider disproportionate capital concentration. The top 1 percent owns a significant portion of all wealth, and it increasingly makes money just from having money. Globally, 82 percent of the wealth generated in 2017 flowed to that top 1 percent, according to Oxfam. Through dividends, interest payments, and rising investments—Buffett-style passive ownership—the holders of capital capture about 30 percent of national income, according to research by Thomas Piketty, Emmanuel Saez, and Gabriel Zucman. “If you’re well diversified and you just chill out, you will make a lot of money without doing much for it,” says Matt Bruenig, founder of the People’s Policy Project.

Bruenig has proposed a wealth tax, with the revenue directed into a stock-accumulating sovereign-wealth fund. Citizens could receive a direct dividend from the gains, the way Alaskans receive a check from the state’s Permanent Fund. Instead of someone like Buffett hoarding wealth to extract income, we would all benefit in service to a fairer society. And as with Norway’s wealth fund, the government could involve itself more directly in corporate governance, as a countervailing force to shareholder tyranny.

Getting serious about taming monopolies also means ceasing the endless praise of Warren Buffett. Leading Democrats and the press have given him a pass for decades. But the path to solving America's inequality crisis goes through Omaha and the cuddly billionaire whose love of monopoly is contributing to national desperation. "He's a really good investor," David Nelson says of Buffett. "I'm not sure he's much of an example on anything else."

Correction, February 15, 2018: *An earlier version of this article claimed that Warren Buffett's Berkshire Hathaway is invested in the aerospace company TransDigm and cited that company's alleged price gouging as an example of how Buffett benefits from monopolistic practices. Regrettably, we confused Berkshire Hathaway with Berkshire Partners, a firm unrelated to Mr. Buffett, which is invested in TransDigm. Accordingly, those passages have been removed from the article, and other sentences have been edited to reflect this fact. We apologize to our readers and to Mr. Buffett for the error.*

DAVID DAYEN David Dayen is the author of *Chain of Title: How Three Ordinary Americans Uncovered Wall Street's Great Foreclosure Fraud*, which won the Studs and Ida Terkel Prize.

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VeriSign (VRSN) Q2 2018 Results - Earnings Call Transcript

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10-Q



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News

EPS of \$1.18 beats by \$0.04 | Revenue of \$302.5M (+ 4.8% Y/Y) misses by \$-0.11M

VeriSign, Inc. (NASDAQ:VRSN) Q2 2018 Earnings Call July 26, 2018 4:30 PM ET

Executives

David Atchley, CFA - VeriSign, Inc.

D. James Bidzos - VeriSign, Inc.

George E. Kilguss III - VeriSign, Inc.

Analysts

Rob Oliver - Robert W. Baird & Co., Inc. (Broker)

Ugam Kamat - JPMorgan India Pvt Ltd.

Matthew Wells - Citigroup Global Markets, Inc.

Unknown Speaker

kOperator: Good day, everyone. Welcome to VeriSign's Second Quarter 2018 Earnings Call. Today's conference is being recorded and unauthorized recording of this call is not permitted.

At this time, I'd like to turn the conference over to Mr. David Ashley, Vice President of Investor Relations and Corporate Treasurer. Please go ahead, sir.

David Atchley, CFA - VeriSign, Inc.

Thank you, operator, and good afternoon, everyone. Welcome to VeriSign's second quarter 2018 earnings call. With me are Jim Bidzos, Executive Chairman, President and CEO; Todd Strubbe, Executive Vice President and COO; and George Kilguss, Executive Vice President and CFO. This call and our presentation are being webcast from our Investor Relations website, which is available under About VeriSign on verisign.com. There you will also find our second quarter 2018 earnings release. At the end of this call the presentation will be available on that site and within a few hours the replay of the call will be posted.

Financial results in our earnings release are unaudited and our remarks include forward-looking statements that are subject to the risks and uncertainties that we discuss in detail in our documents filed with the SEC, specifically the most recent reports on Forms 10-K and 10-Q, which identify risk factors that could cause actual results to differ materially from those contained in the forward-looking statements. VeriSign retains its longstanding policy not to comment on financial performance or guidance during the quarter unless it is done through a public disclosure.

The financial results in today's call and the matters we will be discussing today (00:01:36) and non-GAAP measures used by VeriSign. GAAP to non-GAAP reconciliation information is appended to our earnings release and slide presentation as applicable, each of which can be found on the Investor Relations section of our website. In a moment, Jim and George will provide some prepared remarks and afterwards we will open the call for your questions.

With that I would like to turn the call over to Jim.

D. James Bidzos - VeriSign, Inc.

Thanks, David, and good afternoon, everyone. I am pleased to report another solid quarter for VeriSign. Second quarter results were in line with our objectives of offering security and stability to our customers while generating profitable growth and providing long-term value to our shareholders.

We reported revenue of \$302 million, up 4.8% year-over-year, and delivered solid financial performance including non-GAAP EPS of \$1.18, up 12% year-over-year. During the second quarter we continued our share repurchase program by repurchasing 1 million shares for \$125 million.

Our financial position remains strong with \$1.2 billion in cash, cash equivalents and marketable securities at the end of the quarter. We continually evaluate the overall cash and investing needs of the business and consider the best uses for our cash including potential share repurchases. At the end of June, the domain name base in .com and .net totaled 149.7 million, consisting of 135.6 million names for .com and 14.1 million names for .net. During the second quarter we processed 9.6 million new registrations and the domain name base increased by 1.4 million names.

Although renewal rates are not fully measurable until 45 days after the end of the quarter, we believe that the renewal rate for the second quarter of 2018 will be 74.9%. This preliminary rate compares to 74.0% achieved in the second quarter of 2017.

We now expect full year 2018 domain name base growth of between 3.5% and 4.25% with an increase to the domain name base for the third quarter of 2018 of between 1.3 million and 1.8 million net registrations.

To update you on our discussions about the Cooperative Agreement, VeriSign and NTIA are engaged in dialogue about amending the Cooperative Agreement and what that amendment would look like. But beyond that we don't have anything else to say at this time.

And now I'd like to turn the call over to George.

George E. Kilguss III - VeriSign, Inc.

Thanks, Jim, and good afternoon, everyone. Revenue for the second quarter totaled \$302 million, up 4.8% year-over-year and up by 1.1% sequentially. The increase was primarily a result of improved new domain name registrations and improving renewal rates over the prior year.

Operating income for the period totaled \$193 million compared with \$175 million in the second quarter of 2017. The operating margin in the quarter came to 63.8% compared to 60.6% in the same quarter a year ago.

Net income totaled \$128 million compared to \$123 million a year earlier, which produced diluted earnings per share of \$1.04 in the second quarter of this year compared to \$0.99 for the same quarter of last year.

As of June 30, 2018, the company maintained total assets of \$1.9 billion and total liabilities of \$3.3 billion. Assets included \$1.2 billion of cash, cash equivalents and marketable securities, of which \$569 million were held domestically with the remainder held abroad.

I'll now review some additional second quarter financial metrics which include non-GAAP operating margin, non-GAAP earnings per share, operating cash flow, and free cash flow. I will then provide updates on our 2018 full-year guidance.

As it relates to non-GAAP metrics, second quarter operating expense, which excludes \$13 million of stock-based compensation, totaled \$96 million compared to \$101 million last quarter and \$100 million in the same quarter a year ago.

Non-GAAP operating margin for the second quarter was 68.2%, compared to 66.3% last quarter and 65.3% in the same quarter of 2017. Non-GAAP net income for the second quarter was \$145 million, resulting in non-GAAP diluted earnings per share of \$1.18 based on a weighted average diluted share count of 123.2 million shares. This compares to \$1.07 last quarter and \$1.05 in the second quarter of 2017.

Operating cash flow for the second quarter was \$202 million and free cash flow was \$191 million compared with \$181 million and \$171 million respectively for the second quarter last year.

Now we would like to provide updates to our full-year 2018 guidance. Revenue is now expected to be in the range of \$1.205 billion to \$1.215 billion, narrowed from the \$1.2 billion to \$1.215 billion provided on our last call.

Non-GAAP operating margin is now expected to be between 66% and 67%, increased from the 65.5% to 66.5% range provided on the last call. Our non-GAAP interest expense and non-GAAP non-operating income net is now expected to be an expense of between \$82 million and \$89 million, decreased from the \$85 million and \$92 million range provided on our last call.

Capital expenditures are still expected to be between \$45 million and \$55 million. Cash taxes are now expected to be between \$80 million and \$90 million, narrowed from the \$75 million to \$95 million range provided on our last call.

In summary, the company continued to demonstrate sound financial performance during the second quarter. Now I'll turn the call back over to Jim for his closing remarks.

D. James Bidzos - VeriSign, Inc.

Thank you, George. Second quarter was a solid one for VeriSign. There was further expansion of the domain name base and revenues were generated and efficiently returned value to shareholders.

We continue to work to protect, grow and manage the business while continuing our focus on providing long-term value to our shareholders. Last week the company surpassed 21 continuous years of 100% availability in the common net DNS.

This record is the result of the expertise of our people and our specialized infrastructure.

We will now take your questions. Operator, we're ready for the first question.

Question-and-Answer Session**Operator**

Thank you. We'll take our first question from Rob Oliver with Baird. Please go ahead.

Rob Oliver - Robert W. Baird & Co., Inc. (Broker)

Hey, guys. Thank you very much for taking my question. And I know, Jim, that you said you won't comment on the CA. But I thought I'd give it a shot anyway.

On the time line it's a November expiration so is it likely we would get some resolution on this before kind of our next earnings call? Or is it something that we would be unlikely to hear about until the actual expiration? And then I just had a quick follow-up. Thank you.

D. James Bidzos - VeriSign, Inc.

Yeah, Rob. Nice try. Sorry, we're engaged in a dialogue with NTIA and really can't speculate on the time line. It's their process.

Rob Oliver - Robert W. Baird & Co., Inc. (Broker)

Okay. Thanks, Jim. And then I just wanted to ask about just kind of where we are with .web and any color that you guys can provide around how that ramp might begin to look. Thank you guys very much.

D. James Bidzos - VeriSign, Inc.

Sure, thanks. Well, we're engaged in ICANN's process on .web to move the delegation forward but this is ICANN's process so we can't say exactly when it will conclude. We'll certainly give you updates when they're available. Operator, another one?

Operator

Thank you. We'll now take our next question from Sterling Auty with JPMorgan.

Ugam Kamat - JPMorgan India Pvt Ltd.

Hey. Hi guys, this is actually Ugam Kamat on for Sterling. So just to hit on the Cooperative Agreement, Jim, you mentioned about that you are amending the agreement with ICANN?

Just so that we are clear on that one, is it ruled out about the possibility of renewing or the contract throwing away and the third possibility of amending is the one that you are taking moving forward?

D. James Bidzos - VeriSign, Inc.

Well, that is the statement that we made. Those others were certainly in a range of possibility. I suppose anything is possible. But the facts as they sit today that I can say speaking for both VeriSign and NTIA is precisely the statement that I made earlier, which is that we are engaged in a dialogue about amending the Cooperative Agreement and what that amendment would look like.

And I guess I would just add that amendments are certainly possible by mutual agreement between NTIA and VeriSign. So again we're engaged and that's the process we're in currently.

Ugam Kamat - JPMorgan India Pvt Ltd.

Great.

D. James Bidzos - VeriSign, Inc.

Since that process is still ongoing I can't speculate on what's possible at the end of it. But that's the statement I'm providing today.

Ugam Kamat - JPMorgan India Pvt Ltd.

Great. I mean, that's helpful. And one on the like net additions for the total domain names, you are guiding to something like 4% at the midpoint. I mean, that's the best rates that we have seen so far. Like if you exclude out the China in 2015. What is driving that particular increase in the domain? Is that the cross additions that you are seeing or the high renewal rates from the existing customers that is driving that net additions up?

George E. Kilguss III - VeriSign, Inc.

Sure. This is George. As you saw in the second quarter, we had good performance in net adds from the domain name base. And in the second quarter that primarily came from improved gross adds. Gross adds were \$9.6 million versus \$9.2 million a year ago in the second quarter and slightly improved renewal rates which were, as Jim mentioned, the preliminary renewal rate for second quarter is 74.9%, up from 74% a year ago. And we expect those trends to continue here into the third quarter. And that really – those two factors really are the basis of our guidance.

Ugam Kamat - JPMorgan India Pvt Ltd.

All right. And if I could squeeze one more in on the operating margins, I mean 68.2% has been really the peak of the margins. But you are guiding to 66%, 67% for 2018. Any particular expenses that you expect in the back half of the year that should drag the margins down from the June quarter level?

George E. Kilguss III - VeriSign, Inc.

Well, if you look at the second quarter, you can see that our expenses, our non-GAAP expenses were down about \$4 million year-over-year. And as I have mentioned before, quarter-to-quarter we do have some timing differences with some spend that we put into the business. And Q4 was lower by that \$4 million. Roughly \$3 million of it was in marketing and \$1 million was in G&A. But we still expect to be around that \$100 million expense going forward.

And when we think about where they are – we'll probably see a little bit more in marketing expense go out in subsequent quarters. But we've given – we really don't guide to quarterly expense or margin. The full year guidance is what we expect we'll fall between for the remainder of the year.

Ugam Kamat - JPMorgan India Pvt Ltd.

That's perfect. Really helpful. Thank you, guys.

Operator

Thank you. We'll now take our last question from Matthew Wells with Citi.

Matthew Wells - Citigroup Global Markets, Inc.

Hey. This is Matt Wells with Citi. Thanks for taking my questions. And just digging into growth in the zone file and net adds, can you just talk to where you are seeing strength geographically?

George E. Kilguss III - VeriSign, Inc.

Yes. I'd say similar to last quarter, Matt, we continue to see U.S. registrars do well, as well as registrars in China. But the U.S. registrars have performed well for us this year year-to-date.

Matthew Wells - Citigroup Global Markets, Inc.

Are you able to just speak directionally around the breakout between U.S. and China, net add?

George E. Kilguss III - VeriSign, Inc.

Well, for the first half of the year -- I mean, again we know that our (00:15:10) registrars are performing well. I'd say it's fairly balanced between the two areas. I'd say the U.S. is doing a pretty good job but China continues to do well as well.

Matthew Wells - Citigroup Global Markets, Inc.

That's great. Thanks.

D. James Bidzos - VeriSign, Inc.

Okay, it's Jim here. Just a clarification on one answer I gave on the Cooperative Agreement, our status there. The statement I made is an accurate statement. I guess I don't speak for NTIA. That process is theirs. But the statement is an accurate statement from VeriSign. I just wanted to be clear on that.

Operator

Thank you and that does conclude today's question-and-answer session. I'd like to turn the conference back over to Mr. David Atchley for any additional or final closing remarks.

David Atchley, CFA - VeriSign, Inc.

Thank you, operator. Please call the Investor Relations department with any follow-up questions from this call. Thank you for your participation. This concludes our call. Have a good evening.

Operator

Thank you. That does conclude today's conference. Thank you all for your participation.

EXHIBIT C-19

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Afilias supports nearly 12M names for established gTLD operators, and has a long track record of enabling these operators to meet their ICANN technical requirements. We proudly support this wide range of gTLDs, some of which have specialized eligibility requirements.

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EXHIBIT C-20

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Final Report - Introduction of New Generic Top-Level Domains

Date:
08 August 2007

Last Updated: 01 May 2018

ICANN Generic Names Supporting Organisation

Final Report

Introduction of New Generic Top-Level Domains

8 August 2007

Part A: Final Report

Introduction of New Generic Top-Level Domains

ABSTRACT

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FINAL REPORT: PART B

ABSTRACT

This is the Generic Names Supporting Organization's Final Report on the Introduction of New Top-Level Domains. The Report is in two parts. Part A contains the substantive discussion of the Principles, Policy Recommendations and Implementation Guidelines and Part B contains a range of supplementary materials that have been used by the Committee during the course of the Policy Development Process.

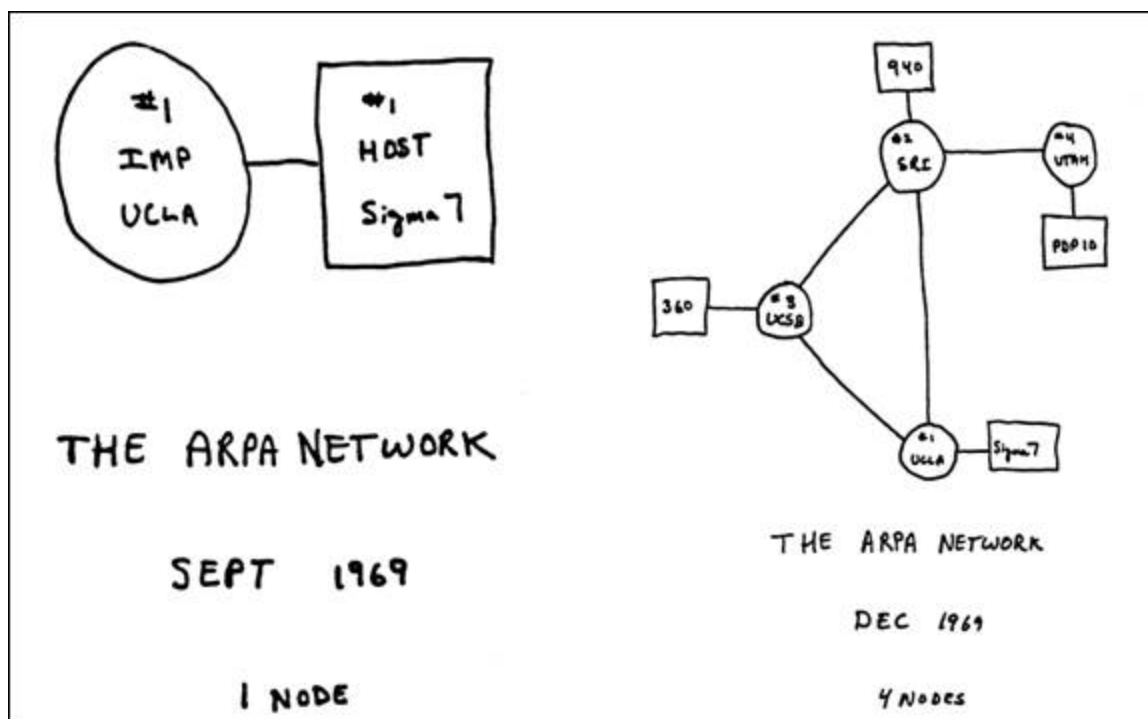
The GNSO Committee on New Top-Level Domains consisted of all GNSO Council members. All meetings were open to a wide range of interested stakeholders and observers. A set of participation data is found in Part B.

Many of the terms found here have specific meaning within the context of ICANN and new top-level domains discussion. A full glossary of terms is available in the Reference Material section at the end of Part A.

BACKGROUND

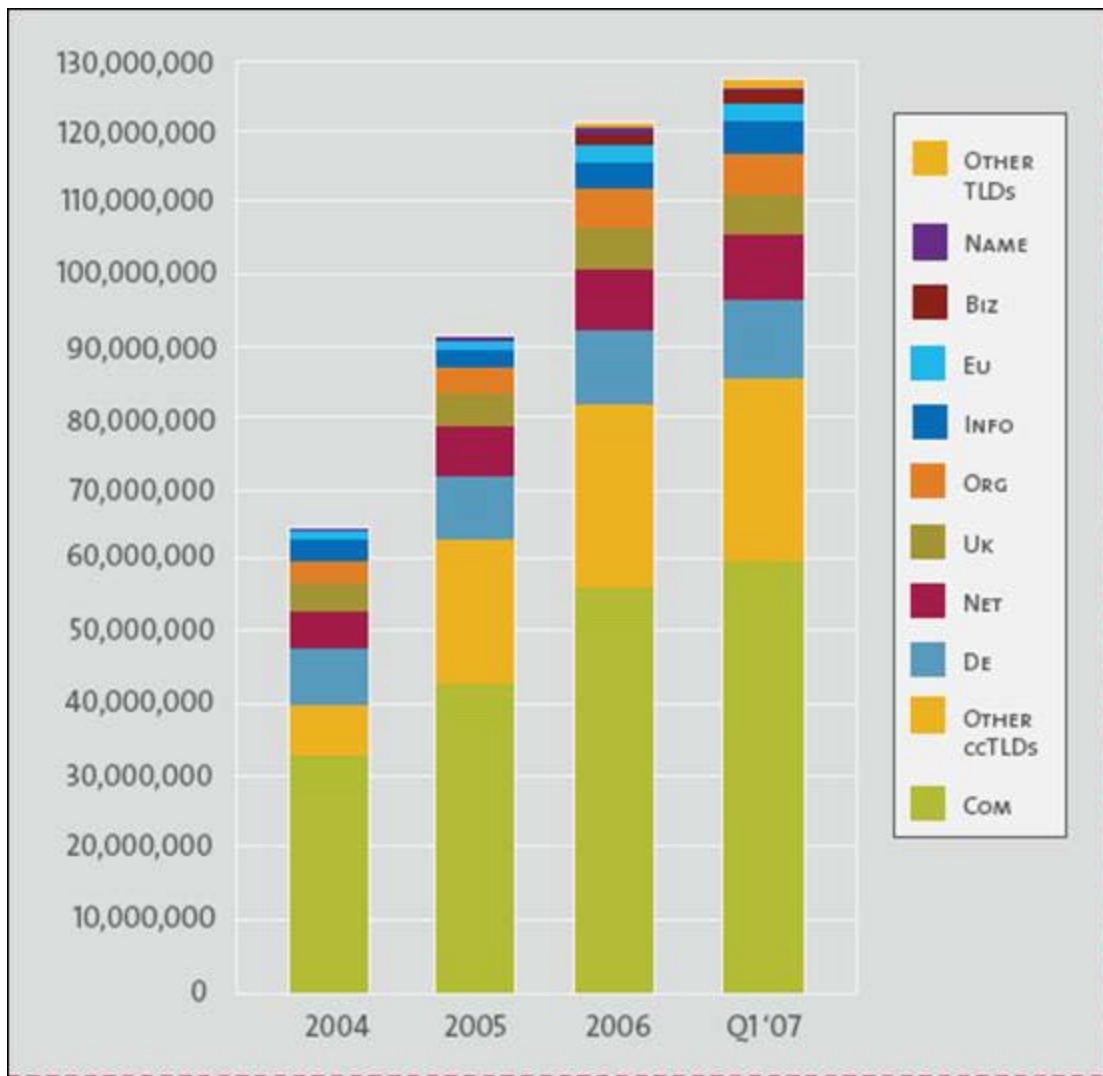
1. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the overall coordination of "the global Internet's system of unique identifiers" and ensuring the "stable and secure operation of the Internet's unique identifier systems. In particular, ICANN coordinates the "allocation and assignment of the three sets of unique identifiers for the Internet". These are "domain names"(forming a system called the DNS); Internet protocol (IP) addresses and autonomous system (AS) numbers and Protocol port and parameter numbers". ICANN is also responsible for the "operation and evolution of the DNS root name server system and policy development reasonably and appropriately related to these technical functions". These elements are all contained in ICANN's Mission and Core Values[1] in addition to provisions which enable policy development work that, once approved by the ICANN Board, become binding on the organization. The results of the policy development process found here relate to the introduction of new generic top-level domains.
2. This document is the *Final Report* of the Generic Names Supporting Organisation's (GNSO) Policy Development Process (PDP) that has been conducted using ICANN's Bylaws and policy development guidelines that relate to the work of the GNSO. This *Report* reflects a comprehensive examination of four Terms of Reference designed to establish a stable and ongoing process that facilitates the introduction of new top-level domains. The policy development process (PDP) is part of the Generic Names Supporting Organisation's (GNSO) mandate within the ICANN structure. However, close consultation with other ICANN Supporting Organisations and Advisory Committees has been an integral part of the process. The consultations and negotiations have also included a wide range of interested stakeholders from within and outside the ICANN community[2].
3. The *Final Report* is in two parts. This document is Part A and contains the full explanation of each of the Principles, Recommendations and Implementation Guidelines that the Committee has developed since December 2005[3]. Part B of the *Report* contains a wide range of supplementary materials which have been used in the policy development process including Constituency Impact Statements (CIS), a series of Working Group Reports on important sub-elements of the Committee's deliberations, a collection of external reference materials, and the procedural documentation of the policy development process[4].
4. The finalisation of the policy for the introduction of new top-level domains is part of a long series of events that have dramatically changed the nature of the Internet. The 1969 ARPANET diagram shows the

initial design of a network that is now global in its reach and an integral part of many lives and businesses. The policy recommendations found here illustrate the complexity of the Internet of 2007 and, as a package, propose a system to add new top-level domains in an orderly and transparent way. The ICANN Staff Implementation Team, consisting of policy, operational and legal staff members, has worked closely with the Committee on all aspects of the policy development process[5]. The ICANN Board has received regular information and updates about the process and the substantive results of the Committee's work.



5. The majority of the early work on the introduction of new top-level domains is found in the IETF's Request for Comment series. RFC 1034[6] is a fundamental resource that explains key concepts of the naming system. Read in conjunction with RFC920[7], an historical picture emerges of how and why the domain name system hierarchy has been organised. Postel & Reynolds set out in their RFC920 introduction about the "General Purpose Domains" that ..."While the initial domain name "ARPA" arises from the history of the development of this system and environment, in the future most of the top level names will be very general categories like "government", "education", or "commercial". The motivation is to provide an organization name that is free of undesirable semantics."

6. In 2007, the Internet is multi-dimensional and its development is driven by widespread access to inexpensive communications technologies in many parts of the world. In addition, global travel is now relatively inexpensive, efficient and readily available to a diverse range of travellers. As a consequence, citizens no longer automatically associate themselves with countries but with international communities of linguistic, cultural or professional interests independent of physical location. Many people now exercise multiple citizenship rights, speak many different languages and quite often live far from where they were born or educated. The 2007 OECD *Factbook*[8] provides comprehensive statistics about the impact of migration on OECD member countries. In essence, many populations are fluid and changing due in part to easing labour movement restrictions but also because technology enables workers to live in one place and work in another relatively easily. As a result, companies and organizations are now global and operate across many geographic borders and jurisdictions. The following illustration[9] shows how rapidly the number of domain names under registration has increased and one could expect that trend to continue with the introduction of new top-level domains.



7. A key driver of change has been the introduction of competition in the registration of domain names through ICANN Accredited Registrars[10]. In June 2007, there were more than 800 accredited registrars who register names for end users with ongoing downward pressure on the prices end-users pay for domain name registration.

8. ICANN's work on the introduction of new top-level domains has been underway since 1999. By mid-1999, Working Group C[11] had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.

9. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel[12].

10. The July 2007 zone file survey statistics from www.registrarstats.com[13] shows that there are slightly more than 96,000,000 top level domains registered across a selection of seven top-level domains including .com, .net and .info. Evidence from potential new applicants provides more impetus to implement a system that enables the ongoing introduction of new top level domains[14]. In addition, interest from Internet users who could use Internationalised Domain Names (IDNs) in a wide variety of scripts beyond ASCII is growing rapidly.

11. To arrive at the full set of policy recommendations which are found here, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[15], and which was augmented by a full set of GNSO Constituency Statements[16]. These are all found in Part B of the *Final Report* and should be read in conjunction with this document. In addition, the Committee received detailed responses from the Implementation Team about proposed policy recommendations and

the implementation of the recommendations package as an on-line application process that could be used by a wide array of potential applicants.

12. The Committee reviewed and analysed a wide variety of materials including Working Group C's findings, the evaluation reports from the 2003 & 2004 round of sponsored top-level domains and a full range of other historic materials[17].

13. In the past, a number of different approaches to new top level domains have been considered including the formulation of a structured taxonomy[18] of names, for example, .auto, .books, .travel and .music. The Committee has opted to enable potential applicants to self-select strings that are either the most appropriate for their customers or potentially the most marketable. It is expected that applicants will apply for targeted community strings such as .travel for the travel industry and .cat for the Catalan community as well as some generic strings. The Committee identified five key drivers for the introduction of new top-level domains.

- (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
- (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
- (iii) Expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
- (iv) There is demand for additional top-level domains as a business opportunity. The GNSO Committee expects that this business opportunity will stimulate competition at the registry service level which is consistent with ICANN's Core Value 6.
- (v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

14. The remainder of this Report is structured around the four *Terms of Reference*. This includes an explanation of the Principles that have guided the work taking into account the Governmental Advisory Committee's March 2007 *Public Policy Principles for New gTLDs*[19]; a comprehensive set of Recommendations which has majority Committee support and a set of Implementation Guidelines which has been discussed in great detail with the ICANN Staff Implementation Team. The Implementation Team has released two *ICANN Staff Discussion Points* documents (in November 2006 and June 2007). Version 2 provides detailed analysis of the proposed recommendations from an implementation standpoint and provides suggestions about the way in which the implementation plan may come together. The ICANN Board will make the final decision about the actual structure of the application and evaluation process.

15. In each of the sections below the Committee's recommendations are discussed in more detail with an explanation of the rationale for the decisions. The recommendations have been the subject of numerous public comment periods and intensive discussion across a range of stakeholders including ICANN's GNSO Constituencies, ICANN Supporting Organisations and Advisory Committees and members of the broader Internet-using public that is interested in ICANN's work[20]. In particular, detailed work has been conducted through the Internationalised Domain Names Working Group (IDN-WG)[21], the Reserved Names Working Group (RN-WG)[22] and the Protecting the Rights of Others Working Group (PRO-WG) [23]. The Working Group Reports are found in full in Part B of the *Final Report* along with the March 2007 GAC Public Policy Principles for New Top-Level Domains, Constituency Impact Statements. A minority statement from the NCUC about Recommendations 6 & 20 are found Annexes for this document along with individual comments from Nominating Committee appointee Ms Avri Doria.

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in

accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system[24].

2. The Principles are a combination of GNSO Committee priorities, ICANN staff implementation principles developed in tandem with the Committee and the March 2007 GAC Public Policy Principles on New Top-Level Domains. The Principles are supported by all GNSO Constituencies.[25]

3. ICANN's Mission and Core Values were key reference points for the development of the Committee's Principles, Recommendations and Implementation Guidelines. These are referenced in the right-hand column of the tables below.

4. The Principles have support from all GNSO Constituencies.

	PRINCIPLES	MISSION & CORE VALUES
A	New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.	M1 & CV1 & 2, 4-10
B	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
C	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.	M3 & CV 4-10
D	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
E	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
F	A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.	M1-3 & CV 1
G	The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.	

	RECOMMENDATIONS[26]	MISSION & CORE VALUES
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.</p> <p>All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully</p>	M1-3 & CV1-11

	available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.	
2	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
3	Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).	CV3
4	Strings must not cause any technical instability.	M1-3 & CV 1
5	Strings must not be a Reserved Word[27].	M1-3 & CV 1 & 3
6*	Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).	M3 & CV 4
7	Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.	M1-3 & CV1
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	There must be a clear and pre-published application process using objective and measurable criteria.	M3 & CV6-9
10	There must be a base contract provided to applicants at the beginning of the application process.	CV7-9
11	[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]	
12	Dispute resolution and challenge processes must be established prior to the start of the process.	CV7-9
13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9
14	The initial registry agreement term must be of a commercially	CV5-9

	reasonable length.	
15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1
20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	

* The NCUC submitted Minority Statements on Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies.

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants.	CV 5, 6, 8 & 9
IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	If there is contention for strings, applicants may[29]: i) resolve contention between them within a pre-established timeframe	CV 7-10

	<p>ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;</p> <p>iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.</p>	
IG H*	<p>Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:</p> <p>(i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and</p> <p>(ii) a formal objection process is initiated.</p> <p>Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.</p> <p>Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.</p>	CV 7 - 10
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English[30].	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10

The following process, definitions and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

- a) **substantial** – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment
- b) **significant portion** – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.
- c) **community** – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.
- d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.
- e) **implicitly targeting** – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.
- f) **established institution** – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

	<p>g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.</p> <p>h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.</p>	
IG Q	ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.	
IG R	Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.	

* The NCUC submitted Minority Statements on Implementation Guidelines F, H & P. The remainder of the Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementation guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*[31] documents that were prepared to facilitate consultation with the GNSO Committee about the implementation impacts of the proposed policy Recommendations. The Implementation Guidelines will be used to inform the final Implementation Plan which is approved by the ICANN Board

2. The *Discussion Points* documents contain draft flowcharts which have been developed by the Implementation Team and which will be updated, based on the final vote of the GNSO Council and the direction of the ICANN Board. The *Discussion Points* documents have been used in the ongoing internal implementation discussions that have focused on ensuring that draft recommendations proposed by the Committee are implementable in an efficient and transparent manner[32]. The flowchart setting out the proposed Contention Evaluation Process is a more detailed component within the Application Evaluation Process and will be amended to take into account the inputs from Recommendation 20 and its related Implementation Guidelines.

3. This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.

4. The following sections set out in detail the explanation for the Committee's recommendations for each Term of Reference.

TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS

1. **Recommendation 1 Discussion – All GNSO Constituencies supported the introduction of new top-level domains.**

2. The GNSO Committee was asked to address the question of whether to introduce new top-level domains. The Committee recommends that ICANN should implement a process that allows the introduction of new top level domains and that work should proceed to develop policies that will enable the introduction of new generic top-level domains, taking into account the recommendations

found in the latter sections of the *Report* concerning Selection Criteria (Term of Reference 2), Allocation Methods (Term of Reference 3) and Policies for Contractual Conditions (Term of Reference 4).

3. ICANN's work on the introduction of new top-level domains has been ongoing since 1999. The early work included the 2000 Working Group C Report[33] that also asked the question of "whether there should be new TLDs". By mid-1999, the Working Group had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.
4. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel.
5. In addressing Term of Reference One, the Committee arrived at its recommendation by reviewing and analysing a wide variety of materials including Working Group C's findings; the evaluation reports from the 2003-2004 round of sponsored top-level domains and full range of other historic materials which are posted at <http://gnso.icann.org/issues/new-gtlds/>
6. In addition, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[34]. These papers augmented a full set of GNSO Constituency Statements[35] and a set of Constituency Impact Statements[36] that addressed specific elements of the Principles, Recommendations and Implementation Guidelines.
7. The Committee was asked, at its February 2007 Los Angeles meeting, to confirm its rationale for recommending that ICANN introduce new top-level domains. In summary, there are five threads which have emerged:
 - (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
 - (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
 - (iii) It is hoped that expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
 - (iv) In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, and to add to consumer choice, market differentiation and geographic and service-provider diversity which is consistent with ICANN's Core Value 6.
 - (v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.
8. Article X, Part 7, Section E of the GNSO's Policy Development Process requires the submission of "constituency impact statements" which reflect the potential implementation impact of policy recommendations. By 4 July 2007 all GNSO Constituencies had submitted Constituency Impact Statements (CIS) to the gTLD-council mailing list[37]. Each of those statements is referred to throughout the next sections[38] and are found in full in Part B of the *Report*. The NCUC submitted Minority Statements on Recommendations 6 & 20 and on Implementation Guidelines F, H & P. These statements are found in full here in Annex A & C, respectively, as they relate specifically to the finalised text of those two recommendations. GNSO Committee Chair and Nominating Committee appointee Ms Avri Doria also submitted individual comments on the recommendation package. Her comments are found in Annex B here.

9. All Constituencies support the introduction of new TLDs particularly if the application process is transparent and objective. For example, the ISPCP said that, "...the ISPCP is highly supportive of the principles defined in this section, especially with regards to the statement in [principle A] (A): New generic top-level domains must be introduced in an orderly, timely and predictable way. Network operators and ISPs must ensure their customers do not encounter problems in addressing their emails, and in their web searching and access activities, since this can cause customer dissatisfaction and overload help-desk complaints. Hence this principle is a vital component of any addition sequence to the gTLD namespace. The various criteria as defined in D, E and F, are also of great importance in contributing to minimise the risk of moving forward with any new gTLDs, and our constituency urges ICANN to ensure they are scrupulously observed during the applications evaluation process". The Business Constituency's (BC) CIS said that "...If the outcome is the best possible there will be a beneficial impact on business users from: a reduction in the competitive concentration in the Registry sector; increased choice of domain names; lower fees for registration and ownership; increased opportunities for innovative on-line business models." The Registrar Constituency (RC) agreed with this view stating that "...new gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs of implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model."

10. The Registry Constituency (RyC) said that "...Regarding increased competition, the RyC has consistently supported the introduction of new gTLDs because we believe that: there is a clear demand for new TLDs; competition creates more choices for potential registrants; introducing new TLDs with different purposes increases the public benefit; new gTLDs will result in creativity and differentiation in the domain name industry; the total market for all TLDs, new and old, will be expanded." In summary, the Committee recommended, "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process". Given that this recommendation has support from all Constituencies, the following sections set out the other Terms of Reference recommendations.

TERM OF REFERENCE -- SELECTION CRITERIA

1. Recommendation 2 Discussion -- Strings must not be confusingly similar to an existing top-level domain.

- i) This recommendation has support from all the GNSO Constituencies. Ms Doria accepted the recommendation with the concern expressed below^[39].
- ii) The list of existing top-level domains is maintained by IANA and is listed in full on ICANN's website^[40]. Naturally, as the application process enables the operation of new top-level domains this list will get much longer and the test more complex. The RyC, in its Impact Statement, said that "...This recommendation is especially important to the RyC. ... It is of prime concern for the RyC that the introduction of new gTLDs results in a ubiquitous experience for Internet users that minimizes user confusion. gTLD registries will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLD strings or with strings that are introduced in the future. There is a strong possibility of significant impact on gTLD registries if IDN versions of existing ASCII gTLDs are introduced by registries different than the ASCII gTLD registries. Not only could there be user confusion in both email and web applications, but dispute resolution processes could be greatly complicated." The ISPCP also stated that this recommendation was "especially important in the avoidance of any negative impact on network activities." The RC stated that "...Registrars would likely be hesitant to offer confusingly similar gTLDs due to customer

demand and support concerns. On the other hand, applying the concept too broadly would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers".

- iii) There are two other key concepts within this recommendation. The first is the issue of "confusingly similar" [41] and the second "likelihood of confusion". There is extensive experience within the Committee with respect to trademark law and the issues found below have been discussed at length, both within the Committee and amongst the Implementation Team.
- iv) The Committee used a wide variety of existing law[42], international treaty agreements and covenants to arrive at a common understanding that strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademarks[43]. For example, the Committee considered the World Trade Organisation's TRIPS agreement, in particular Article 16 which discusses the rights which are conferred to a trademark owner.[44] In particular, the Committee agreed upon an expectation that strings must avoid increasing opportunities for entities or individuals, who operate in bad faith and who wish to defraud consumers. The Committee also considered the Universal Declaration of Human Rights[45] and the International Covenant on Civil and Political Rights which address the "freedom of expression" element of the Committee's deliberations.
- v) The Committee also benefited from the work of the Protecting the Rights of Others Working Group (PRO-WG). The PRO-WG presented its *Final Report*[46] to the Committee at the June 2007 San Juan meeting. The Committee agreed that the Working Group could develop some reference implementation guidelines on rights protection mechanisms that may inform potential new TLD applicants during the application process. A small ad-hoc group of interested volunteers are preparing those materials for consideration by the Council by mid-October 2007.
- vi) The Committee had access to a wide range of differing approaches to rights holder protection mechanisms including the United Kingdom, the USA, Jordan, Egypt and Australia[47].
- vii) In addition, the Committee referred to the 1883 *Paris Convention on the Protection of Industrial Property*[48]. It describes the notion of confusion and describes creating confusion as "to create confusion by any means whatever" {Article 10bis (3) (1)} and, further, being "liable to mislead the public" {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law (currently covering twenty-seven countries) and is structured as follows. "...because of its identity with or similarity to...there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association..." {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.
- viii) In the United States, existing trade mark law requires applicants for trademark registration to state under penalty of perjury that "...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..." which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at <http://www.bitlaw.com/source/15usc/1051.html>.)[49]
- ix) In Australia, the Australian Trade Marks Act 1995 Section 10 says that "...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion" (found at http://www.ipaustralia.gov.au/resources/legislation_index.shtml)
- x) A number of different trademark offices provide guidance on how to interpret confusion. For example, the European Union Trade Mark Office provides guidance on how to interpret confusion. "...confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in

detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables." (found at <http://oami.europa.eu/en/mark/marque/direc.htm>).

- xi) An extract from the United Kingdom's Trade Mark Office's Examiner's Guidance Manual is useful in explaining further the Committee's approach to developing its Recommendation. *"For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, "but serves to define its scope". Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. "The risk that the public might believe that the goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion..."*. (found at <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)
- xii) The Committee also looked in detail at the existing provisions of ICANN's Registrar Accreditation Agreement, particularly Section 3.7.7.9^[50] which says that "...The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party."
- xiii) The implications of the introduction of Internationalised Domain Names (IDNs) are, in the main, the same as for ASCII top-level domains. On 22 March 2007 the IDN-WG released its *Outcomes Report*^[51] that the Working Group presented to the GNSO Committee. The Working Group's exploration of IDN-specific issues confirmed that the new TLD recommendations are valid for IDN TLDs. The full IDN WG Report is found in Part B of the *Report*.
- xiv) The technical testing for IDNs at the top-level is not yet completed although strong progress is being made. Given this and the other work that is taking place around the introduction of IDNs at the top-level, there are some critical factors that may impede the immediate acceptance of new IDN TLD applications. The conditions under which those applications would be assessed would remain the same as for ASCII TLDs.
- xv) Detailed work continues on the preparation of an Implementation Plan that reflects both the Principles and the Recommendations. The proposed Implementation Plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users^[52].
- xvi) The draft Implementation Plan (included in the *Discussion Points* document), illustrates the

flow of the application and evaluation process and includes a detailed dispute resolution and extended evaluation tracks designed to resolve objections to applicants or applications.

- xvii) There is tension between those on the Committee who are concerned about the protection of existing TLD strings and those concerned with the protection of trademark and other rights as compared to those who wish, as far as possible, to preserve freedom of expression and creativity. The *Implementation Plan* sets out a series of tests to apply the recommendation during the application evaluation process.

2. Recommendation 3 Discussion -- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

- i. This recommendation has support from all GNSO Constituencies. Ms Doria supported the recommendation with concern expressed below[53].
- ii. This recommendation was discussed in detail in the lead up to the Committee's 7 June 2007 conference call and it was agreed that further work would be beneficial. That work was conducted through a series of teleconferences and email exchanges. The Committee decided to leave the recommendation text as it had been drafted and insert a new Principle G that reads "...The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law."
- iii. Prior to this, the Committee engaged in comprehensive discussion about this recommendation and took advice from a number of experts within the group[54]. The original text of the recommendation has been modified to recognise that an applicant would be bound by the laws of the country where they are located and an applicant may be bound by another country that has jurisdiction over them. In addition, the original formulation that included "freedom of speech" was modified to read the more generally applicable "freedom of expression".
- iv. Before reaching agreement on the final text, the IPC and the NCUC, in their respective Constituency Impact Statements (CIS), had differing views. The NCUC argued that "...there is no recognition that trade marks (and other legal rights have legal limits and *defenses*." The IPC says "agreed [to the recommendation], and, as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others."

3. Recommendation 4 Discussion -- Strings must not cause any technical instability.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. It was agreed by the Committee that the string should not cause any technical issues that threatened the stability and security of the Internet.
- iii. In its CIS, the ISPCP stated that "...this is especially important in the avoidance of any negative impact on network activities...The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational and operational capability of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The IPC also agreed that "technical and operational stability are imperative to any new gTLD introduction." The RC said "...This is important to Registrars in that unstable registry and/or zone operations would have a serious and costly impact on its operations and customer service and support."
- iv. The Security and Stability Advisory Committee (SSAC) has been involved in general discussions about

new top level domains and will be consulted formally to confirm that the implementation of the recommendations will not cause any technical instability.

v. A reserved word list, which includes strings which are reserved for technical reasons, has been recommended by the RN-WG. This table is found in the section below.

4. Recommendation 5 Discussion -- Strings must not be a Reserved Word.[55]

- i. This recommendation is supported by all GNSO Constituencies. Ms Doria supported the recommendation but expressed some concerns outlined in the footnote below.[56]
- ii. The RN WG developed a definition of "reserved word" in the context of new TLDs which said "...depending on the specific reserved name category as well as the type (ASCII or IDN), the reserved name requirements recommended may apply in any one or more of the following levels as indicated:
 - 1. At the top level regarding gTLD string restrictions
 - 2. At the second-level as contractual conditions
 - 3. At the third-level as contractual conditions for any new gTLDs that offer domain name registrations at the third-level.
- iii. The notion of "reserved words" has a specific meaning within the ICANN context. Each of the existing ICANN registry contracts has provisions within it that govern the use of reserved words. Some of these recommendations will become part of the contractual conditions for new registry operators.
- iv. The Reserved Names Working Group (RN-WG) developed a series of recommendations across a broad spectrum of reserved words. The Working Group's *Final Report*[57] was reviewed and the recommendations updated by the Committee at ICANN's Puerto Rico meeting and, with respect to the recommendations relating to IDNs, with IDN experts. The final recommendations are included in the following table.

	Reserved Name Category	Domain Name Level(s)	Recommendation
1	ICANN & IANA	All ASCII	The names listed as ICANN and IANA names will be reserved at all levels.
2	ICANN & IANA	Top level, IDN	Any names that appear in the IDN evaluation facility[58] which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
3	ICANN & IANA	2 nd & 3 rd levels, IDN	Any names that appear in the IDN evaluation facility which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
4	Symbols	All	We recommend that the current practice be maintained, so that no symbols other than the '-' [hyphen] be considered

			for use, with further allowance for any equivalent marks that may explicitly be made available in future revisions of the IDNA protocol.
5	Single and Two Character IDNs	IDNA-valid strings at all levels	Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script (see Recommendation 10 below). Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.
6	Single Letters	Top Level	We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.
7	Single Letters and Digits	2 nd Level	In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable).
8	Single and Two Digits	Top Level	A top-level label must not be a plausible component of an IPv4 or IPv6 address. (e.g., .3, .99, .123, .1035, .0xAF, .1578234)
9	Single Letter, Single Digit Combinations	Top Level	Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process. Examples include .3F, .A1, .u7.
10	Two Letters	Top Level	We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time.[59] Examples include .AU, .DE, .UK.
11	Any combination of Two Letters, Digits	2 nd Level	Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented.[60] Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.
12	Tagged Names	Top Level ASCII	In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved at the top-level.[61]

13	N/A	Top Level IDN	<p>For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label")^[62] For example:</p> <ul style="list-style-type: none"> • If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京). • If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lqs71d) and the U-label (東京).
14	Tagged Names	2 nd Level ASCII	<p>The current reservation requirement be reworded to say, "<i>In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2nd) level.</i>^[63] – added words in <i>italics</i>. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)</p>
15	Tagged Names	3 rd Level ASCII	<p>All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3rd level) for gTLD registries that register names at the third level."^[64] – added words in <i>italics</i>. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)</p>
16	NIC, WHOIS, WWW	Top ASCII	<p>The following names must be reserved: nic, whois, www.</p>
17	NIC, WHOIS, WWW	Top IDN	<p>Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.</p>
18	NIC, WHOIS, WWW	Second and Third* ASCII	<p>The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (*Third level only applies in cases where a registry offers registrations at the third level.)</p>
19	NIC, WHOIS, WWW	Second and Third* IDN	<p>Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (*Third level only applies in cases where a registry offers registrations at the third level.)</p>
20	Geographic and geopolitical	Top Level ASCII and IDN	<p>There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft</p>

			<p>new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.</p> <p>However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.</p> <p><i>Note New gTLD Recommendation 20</i></p>
21	Geographic and geopolitical	All Levels ASCII and IDN	<p>The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations.</p> <p><i>Note New gTLD Recommendation 20</i></p>
22	Geographic and geopolitical	Second Level & Third Level if applicable, ASCII & IDN	<p>The consensus view of the working group is given the lack of any established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .BIZ and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, the registry would have to incorporate appropriate mechanisms to comply with their national/local laws.</p> <p>For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is</p>

			<p>strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.</p> <p><i>Note New gTLD Recommendation 20</i></p>
23	gTLD Reserved Names	Second & Third Level ASCII and IDN (when applicable)	<p>Absent justification for user confusion[65], the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for their gTLD.</p>
24	Controversial Names	All Levels, ASCII & IDN	<p>There should not be a new reserved names category for Controversial Names.</p>
25	Controversial Names	Top Level, ASCII & IDN	<p>There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process.</p> <p><i>Note New gTLD Recommendation 6</i></p>
26	Controversial Names	Top Level, ASCII & IDN	<p>In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute shall not result in the development of new categories of Reserved Names.[66]</p> <p><i>Note New gTLD Recommendation 6</i></p>
27	Controversial Names	Top Level, ASCII & IDN	<p>The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area.</p> <p><i>Note New gTLD Recommendation 6</i></p>
28	Controversial Names	Top Level, ASCII & IDN	<p>Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g. ALAC or GAC) or supporting organizations (e.g. GNSO or ccNSO). As these</p>

and nominative use."

- vi. The GAC's Public Policy Principle 2.2 states that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant government or public authorities."
- vii. The Implementation Team has developed some suggestions about how this recommendation may be implemented. Those suggestions and the process flow were incorporated into the Version 2 of the ICANN Staff *Discussion Points* document for consideration by the Committee.

5. Recommendation 6 Discussion -- Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention of the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

- i. This Recommendation is supported by all GNSO Constituencies except the NCUC. The NCUC has submitted a Minority Statement which is found in full in Annex A. The NCUC's earlier Constituency Impact Statement is found, along with all the GNSO Constituency Impact Statements, in Part B of this report. Ms Doria has submitted individual comments^[67]. The Committee has discussed this recommendation in great detail and has attempted to address the experiences of the 2003-2004 sTLD round and the complex issues surrounding the .xxx application. The Committee has also recognised the GAC's Public Policy Principles, most notably Principle 2.1 a) and b) which refer to both freedom of expression and terms with significance in a variety of contexts. In addition, the Committee recognises the tension respecting freedom of expression and being sensitive to the legitimate concerns others have about offensive terms. The NCUC's earlier CIS says "...we oppose any string criteria based on morality and public order".
- ii. Other Constituencies did not address this recommendation in their CISs. The Implementation Team has tried to balance these views by establishing an Implementation Plan that recognises the practical effect of opening a new top-level domain application system that will attract applications that some members of the community do not agree with. Whilst ICANN does have a technical co-ordination remit, it must also put in place a system of handling objections to strings or to applicants, using pre-published criteria, that is fair and predictable for applicants. It is also necessary to develop guidance for independent evaluators tasked with making decisions about objections.
- iii. In its consideration of public policy aspects of new top-level domains the Committee examined the approach taken in a wide variety of jurisdictions to issues of morality and public order. This was done not to make decisions about acceptable strings but to provide a series of potential tests for independent evaluators to use should an objection be raised to an application. The use of the phrase "morality and public order" within the recommendation was done to set some guidelines for potential applicants about areas that may raise objections. The phrasing was also intended to set parameters for potential objectors so that any objection to an application could be analysed within the framework of broadly accepted legal norms that independent evaluators could use across a broad spectrum of possible objections. The Committee also sought to ensure that the objections process would have parameters set for who could object. Those suggested parameters are found within the Implementation Guidelines.
- iv. In reaching its decision about the recommendation, the Committee sought to be consistent with, for

example, Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing "contrary to morality or public order and in particular of such a nature as to deceive the public" comes from Article 6quinques (B)(3) of the 1883 *Paris Convention*. The reference to the *Paris Convention* remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.

- v. The concept of "morality" is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhchr.ch/udhr/lang/eng.htm>) says "...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 29 continues by saying that "...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".
- vi. The EU Trade Mark Office's Examiner's guidelines provides assistance on how to interpret morality and deceit. "...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision." The further element is deception of the public which is treated in the following way. "...Deceive the public. To deceive the public, is for instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue." For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>
- vii. The UK Trade Mark office provides similar guidance in its Examiner's Guidance Manual. "Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage." For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)
- viii. This recommendation has been the subject of detailed Committee and small group work in an attempt to reach consensus about both the text of the recommendation and the examples included as guidance about generally accepted legal norms. The work has been informed by detailed discussion within the GAC and through interactions between the GNSO Committee and the GAC.

6. Recommendation 7 Discussion -- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee agreed that the technical requirements for applicants would include compliance with a minimum set of technical standards and that this requirement would be part of the new registry operator's contractual conditions included in the proposed base contract. The more

detailed discussion about technical requirements has been moved to the contractual conditions section.

- iii. Reference was made to numerous Requests for Comment (RFCs) and other technical standards which apply to existing registry operators. For example, Appendix 7 of the June 2005 .net agreement[68] provides a comprehensive listing of technical requirements in addition to other technical specifications in other parts of the agreement. These requirements are consistent with that which is expected of all current registry operators. These standards would form the basis of any new top-level domain operator requirements.
- iv. This recommendation is referred to in two CISs. "The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organisational and operational capabilities of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The NCUC submitted "...we record that this must be limited to transparent, predictable and minimum technical requirements only. These must be published. They must then be adhered to neutrally, fairly and without discrimination."
- v. The GAC supported this direction in its Public Policy Principles 2.6, 2.10 and 2.11.

7. Recommendation 8 Discussion -- Applicants must be able to demonstrate their financial and organisational operational capability.

- i. This recommendation is supported by all GNSO Constituencies and accepted with concern by Ms Doria[69].
 - ii. The Committee discussed this requirement in detail and determined that it was reasonable to request this information from potential applicants. It was also consistent with past practices including the prior new TLD rounds in 2000 and 2003-2004; the .net and .org rebids and the conditions associated with ICANN registrar accreditation.
 - iii. This is also consistent with best practice procurement guidelines recommended by the World Bank (www.worldbank.org), the OECD (www.oecd.org) and the Asian Development Bank (www.adb.org) as well as a range of federal procurement agencies such as the UK telecommunications regulator, Ofcom; the US Federal Communications Commission and major public companies.
 - iv. The challenging aspect of this recommendation is to develop robust and objective criteria against which applicants can be measured, recognising a vast array of business conditions and models. This will be an important element of the ongoing development of the Implementation Plan.
 - v. The ISPCP discussed the importance of this recommendation in its CIS, as found in Recommendation 7 above.
 - vi. The NCUC's CIS addressed this recommendation by saying "...we support this recommendation to the extent that the criteria is truly limited to minimum financial and organizational operational capability...All criteria must be transparent, predictable and minimum. They must be published. They must then be adhered to neutrally, fairly and without discrimination."
 - vii. The GAC echoed these views in its Public Policy Principle 2.5 that said "...the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

8. Recommendation 9 Discussion -- There must be a clear and pre-published process using objective and measurable criteria.

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria. It is consistent with ICANN's previous TLD rounds in 2000 and 2003-2004 and with its re-bid of both the .net and .org registry contracts.
- ii. It is also consistent with ICANN's Mission and Core Values especially 7, 8 and 9 which address openness in decision-making processes and the timeliness of those processes.
- iii. The Committee decided that the "process" criteria for introducing new top-level domains would follow a pre-published application system including the levying of an application fee to recover the costs of the application process. This is consistent with ICANN's approach to the introduction of new TLDs in the previous 2000 and 2004 round for new top-level domains.
- iv. The RyC reiterated its support for this recommendation in its CIS. It said that "...this Recommendation is of major importance to the RyC because the majority of constituency members incurred unnecessarily high costs in previous rounds of new gTLD introductions as a result of excessively long time periods from application submittal until they were able to start their business. We believe that a significant part of the delays were related to selection criteria and processes that were too subjective and not very measurable. It is critical in our opinion that the process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans." The NCUC said that "...we strongly support this recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We all stress the need that all evaluation criteria be objective and measurable."

9. Recommendation 10 Discussion -- There must be a base contract provided to applicants at the beginning of the process.

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria.
- ii. The General Counsel's office has been involved in discussions about the provision of a base contract which would assist applicants both during the application process and in any subsequent contract negotiations.
- iii. A framework for the base contract was developed for discussion at the June 2007 ICANN meeting in Puerto Rico. The base contract will not be completed until the policy recommendations are in place. Completion of the policy recommendations will enable the completion of a draft base contract that would be available to applicants prior to the start of the new gTLD process, that is, prior to the beginning of the four-month window preceding the application submittal period.
- iv. The RyC, in its CIS, said, "...like the comments for Recommendation 9, we believe that this recommendation will facilitate a more cost-effective and timely application process and thereby minimize the negative impacts of a process that is less well-defined and objective. Having a clear understanding of base contractual requirements is essential for a new gTLD applicant in developing a complete business plan."

10. Recommendation 11 Discussion -- (This recommendation has been removed and is left intentionally blank. Note Recommendation 20 and its Implementation Guidelines).

11. Recommendation 12 Discussion -- Dispute resolution and challenge processes must be established prior to the start of the process.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee has provided clear direction on its expectations that all the dispute

resolution and challenge processes would be established prior to the opening of the application round. The full system will be published prior to an application round starting. However, the finalisation of this process is contingent upon a completed set of recommendations being agreed; a public comment period and the final agreement of the ICANN Board.

iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which the ICANN Staff proposes that disputes between applicants and challenge processes may be handled. Expert legal and other professional advice from, for example, auctions experts is being sought to augment the Implementation Plan.

TERM OF REFERENCE THREE -- ALLOCATION METHODS

12. Recommendation 13 Discussion -- Applications must initially be assessed in rounds until the scale of demand is clear.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation sets out the principal allocation methods for TLD applications. The narrative here should be read in conjunction with the draft flowcharts and the draft Request for Proposals.
- iii. An application round would be opened on Day 1 and closed on an agreed date in the future with an unspecified number of applications to be processed within that round.
- iv. This recommendation may be amended, after an evaluation period and report that may suggest modifications to this system. The development of objective "success metrics" is a necessary part of the evaluation process that could take place within the new TLDs Project Office.
- v. The ISPCP expressed its support for this recommendation. Its CIS said that "...this is an essential element in the deployment of new gTLDs, as it enables any technical difficulties to be quickly identified and sorted out, working with reduced numbers of new strings at a time, rather than many all at once. Recommendation 18 on the use of IDNs is also important in preventing any negative impact on network operators and ISPs."

13. Recommendation 20 Discussion -- An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

- i. This recommendation is supported by the majority of GNSO Constituencies. Ms Doria supports the recommendation but has concerns about its implementation^[70]. The NCUC has submitted a Minority Statement which is found in full in Annex C about the recommendation and its associated Implementation Guidelines F, H and P.
- ii. This recommendation was developed during the preparations for the Committee's 7 June 2007 conference call and during subsequent Committee deliberations. The intention was to factor into the process the very likely possibility of objections to applications from a wide variety of stakeholders.
- iii. The language used here is relatively broad and the implementation impact of the proposed recommendation is discussed in detail in the Implementation Team's *Discussion Points* document.
- iv. The NCUC's response to this recommendation in its earlier CIS says, in part, "...recommendation 20 swallows up any attempt to narrow the string criteria to technical, operational and financial evaluations. It asks for objections based on entirely subjective and unknowable criteria and for unlimited reasons and by unlimited parties." This view has, in part, been addressed in the Implementation Team's proposed plan but this requires further

discussion and agreement by the Committee.

TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS

14. Recommendation 14 Discussion -- The initial registry agreement term must be of a commercially reasonable length.

i. The remainder of the recommendations address Term of Reference Four on policies for contractual conditions and should be read in conjunction with Recommendation 10 on the provision of a base contract prior to the opening of an application round. The recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements.

iii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.

iv. The RyC commented on this recommendation in its CIS saying that "...the members of the RyC have learned first hand that operating a registry in a secure and stable manner is a capital intensive venture. Extensive infrastructure is needed both for redundant registration systems and global domain name constellations. Even the most successful registries have taken many years to recoup their initial investment costs. The RyC is convinced that these two recommendations [14 & 15] will make it easier for new applicants to raise the initial capital necessary and to continue to make investments needed to ensure the level of service expected by registrants and users of their TLDs. These two recommendations will have a very positive impact on new gTLD registries and in turn on the quality of the service they will be able to provide to the Internet community."

15. Recommendation 15 -- There must be renewal expectancy.

i. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements and is supported by all Constituencies. Ms Doria supported the recommendation and provided the comments found in the footnote below.[71]

ii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.

iii. See the CIS comments from the RyC in the previous section.

16. Recommendation 16 -- Registries must apply existing Consensus Policies[72] and adopt new Consensus Policies as they are approved.

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. The full set of existing ICANN registry contracts can be found here <http://www.icann.org/registries/agreements.htm> and ICANN's seven current Consensus Policies are found at <http://www.icann.org/general/consensus-policies.htm>.

iii. ICANN develops binding Consensus Policies through its policy development processes, in this case, through the GNSO[73].

17. Recommendation 17 -- A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

- ii. Referring to the recommendations on contractual conditions above, this section sets out the discussion of the policies for contractual conditions for new top-level domain registry operators. The recommendations are consistent with the existing provisions for registry operators which were the subject of detailed community input throughout 2006[74].
- iii. The Committee developed its recommendations during the Brussels and Amsterdam face-to-face consultations, with assistance from the ICANN General Counsel's office. The General Counsel's office has also provided a draft base contract which will be completed once the policy recommendations are agreed. Reference should also be made to Recommendation 5 on reserved words as some of the findings could be part of the base contract.
- iv. The Committee has focused on the key principles of consistency, openness and transparency. It was also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee referred in particular to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for example, spectrum auctions, broadcasting licence distribution and media ownership frameworks.
- v. Since then ICANN has developed and published a new approach to its compliance activities. These are found on ICANN's website at <http://www.icann.org/compliance/> and will be part of the development of base contract materials.
- vi. The Committee found a number of expert reports[75] beneficial. In particular, the World Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favouring the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and technologically neutral approaches gain importance, regulators and policy makers need to be ready to adapt and evolve licensing procedures and practices to the new environment."
- vii. The Recommendations which the Committee has developed with respect to the introduction of new TLDs are consistent with the World Bank principles.

18. Recommendation 18 Discussion -- If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria. The introduction of internationalised domain names at the root presents ICANN with a series of implementation challenges. This recommendation would apply to any new gTLD (IDN or ASCII TLD) offering IDN services. The initial technical testing[76] has been completed and a series of live root tests will take place during the remainder of 2007.
- ii. The Committee recognises that there is ongoing work in other parts of the ICANN organisation that needs to be factored into the application process that will apply to IDN applications. The work includes the President's Committee on IDNs and the GAC and ccNSO joint working group on IDNs.

19. Recommendation 19 Discussion -- Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. There is a long history associated with the separation of registry and registrar operations for top-level domains. The structural separation of VeriSign's registry operations from Network Solutions registrar operations explains much of the ongoing policy to require the use of ICANN accredited registrars.
- iii. In order to facilitate the stable and secure operation of the DNS, the Committee agreed that it was prudent to continue the current requirement that registry operators be obliged to use ICANN accredited registrars.
- iv. ICANN's Registrar Accreditation Agreement has been in place since 2001^[77]. Detailed information about the accreditation of registrars can be found on the ICANN website^[78]. The accreditation process is under active discussion but the critical element of requiring the use of ICANN accredited registrars remains constant.
- v. In its CIS, the RyC noted that "...the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

NEXT STEPS

1. Under the GNSO's Policy Development Process, the production of this *Final Report* completes Stage 9. The next steps are to conduct a twenty-day public comment period running from 10 August to 30 August 2007. The GNSO Council is due to meet on 6 September 2007 to vote on the package of principles, policy recommendations and implementation guidelines.
2. After the GNSO Council have voted the Council Report to the Board is prepared. The GNSO's PDP guidelines stipulate that "the Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:
 - a. A clear statement of any Supermajority Vote recommendation of the Council;
 - b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;
 - c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;
 - d. An analysis of the period of time that would likely be necessary to implement the policy;

- e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;
 - f. The Final Report submitted to the Council; and
 - g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.
3. It is expected that, according to the Bylaws, "...The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best interests of the ICANN community or ICANN. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN community or ICANN. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act. When a final decision on a GNSO Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board."
4. The final stage in the PDP is the implementation of the policy which is also governed by the Bylaws as follows, "...Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy."

Annex A – NCUC Minority Statement: Recommendation 6

STATEMENT OF **DISSENT** ON **RECOMMENDATION #6** OF
GNSO's NEW GTLD REPORT FROM
the Non-Commercial Users Constituency (NCUC)
20 July 2007

NCUC supports most of the recommendations in the GNSO's Final Report, but Recommendation #6 is one we cannot support.[79]

We oppose Recommendation #6 for the following reasons:

- 1) It will completely undermine ICANN's efforts to make the gTLD application process predictable, and instead make the evaluation process arbitrary, subjective and political;
- 2) It will have the effect of suppressing free and diverse expression;

3) It exposes ICANN to litigation risks;

4) It takes ICANN too far away from its technical coordination mission and into areas of legislating morality and public order.

We also believe that the objective of Recommendation #6 is unclear, in that much of its desirable substance is already covered by Recommendation #3. At a minimum, we believe that the words "relating to morality and public order" must be struck from the recommendation.

1) Predictability, Transparency and Objectivity

Recommendation #6 poses severe implementation problems. It makes it impossible to achieve the GNSO's goals of predictable and transparent evaluation criteria for new gTLDs.

Principle 1 of the New gTLD Report states that the evaluation process must be "predictable," and Recommendation #1 states that the evaluation criteria must be transparent, predictable, and fully available to applicants prior to their application.

NCUC strongly supports those guidelines. But no gTLD applicant can possibly know in advance what people or governments in a far away land will object to as "immoral" or contrary to "public order." When applications are challenged on these grounds, applicants cannot possibly know what decision an expert panel – which will be assembled on an ad hoc basis with no precedent to draw on – will make about it.

Decisions by expert panels on "morality and public order" *must* be subjective and arbitrary, because there is no settled and well-established international law regarding the relationship between TLD strings and morality and public order. There is no single "community standard" of morality that ICANN can apply to all applicants in every corner of the globe. What is considered "immoral" in Teheran may be easily accepted in Los Angeles or Stockholm; what is considered a threat to "public order" in China and Russia may not be in Brazil and Qatar.

2) Suppression of expression of controversial views

gTLD applicants will respond to the uncertainty inherent in a vague "morality and public order" standard and lack of clear standards by suppressing and avoiding any ideas that might generate controversy. Applicants will have to invest sizable sums of money to develop a gTLD application and see it through the ICANN process. Most of them will avoid risking a challenge under Recommendation #6. In other words, the presence of Recommendation #6 will result in self-censorship by most applicants.

That policy would strip citizens everywhere of their rights to express controversial ideas because someone else finds them offensive. This policy recommendation ignores international and national laws, in particular freedom of expression guarantees that permit the expression of "immoral" or otherwise controversial speech on the Internet.

3) Risk of litigation

Some people in the ICANN community are under the mistaken impression that suppressing controversial gTLDs will protect it from litigation. Nothing could be further from the truth. By introducing subjective and culturally divisive standards into the evaluation process Recommendation #6 will increase the likelihood of litigation.

ICANN operates under authority from the US Commerce Department. It is undisputed that the US Commerce Department is prohibited from censoring the expression of US citizens in the manner proposed by Recommendation #6. The US Government cannot "contract away" the constitutional protections of its citizens to ICANN any more than it can engage in the censorship itself.

Adoption of Recommendation #6 invites litigation against ICANN to determine whether its censorship policy is compatible with the US First Amendment. An ICANN decision to suppress a gTLD string that would be permitted under US law could and probably would lead to legal challenges to the decision as a form of US Government action.

If ICANN left the adjudication of legal rights up to courts, it could avoid the legal risk and legal liability that this policy of censorship brings upon it.

4) ICANN's mission and core values

Recommendation #6 exceeds the scope of ICANN's technical mission. It asks ICANN to create rules and adjudicate disputes about what is permissible expression. It enables it to censor expression in domain names that would be lawful in some countries. It would require ICANN and "expert panels" to make decisions about permitting top-level domain names based on arbitrary "morality" judgments and other subjective criteria. Under Recommendation #6, ICANN will evaluate domain names based on ideas about "morality and public order" -- concepts for which there are varying interpretations, in both law and culture, in various parts of the world. Recommendation #6 risks turning ICANN into the arbiter of "morality" and "appropriate" public policy through global rules.

This new role for ICANN conflicts with its intended narrow technical mission, as embodied in its mission and core values. ICANN holds no legitimate authority to regulate in this entirely non-technical area and adjudicate the legal rights of others. This recommendation takes the adjudication of people's rights to use domain names out of the hands of democratically elected representatives and into the hands of "expert panels" or ICANN staff and board with no public accountability.

Besides exceeding the scope of ICANN's authority, Recommendation #6 seems unsure of its objective. It mandates "morality and public order" in domain names, but then lists, as examples of the type of rights to protect, the WTO TRIPS Agreement and all 24 World Intellectual Property (WIPO) Treaties, which deal with economic and trade rights, and have little to do with "morality and public order". Protection for intellectual property rights was fully covered in Recommendation #3, and no explanation has been provided as to why intellectual property rights would be listed again in a recommendation on "morality and public order", an entirely separate concept.

In conclusion Recommendation #6 exceeds ICANN's authority, ignores Internet users' free expression rights, and its adoption would impose an enormous burden on and liability for ICANN. It should not be adopted by the Board of Directors in the final policy decision for new gTlds.

Annex B – Nominating Committee Appointee Avri Doria[80]: Individual Comments

Comments from Avri Doria

The "Personal level of support" indications fall into 3 categories:

I Support: these are principles, recommendations or guidelines that are compatible with my personal opinions

I Support with concerns: While these principles, recommendations and guidelines are not incompatible with my personal opinions, I have some concerns about them.

I Accept with concern: these recommendations and guidelines do not necessarily correspond to my personal opinions, but I am able to accept them in that they have the broad support of the committee. I do, however, have concerns with these recommendations and guideline.

I believe these comments are consistent with comments I have made throughout the process and do not constitute new input.

Principles

#	Personal level of	Explanation
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	support	
A	Support	
B	Support with concerns	While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers.
C	Support	
D	Support with concerns	While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability.
E-G	Support	

Recommendations

#	Level of support	Explanation
1	Support	
2	Accept with concern	<p>My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.</p> <p>I In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.</p> <p>I By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.</p> <p>I As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages.</p>
3	Support with concerns	<p>My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice.</p> <p>I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system.</p>

4	Support	
5	Support with concerns	Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration.
6	Accept with concern	<p>My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order.</p> <p>This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g, a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality.</p>
7	Support	
8	Accept with concern	<p>While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.</p> <p>Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities then those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels.</p>
9,10, 12-14	Support	
15	Support with concerns	In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal.

16-19	Support	
20	Support with concerns	In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)

Implementation Guidelines

#	Level of support	Explanation
A-E	Support	
F	Accept with concern	In designing a New gTLD process, one of the original design goals had been to design a predictable and timely process that did not include the involvement of the Board of Directors except for very rare and exceptional cases and perhaps in the due diligence check of a final approval. My concern is that the use of Board in step (iii) may make them a regular part of many of the application procedure and may overload both the Board and the process. If every dispute can fall through to Board consideration in the process sieve, then the incentive to resolve the dispute earlier will be lessened.
G-M	Support	
N	Support with concerns	I strongly support the idea of financial assistance programs and fee reduction for less developed communities. I am concerned that not providing pricing that enables applications from less developed countries and communities may serve to increase the divide between the haves and the have nots in the Internet and may lead to a foreign 'land grab' of choice TLD names, especially IDN TLD names in a new form of resource colonialism because only those with well developed funding capability will be able to participate in the process as currently planned.
O	Support	
	Support	<p>While I essentially agree with the policy recommendation and its implementation guideline, its social justice and fairness depends heavily on the implementation issues. While the implementation details are not yet settled, I have serious concerns about the published draft plans of the ICANN staff in this regard. The current proposal involves using fees to prevent vexatious or unreasonable objections. In my personal opinion this would be a cause of social injustice in the application of the policy as it would prejudice the objection policy in favor of the rich. I also believe that an objection policy based on financial means would allow for well endowed entities to object to any term they found objectionable, hence enabling them to be as vexatious as they wish to be.</p> <p>In order for an objection system to work properly, it must be fair and it must allow for any applicant to understand the basis on which they might have to answer an objection. If the policy and implementation are clear about objections only being considered when they can be shown to cause irreparable harm to a community then it may be possible to build a just process. In addition to the necessity for there to be strict filters on which potential objections are actually processed for further review by an objections review process, it is essential that an external and impartial professional review panel have a clear basis for judging any objections.</p>

P	with concerns	<p>I do not believe that the ability to pay for a review will provide a reasonable criteria, nor do I believe that financial barriers are an adequate filter for stopping vexatious or unreasonable objections though they are a sufficient barrier for the poor.</p> <p>I believe that ICANN should investigate other methods for balancing the need to allow even the poorest to raise an issue of irreparable harm while filtering out unreasonable disputes. I believe, as recommend in the Reserved Names Working group report, that the ALAC and GAC may be an important part of the solution. IG (P) currently includes support for treating ALAC and GAC as established institutions in regard to raising objections to TLD concerns. I believe this is an important part of the policy recommendation and should be retained in the implementation. I believe that it should be possible for the ALAC or GAC, through some internal procedure that they define, to take up the cause of the individual complainant and to request a review by the external expert review panel. Some have argued that this is unacceptable because it operationalizes these Advisory Committees. I believe we do have precedence for such an operational role for volunteers within ICANN and that it is in keeping with their respective roles and responsibilities as representatives of the user community and of the international community of nations. I strongly recommend that such a solution be included in the Implementation of the New gTLD process.</p>
Q	Support	

Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P

STATEMENT OF DISSENT ON RECOMMENDATION #20 &

IMPLEMENTATION GUIDELINES F, H, & P IN THE

GNSO NEW GTLD COMMITTEE'S FINAL REPORT

FROM THE

NON-COMMERCIAL USERS CONSTITUENCY (NCUC)

RE: Domain Name Objection and Rejection Process

25 July 2007

Text of Recommendation #20:

"An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted."

Text of Implementation Guideline F:

If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe

- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

Text of Implementation Guideline H:

External dispute providers will give decisions on complaints.

Text of Implementation Guideline P:

The following process, definitions, and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

a) substantial

In determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.

b) significant portion:

In determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) community

Community should be interpreted broadly and will include for example an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is

impacted.

d) explicitly targeting

Explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implicitly targeting

Implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) established institution

An institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstances include but are not limited to reorganisation, merger, or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) formal existence

Formal existence may be demonstrated by: appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organisation or similar.

h) detriment

<< A >> Evidence of detriment to the community or to users more widely must be provided.

<< B >> [A likelihood of detriment to the community or to users more widely must be provided.]

Recommendation #20

The Non-Commercial Users Constituency (NCUC) Dissenting Statement on Recommendation #20 of the New GTLD Committee's Final Report[81] should be read in combination with Implementation Guidelines F, H & P, which detail the implementation of Recommendation #20. This statement should also be read in conjunction with its statement[82] of 13 June 2007 on the committee's draft report.

NCUC cannot support the committee's proposal for ICANN to establish a broad objection and rejection process for domain names that empowers ICANN and its "experts" to adjudicate the legal rights of domain name applicants (and objectors). The proposal would also empower ICANN and its "experts" to invent entirely new rights to domain names that do not exist in law and that will compete with existing legal rights to domains.

However "good-intentioned", the proposal would inevitably set up a system that decides legal rights based on subjective beliefs of "expert panels" and the amount of insider lobbying. The proposal would give "established institutions" veto power over applications for domain names to the detriment of innovators and start-ups. The proposal is further flawed because it makes no allowances for generic words to which no community claims exclusive "ownership" of. Instead, it wants to assign rights to use language based on

subjective standards and will over-regulate to the detriment of competition, innovation, and free expression.

There is no limitation on the type of objections that can be raised to kill a domain name, no requirement that actual harm be shown to deny an application, and no recourse for the wrongful denial of legal rights by ICANN and its experts under this proposal. An applicant must be able to appeal decisions of ICANN and its experts to courts, who have more competence and authority to decide the applicant's legal rights. Legal due process requires maintaining a right to appeal these decisions to real courts.

The proposal is hopelessly flawed and will result in the improper rejection of many legitimate domain names. The reasons permitted to object to a domain are infinite in number. Anyone may make an objection; and an application will automatically be rejected upon a very low threshold of "detriment" or an even lower standard of "a likelihood of detriment" to anyone. Not a difficult bar to meet.

If ICANN attempted to put this policy proposal into practice it would intertwine itself in general policy debates, cultural clashes, business feuds, religious wars, and national politics, among a few of the disputes ICANN would have to rule on through this domain name policy.

The proposal operates under false assumptions of "communities" that can be defined, and that parties can be rightfully appointed representatives of "the community" by ICANN. The proposal gives preference to "established institutions" for domain names, and leaves applicants' without the backing of "established institutions" with little right to a top-level domain. The proposal operates to the detriment of small-scale start-ups and innovators who are clever enough to come up with an idea for a domain first, but lack the insider-connections and financial resources necessary to convince an ICANN panel of their worthiness.

It will be excessively expensive to apply for either a controversial or a popular domain name, so only well-financed "established institutions" will have both the standing and financial wherewithal to be awarded a top-level domain. The proposal privileges who is awarded a top-level domain, and thus discourages diversity of thought and the free flow of information by making it more difficult to obtain information on controversial ideas or from innovative new-comers.

Implementation Guideline F

NCUC does not agree with the part of Implementation Guideline F that empowers ICANN identified "communities" to support or oppose applications. Why should all "communities" agree before a domain name can be issued? How to decide who speaks for a "community"?

NCUC also notes that ICANN's Board of Directors would make the final decisions on applications and thus the legal rights of applicants under proposed IG-F. ICANN Board Members are not democratically elected, accountable to the public in any meaningful way, or trained in the adjudication of legal rights. Final decisions regarding legal rights should come from legitimate law-making processes, such as courts.

"Expert panels" or corporate officers are not obligated to respect an applicant's free expression rights and there is no recourse for a decision by the panel or ICANN for rights wrongfully denied. None of the "expert" panelists are democratically elected, nor accountable to the public for their decisions. Yet they will take decisions on the boundaries between free expression and trademark rights in domain names; and "experts" will decide what ideas are too controversial to be permitted in a domain name under this process.

Implementation Guideline H

Implementation Guideline H recommends a system to adjudicate legal rights that exists entirely outside of legitimate democratic law-making processes. The process sets up a system of unaccountable "private law" where "experts" are free to pick and choose favored laws, such as trademark rights, and ignore disfavored laws, such as free expression guarantees.

IG-H operates under the false premise that external dispute providers are authorized to adjudicate the legal rights of domain name applicants and objectors. It further presumes that such expert panels will be

qualified to adjudicate the legal rights of applicants and others. But undertaking the creation of an entirely new international dispute resolution process for the adjudication of legal rights and the creation of new rights is not something that can be delegated to a team of experts. Existing international law that takes into account conflict of laws, choice of laws, jurisdiction, standing, and due process must be part of any legitimate process; and the applicant's legal rights including freedom of expression rights must be respected in the process.

Implementation Guideline P

"The devil is in the details" of Implementation Guideline P as it describes in greater detail the proposed adversarial dispute process to adjudicate legal rights to top-level domain names in Recommendation #20. IG-P mandates the rejection of an application if there is "substantial opposition" to it according to ICANN's expert panel. But "substantial" is defined in such a way so as to actually mean "insubstantial" and as a result many legitimate domain names would be rejected by such an extremely low standard for killing an application.

Under IG-P, opposition against and support for an application must be made by an "established institution" for it to count as "significant", again favoring major industry players and mainstream cultural institutions over cultural diversity, innovative individuals, small niche, and medium-sized Internet businesses.

IG-P states that "community" should be interpreted broadly, which will allow for the maximum number of objections to a domain name to count against an application. It includes examples of "the economic sector, cultural community or linguistic community" as those who have a right to complain about an application. It also includes any "related community which believes it is impacted." So anyone who claims to represent a community and believes to be impacted by a domain name can file a complaint and have standing to object to another's application.

There is no requirement that the objection be based on legal rights or the operational capacity of the applicant. There is no requirement that the objection be reasonable or the belief about impact to be reasonable. There is no requirement that the harm be actual or verifiable. The standard for "community" is entirely subjective and based on the personal beliefs of the objector.

The definition of "implicitly targeting" further confirms this subjective standard by inviting objections where "the objector makes the assumption of targeting" and also where "the objector believes there may be confusion by users". Such a subjective process will inevitably result in the rejection of many legitimate domain names.

Picking such a subjective standard conflicts with Principle A in the Final Report that states domain names must be introduced in a "predictable way", and also with Recommendation 1 that states "All applicants for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." The subjectivity and unpredictability invited into the process by Recommendation #20 turn Principle A and Recommendation 1 from the same report upside down.

Besides the inherent subjectivity, the standard for killing applications is remarkably low. An application need not be intended to serve a particular community for "community-based" objections to kill the application under the proposal. Anyone who believed that he or she was part of the targeted community or who believes others face "detriment" have standing to object to a domain name, and the objection weighs in favor of "significant opposition". This standard is even lower than the "reasonable person" standard, which would at least require that the belief be "reasonable" for it to count against an applicant. The proposed standard for rejecting domains is so low it even permits unreasonable beliefs about a domain name to weigh against an applicant.

If a domain name does cause confusion, existing trademark law and unfair competition law have dealt with it for years and already balanced intellectual property rights against free expression rights in domain names. There is neither reason nor authority for ICANN processes to overtake the adjudication of legal

rights and invite unreasonable and illegitimate objections to domain names.

IG-P falsely assumes that the number of years in operation is indicative of one's right to use language. It privileges entities over 5 years old with objection rights that will effectively veto innovative start-ups who cannot afford the dispute resolution process and will be forced to abandon their application to the incumbents.

IG-P sets the threshold for harm that must be shown to kill an application for a domain name remarkably low. Indeed harm need not be actual or verified for an application to be killed based on "substantial opposition" from a single objector.

Whether the committee selects the unbounded definition for "detriment" that includes a "likelihood of detriment" or the narrower definition of "evidence of detriment" as the standard for killing an application for a domain name is largely irrelevant. The difference is akin to re-arranging the deck chairs on the Titanic. ICANN will become bogged down with the approval of domain names either way, although it is worth noting that "likelihood of detriment" is a very long way from "substantial harm" and an easy standard to meet, so will result in many more domain names being rejected.

The definitions and guidelines detailed in IG-P invite a lobby-fest between competing businesses, instill the "heckler's veto" into domain name policy, privilege incumbents, price out of the market non-commercial applicants, and give third-parties who have no legal rights to domain names the power to block applications for those domains. A better standard for killing an application for non-technical reasons would be for a domain name to be shown to be illegal in the applicant's jurisdiction before it can be rejected.

In conclusion, the committee's recommendation for domain name objection and rejection processes are far too broad and unwieldy to be put into practice. They would stifle freedom of expression, innovation, cultural diversity, and market competition. Rather than follow existing law, the proposal would set up an illegitimate process that usurps jurisdiction to adjudicate peoples' legal rights (and create new rights) in a process designed to favor incumbents. The adoption of this "free-for-all" objection and rejection process will further call into question ICANN's legitimacy to govern and its ability to serve the global public interest that respects the rights of all citizens.

NCUC respectfully submits that ICANN will best serve the global public interest by resisting the temptation to stray from its technical mandate and meddle in international lawmaking as proposed by Rec. #20 and IG-F, IG-H, and IG-P of the New GTLD Committee Final Report.

REFERENCE MATERIAL -- GLOSSARY[83]

TERM	ACRONYM & EXPLANATION
A-label	The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn-11b5bs1di".
ASCII Compatible Encoding	ACE ACE is a system for encoding Unicode so each character can be transmitted using only the letters a-z, 0-9 and hyphens. Refer also to http://www.ietf.org/rfc/rfc3467.txt?number=3467
American Standard Code for Information Exchange	ASCII ASCII is a common numerical code for computers and other devices that work with text. Computers can only understand numbers, so an

	<p>ASCII code is the numerical representation of a character such as 'a' or '@'. See above referenced RFC for more information.</p>
Advanced Research Projects Agency	<p>ARPA</p> <p>http://www.darpa.mil/body/arpa_darpa.html</p>
Commercial & Business Users Constituency	<p>CBUC</p> <p>http://www.bizconst.org/</p>
Consensus Policy	<p>A defined term in all ICANN registry contracts usually found in Article 3 (Covenants).</p> <p>See, for example, http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm</p>
Country Code Names Supporting Organization	<p>ccNSO</p> <p>http://ccnso.icann.org/</p>
Country Code Top Level Domain	<p>ccTLD</p> <p>Two letter domains, such as .uk (United Kingdom), .de (Germany) and .jp (Japan) (for example), are called country code top level domains (ccTLDs) and correspond to a country, territory, or other geographic location. The rules and policies for registering domain names in the ccTLDs vary significantly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country.</p> <p>Some ICANN-accredited registrars provide registration services in the ccTLDs in addition to registering names in .biz, .com, .info, .name, .net and .org, however, ICANN does not specifically accredit registrars to provide ccTLD registration services.</p> <p>For more information regarding registering names in ccTLDs, including a complete database of designated ccTLDs and managers, please refer to http://www.iana.org/cctld/cctld.htm.</p>
Domain Names	<p>The term domain name has multiple related meanings: A name that identifies a computer or computers on the internet. These names appear as a component of a Web site's URL, e.g. www.wikipedia.org. This type of domain name is also called a hostname.</p> <p>The product that Domain name registrars provide to their customers. These names are often called registered domain names.</p> <p>Names used for other purposes in the Domain Name System (DNS), for example the special name which follows the @ sign in an email address, or the Top-level domains like .com, or the names used by the Session Initiation Protocol (VoIP), or DomainKeys.</p> <p>http://en.wikipedia.org/wiki/Domain_names</p>

Domain Name System	<p>The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a "mnemonic" device that makes addresses easier to remember.</p>
Generic Top Level Domain	<p>gTLD</p> <p>Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs". They can be subdivided into two types, "sponsored" TLDs (sTLDs) and "unsponsored TLDs (uTLDs), as described in more detail below.</p> <p>In the 1980s, seven gTLDs (.com, .edu, .gov, .int, .mil, .net, and .org) were created. Domain names may be registered in three of these (.com, .net, and .org) without restriction; the other four have limited purposes.</p> <p>In 2001 & 2002 four new unsponsored TLDs (.biz, .info, .name, and .pro) were introduced. The other three new TLDs (.aero, .coop, and .museum) were sponsored.</p> <p>Generally speaking, an unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor thus carries out delegated policy-formulation responsibilities over many matters concerning the TLD.</p>
Governmental Advisory Committee	<p>GAC</p> <p>http://gac.icann.org/web/index.shtml</p>
Intellectual Property Constituency	<p>IPC</p> <p>http://www.ipconstituency.org/</p>
Internet Service & Connection Providers Constituency	<p>ISPCP</p>
Internationalized Domain Names	<p>IDNs</p> <p>IDNs are domain names represented by local language characters. These domain names may contain characters with diacritical marks (required by many European languages) or characters from non-Latin scripts like Arabic or Chinese.</p>

Internationalized Domain Names in Application	<p>IDNA</p> <p>IDNA is a protocol that makes it possible for applications to handle domain names with non-ASCII characters. IDNA converts domain names with non-ASCII characters to ASCII labels that the DNS can accurately understand. These standards are developed within the IETF (http://www.ietf.org)</p>
Internationalized Domain Names – Labels	<p>IDN A Label</p> <p>The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible ACE) form of an IDN A string. For example "xn-1iq90i".</p> <p>IDN U Label</p> <p>The U-label is what should be displayed to the user and is the representation of the IDN in Unicode. For example "北京" ("Beijing" in Chinese).</p> <p>LDH Label</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org"</p>
Internationalized Domain Names Working Group	<p>IDN-WG</p> <p>http://forum.icann.org/lists/gnso-idn-wg/</p>
Letter Digit Hyphen	<p>LDH</p> <p>The hostname convention used by domain names before internationalization. This meant that domain names could only practically contain the letters a-z, digits 0-9 and the hyphen "-". The term "LDH code points" refers to this subset. With the introduction of IDNs this rule is no longer relevant for all domain names.</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org".</p>
Nominating Committee	<p>NomCom</p> <p>http://nomcom.icann.org/</p>
Non-Commercial Users Constituency	<p>NCUC</p> <p>http://www.ncdnhc.org/</p>
Policy Development Process	<p>PDP</p> <p>See http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA</p>

Protecting the Rights of Others Working Group	<p>PRO-WG</p> <p>See the mailing list archive at http://forum.icann.org/lists/gnso-pro-wg/</p>
Punycode	<p>Punycode is the ASCII-compatible encoding algorithm described in Internet standard [RFC3492]. This is the method that will encode IDNs into sequences of ASCII characters in order for the Domain Name System (DNS) to understand and manage the names. The intention is that domain name registrants and users will never see this encoded form of a domain name. The sole purpose is for the DNS to be able to resolve for example a web-address containing local characters.</p>
Registrar	<p>Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of these companies appears in the Accredited Registrar Directory.</p> <p>The registrar asks registrants to provide various contact and technical information that makes up the domain name registration. The registrar keeps records of the contact information and submits the technical information to a central directory known as the "registry."</p>
Registrar Constituency	<p>RC</p> <p>http://www.icann-registrars.org/</p>
Registry	<p>A registry is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator. Users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.</p>
Registry Constituency	<p>RyC</p> <p>http://www.gtldregistries.org/</p>
<p>Request for Comment</p> <p>A full list of all Requests for Comment http://www.rfc-editor.org/rfcxx00.html</p> <p>Specific references used in this report are shown in the</p>	<p>RFC</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt</p>

next column. This document uses language, for example, "should", "must" and "may", consistent with RFC2119.	
Reserved Names Working Group	RN-WG See the mailing list archive at http://forum.icann.org/lists/gnso-rn-wg/
Root server	<p>A root nameserver is a DNS server that answers requests for the root namespace domain, and redirects requests for a particular top-level domain to that TLD's nameservers. Although any local implementation of DNS can implement its own private root nameservers, the term "root nameserver" is generally used to describe the thirteen well-known root nameservers that implement the root namespace domain for the Internet's official global implementation of the Domain Name System.</p> <p>All domain names on the Internet can be regarded as ending in a full stop character e.g. "en.wikipedia.org.". This final dot is generally implied rather than explicit, as modern DNS software does not actually require that the final dot be included when attempting to translate a domain name to an IP address. The empty string after the final dot is called the root domain, and all other domains (i.e. .com, .org, .net, etc.) are contained within the root domain. http://en.wikipedia.org/wiki/Root_server</p>
Sponsored Top Level Domain	<p>sTLD</p> <p>A Sponsor is an organization to which some policy making is delegated from ICANN. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.</p>
U-label	The U-label is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.
Unicode Consortium	A not-for-profit organization found to develop, extend and promote use of the Unicode standard. See http://www.unicode.org

Unicode

Unicode is a commonly used single encoding scheme that provides a unique number for each character across a wide variety of languages and scripts. The Unicode standard contains tables that list the code points for each local character identified. These tables continue to expand as more characters are digitalized.

Continue to Final Report: Part B

- [1] <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#>
- [2] The ICANN "community" is a complex matrix of intersecting organizations and which are represented graphically here. <http://www.icann.org/structure/>
- [3] The *Final Report* is Step 9 in the GNSO's policy development process which is set out in full at <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>.
- [4] Found here <http://gnso.icann.org/issues/new-gtlds/>.
- [5] The ICANN Staff *Discussion Points* documents can be found at <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf> and <http://gnso.icann.org/drafts/PDP-Dec05-StaffMemo-19-jun-07.pdf>
- [6] Authored in 1987 by Paul Mockapetris and found at <http://www.ietf.org/rfc/rfc1034>
- [7] Authored in October 1984 by Jon Postel and J Reynolds and found at <http://www.ietf.org/rfc/rfc920>
- [8] Found at <http://www.oecd.org/dataoecd/15/37/38336539.pdf>
- [9] From Verisign's June 2007 *Domain Name Industry Brief*.
- [10] The full list is available here <http://www.icann.org/registrars/accredited-list.html>
- [11] Report found at <http://www.icann.org/dnso/wgc-report-21mar00.htm>
- [12] Found at <http://www.icann.org/announcements/announcement-31aug04.htm>
- [13] <http://www.registrarstats.com/Public/ZoneFileSurvey.aspx>
- [14] Verisign produce a regular report on the domain name industry.
http://www.verisign.com/Resources/Naming_Services_Resources/Domain_Name_...
- [15] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [16] Found here <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [17] <http://gnso.icann.org/issues/new-gtlds/>
- [18] For example, see the GA List discussion thread found at <http://gnso.icann.org/mailling-lists/archives/ga/msg03337.html> & earlier discussion on IANA lists <http://www.iana.org/comments/26sep1998-02oct1998/msg00016.html>. The 13 June 2002 paper regarding a taxonomy for non-ASCII TLDs is also illuminating <http://www.icann.org/committees/idn/registry-selection-paper-13jun02.htm>
- [19] Found here http://gac.icann.org/web/home/gTLD_principles.pdf
- [20] A list of the working materials of the new TLDs Committee can be found at <http://gnso.icann.org/issues/new-gtlds/>.
- [21] The Outcomes Report for the IDN-WG is found <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>. A full set of resources which the WG is using is found at <http://gnso.icann.org/issues/idn-tlds/>.
- [22] The Final Report of the RN-WG is found at <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>
- [23] The Final Report of the PRO-WG is found at <http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>
- [24] The root server system is explained here <http://en.wikipedia.org/wiki/Rootserver>
- [25] Ms Doria supports all of the Principles but expressed concern about Principle B by saying "...While I strongly support the introduction of IDN TLDs, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers" and Principle D "...While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability,

security and global interoperability."

[26] Note the updated recommendation text sent to the gTLD-council list after the 7 June meeting.

<http://forum.icann.org/lists/gTld-council/msg00520.html>

[27] Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.

[28] <http://www.icann.org/general/idn-guidelines-22feb06.htm>

[29] The Implementation Team sought advice from a number of auction specialists and examined other industries in which auctions were used to make clear and binding decisions. Further expert advice will be used in developing the implementation of the application process to ensure the fairest and most appropriate method of resolving contention for strings.

[30] Detailed work is being undertaken, lead by the Corporate Affairs Department, on establishing a translation framework for ICANN documentation. This element of the Implementation Guidelines may be addressed separately.

[31] <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf>

[32] Consistent with ICANN's commitments to accountability and transparency found at

<http://www.icann.org/announcements/announcement-26jan07b.htm>

[33] Found at <http://www.icann.org/dnso/wgc-report-21mar00.htm>

[34] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gnso.icann.org/issues/new-gTlds/new-gTld-pdp-input.htm>

[35] Found here <http://gnso.icann.org/issues/new-gTlds/new-gTld-pdp-input.htm>

[36] Found here <http://forum.icann.org/lists/gTld-council/>

[37] Archived at <http://forum.icann.org/lists/gTld-council/>

[38] Business Constituency <http://forum.icann.org/lists/gTld-council/msg00501.html>, Intellectual Property

Constituency <http://forum.icann.org/lists/gTld-council/msg00514.html>, Internet Service Providers

<http://forum.icann.org/lists/gTld-council/msg00500.html>, NCUC <http://forum.icann.org/lists/gTld-council/msg00530.html>, Registry Constituency <http://forum.icann.org/lists/gTld-council/msg00494.html>

[39] "My concern involves using definitions that rely on legal terminology established for trademarks for

what I believe should be a policy based on technical criteria.

In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.

By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.

As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages."

[40] <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

[41] See section 4A -- <http://www.icann.org/udrp/udrp-policy-24oct99.htm>.

[42] In addition to the expertise within the Committee, the NCUC provided, as part of its Constituency Impact Statement expert outside advice from Professor Christine Haight Farley which said, in part, "...A determination about whether use of a mark by another is "confusingly similar" is simply a first step in the analysis of infringement. As the committee correctly notes, account will be taken of visual, phonetic and conceptual similarity. But this determination does not end the analysis. Delta Dental and Delta Airlines are confusingly similar, but are not like to cause confusion, and therefore do not infringe. ... In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily than U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of

confusion". However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used."

[43] In addition, advice was sought from experts within WIPO who continue to provide guidance on this and other elements of dispute resolution procedures.

[44] Kristina Rosette provided the reference to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* which is found online at http://www.wto.org/english/tratop_e/trips_e/t_agm1_e.htm

"...Article 16 *Rights Conferred* 1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use..."

[45] <http://www.ohchr.org/english/bodies/hrc/comments.htm>

[46] <http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

[47] Charles Sha'ban provided a range of examples from Arabic speaking countries. For example, in Jordan, Article 7 Trademarks eligible for registration are 1- A trademark shall be registered if it is distinctive, as to words, letters, numbers, figures, colors, or other signs or any combination thereof and visually perceptible. 2- For the purposes of this Article, "distinctive" shall mean applied in a manner which secures distinguishing the goods of the proprietor of the trademark from those of other persons. Article 8 Marks which may not be registered as trademarks. The following may not be registered as trademarks: 10- A mark identical with one belonging to a different proprietor which is already entered in the register in respect of the same goods or class of goods for which the mark is intended to be registered, or so closely resembling such trademark to the extent that it may lead to deceiving third parties.

12- The trademark which is identical or similar to, or constitutes a translation of, a well-known trademark for use on similar or identical goods to those for which that one is well-known for and whose use would cause confusion with the well-known mark, or for use of different goods in such a way as to prejudice the interests of the owner of the well-known mark and leads to believing that there is a connection between its owner and those goods as well as the marks which are similar or identical to the honorary badges, flags, and other insignia as well as the names and abbreviations relating to international or regional organizations or those that offend our Arab and Islamic age-old values.

In Oman for example, Article 2 of the Sultan Decree No. 38/2000 states:

"The following shall not be considered as trademarks and shall not be registered as such: If the mark is identical, similar to a degree which causes confusion, or a translation of a trademark or a commercial name known in the Sultanate of Oman with respect to identical or similar goods or services belonging to another business, or if it is known and registered in the Sultanate of Oman on goods and service which are neither identical nor similar to those for which the mark is sought to be registered provided that the usage of the mark on those goods or services in this last case will suggest a connection between those goods or services and the owner of the known trademark and such use will cause damage to the interests of the owner of the known trademark."

Although the laws In Egypt do not have specific provisions regarding confusion they stress in great detail the importance of distinctiveness of a trade mark.

Article 63 in the IP Law of Egypt No.82 for the year 2002 states:

"A trademark is any sign distinguishing goods, whether products or services, and include is particular names represented in a distinctive manner, signatures, words, letters, numerals, design, symbols, signposts, stamps, seal, drawings, engravings, a combination of distinctly formed colors and any other combination of these elements if used, or meant to be used, to distinguish the precedents of a particular industry, agriculture, forest or mining venture or any goods, or to indicate the origin of products or goods

or their quality, category, guarantee, preparation process, or to indicate the provision of any service. In all cases, a trademark shall be a sign that is recognizable by sight."

[48] Found at http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.ht with 171 contracting parties.

[49] Further information can be found at the US Patent and Trademark Office's website <http://www.uspto.gov/>

[50] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm#3>

[51] Found at <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>.

[52] The 2003 correspondence between ICANN's then General Counsel and the then GAC Chairman is also useful <http://www.icann.org/correspondence/touton-letter-to-tarmizi-10feb03.htm>.

[53] "My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice. I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system."

[54] For example, David Maher, Jon Bing, Steve Metalitz, Philip Sheppard and Michael Palage.

[55] Reserved Word has a specific meaning in the ICANN context and includes, for example, the reserved word provisions in ICANN's existing registry contracts. See <http://www.icann.org/registries/agreements.htm>.

[56] "Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration."

[57] Found online at <http://gnso.icann.org/issues/new-gTlds/final-report-rn-wg-23may07.htm> and in full in Part B of the *Report*.

[58] The Committee are aware that the terminology used here for the purposes of policy recommendations requires further refinement and may be at odds with similar terminology developed in other context. The terminology may be imprecise in other contexts than the general discussion about reserved words found here.

[59] The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

[60] The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

[61] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[62] Internet Draft IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin), Section 3.1.1.1

[63] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[64] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[65] With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings

for new TLDs may surface during one or more public comment periods.

[66] Note that this recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

[67] Ms Doria said "...My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order. This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g. a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality."

[68] <http://www.icann.org/tlds/agreements/net/appendix7.html>

[69] "While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.

Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities than those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels."

[70] "In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)".

[71] "In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal."

[72] Consensus Policies has a particular meaning within the ICANN environment. Refer to <http://www.icann.org/general/consensus-policies.htm> for the full list of ICANN's Consensus Policies.

[73] <http://www.icann.org/general/bylaws.htm#AnnexA>

[74] <http://www.icann.org/registries/agreements.htm>

[75] The full list of reports is found in the Reference section at the end of the document.

[76] <http://www.icann.org/announcements/announcement-4-07mar07.htm>

[77] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm>

[78] Found at <http://www.icann.org/registrars/accreditation.htm>.

[79] Text of Recommendation #6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."

[80] Ms Doria took over from former GNSO Council Chairman (and GNSO new TLDs Committee Chairman) Dr Bruce Tonkin on 7 June 2007. Ms Doria's term runs until 31 January 2008.

[81] Available at: <http://forum.icann.org/lists/gtld-council/pdfOQqgaRNrXf.pdf>

[82] Available at: <http://ipjustice.org/wp/2007/06/13/ncuc-newgtld-stmt-june2007/>

[83] This glossary has been developed over the course of the policy development process. Refer here to ICANN's glossary of terms <http://www.icann.org/general/glossary.htm> for further information.

Comments concerning the layout, construction and functionality of this site should be sent to [webmaster \[at\] gns0.icann.org](mailto:webmaster@gns0.icann.org)

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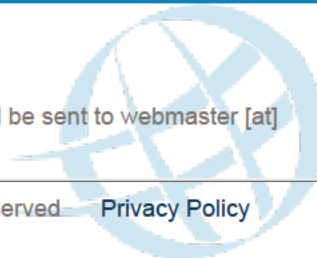


EXHIBIT C-21



Adopted Board Resolutions | Paris

26 Jun 2008

- [Approval of Minutes](#)
- [GNSO Recommendations on New gTLDs](#)
- [IDNC / IDN Fast-track](#)
- [GNSO Recommendation on Domain Tasting](#)
- [Approval of Operating Plan and Budget for Fiscal Year 2008-2009](#)
- [Update on Draft Amendments to the Registrar Accreditation Agreement](#)
- [Approval of PIR Request to Implement DNSSEC in .ORG](#)
- [ICANN Board of Directors' Code of Conduct](#)
- [Ratification of Selection of Consultant to Conduct Independent Review of the Board](#)
- [Appointment of Independent Review Working Groups](#)
- [Update on Independent Reviews of ICANN Structures](#)
- [Board Committee Assignment Revisions](#)
- [Approval of BGC Recommendations on GNSO Improvements](#)
- [Receipt of Report of President's Strategy Committee Consultation](#)
- [Selection of Mexico City for March 2009 ICANN Meeting](#)
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ICANN At-Large Summit Proposal

- [Other Business](#)
- [Thanks to Steve Conte](#)
- [Thanks to Sponsors](#)
- [Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others](#)

Approval of Minutes

Resolved (2008.06.26.01), the minutes of the Board Meeting of 29 May 2008 are approved. <<http://www.icann.org/minutes/prelim-report-29may08.htm>>

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GNSO Recommendations on New gTLDs

Whereas, the GNSO initiated a policy development process on the introduction of New gTLDs in December 2005. <<http://gns0.icann.org/issues/new-gtlds/>>

Whereas, the GNSO Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the process.

Whereas, the GNSO successfully completed its policy development process on the Introduction of New gTLDs and on 7 September 2007, and achieved a Supermajority vote on its 19 policy recommendations.

<<http://gns0.icann.org/meetings/minutes-gns0-06sep07.shtml>>

Whereas, the Board instructed staff to review the GNSO recommendations and determine whether they were capable of implementation.

Whereas, staff has engaged international technical, operational and legal expertise to provide counsel on details to support the implementation of the Policy recommendations and as a result, ICANN cross-functional teams have developed implementation details in support of the GNSO's policy recommendations, and have concluded that the recommendations are capable of implementation.

Whereas, staff has provided regular updates to the community and the Board on the implementation plan. <<http://icann.org/topics/new-gtld-program.htm>>

Whereas, consultation with the DNS technical community has led to the

conclusion that there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns. <<http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf>>

Whereas, the Board recognizes that the process will need to be resilient to unforeseen circumstances.

Whereas, the Board has listened to the concerns about the recommendations that have been raised by the community, and will continue to take into account the advice of ICANN's supporting organizations and advisory committees in the implementation plan.

Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO policy recommendations for the introduction of new gTLDs <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>>.

Resolved (2008.06.26.03), the Board directs staff to continue to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the new gTLD introduction process is launched.

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IDNC / IDN Fast-track

Whereas, the ICANN Board recognizes that the "IDNC Working Group" developed, after extensive community comment, a final report on feasible methods for timely (fast-track) introduction of a limited number of IDN ccTLDs associated with ISO 3166-1 two-letter codes while an overall, long-term IDN ccTLD policy is under development by the ccNSO.

Whereas, the IDNC Working Group has concluded its work and has submitted recommendations for the selection and delegation of "fast-track" IDN ccTLDs and, pursuant to its charter, has taken into account and was guided by consideration of the requirements to:

- Preserve the security and stability of the DNS;
- Comply with the IDNA protocols;
- Take input and advice from the technical community with respect to the implementation of IDNs; and

- Build on and maintain the current practices for the delegation of ccTLDs, which include the current IANA practices.

Whereas, the IDNC Working Group's high-level recommendations require implementation planning.

Whereas, ICANN is looking closely at interaction with the final IDN ccTLD PDP process and potential risks, and intends to implement IDN ccTLDs using a procedure that will be resilient to unforeseen circumstances.

Whereas, staff will consider the full range of implementation issues related to the introduction of IDN ccTLDs associated with the ISO 3166-1 list, including means of promoting adherence to technical standards and mechanisms to cover the costs associated with IDN ccTLDs.

Whereas, the Board intends that the timing of the process for the introduction of IDN ccTLDs should be aligned with the process for the introduction of New gTLDs.

Resolved (2008.06.26.04), the Board thanks the members of the IDNC WG for completing their chartered tasks in a timely manner.

Resolved (2008.06.26.05), the Board directs staff to: (1) post the IDNC WG final report for public comments; (2) commence work on implementation issues in consultation with relevant stakeholders; and (3) submit a detailed implementation report including a list of any outstanding issues to the Board in advance of the ICANN Cairo meeting in November 2008.

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GNSO Recommendation on Domain Tasting

Whereas, ICANN community stakeholders are increasingly concerned about domain tasting, which is the practice of using the add grace period (AGP) to register domain names in bulk in order to test their profitability.

Whereas, on 17 April 2008, the GNSO Council approved, by a Supermajority vote, a motion to prohibit any gTLD operator that has implemented an AGP from offering a refund for any domain name deleted during the AGP that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater. <<http://gns0.icann.org/meetings/minutes-gns0-17apr08.shtml>>

Whereas, on 25 April 2008, the GNSO Council forwarded its formal "Report to the ICANN Board - Recommendation for Domain Tasting"

<<http://gnso.icann.org/issues/domain-tasting/domain-tasting-board-report-gnso-council-25apr08.pdf>>, which outlines the full text of the motion and the full context and procedural history of this proceeding.

Whereas, the Board is also considering the Proposed FY 09 Operating Plan and Budget <<http://www.icann.org/financials/fiscal-30jun09.htm>>, which includes (at the encouragement of the GNSO Council) a proposal similar to the GNSO policy recommendation to expand the applicability of the ICANN transaction fee in order to limit domain tasting.

Resolved (2008.06.26.06), the Board adopts the GNSO policy recommendation on domain tasting, and directs staff to implement the policy following appropriate comment and notice periods on the implementation documents.

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Approval of Operating Plan and Budget for Fiscal Year 2008-2009

Whereas, ICANN approved an update to the Strategic Plan in December 2007. <<http://www.icann.org/strategic-plan/>>

Whereas, the Initial Operating Plan and Budget Framework for fiscal year 2009 was presented at the New Delhi ICANN meeting and was posted in February 2008 for community consultation.

<<http://www.icann.org/announcements/announcement-2-04feb08.htm>>

Whereas, community consultations were held to discuss and obtain feedback on the Initial Framework.

Whereas, the draft FY09 Operating Plan and Budget was posted for public comment in accordance with the Bylaws on 17 May 2008 based upon the Initial Framework, community consultation, and consultations with the Board Finance Committee. A slightly revised version was posted on 23 May 2008.

<<http://www.icann.org/financials/fiscal-30jun09.htm>>

Whereas, ICANN has actively solicited community feedback and consultation with ICANN's constituencies. <<http://forum.icann.org/lists/op-budget-fy2009/>>

Whereas, the ICANN Board Finance Committee has discussed, and guided staff on, the FY09 Operating Plan and Budget at each of its regularly scheduled monthly meetings.

Whereas, the final FY09 Operating Plan and Budget was posted on 26 June 2008.

<<http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf>>

Whereas, the ICANN Board Finance Committee met in Paris on 22 June 2008 to discuss the FY09 Operating Plan and Budget, and recommended that the Board adopt the FY09 Operating Plan and Budget.

Whereas, the President has advised that the FY09 Operating Plan and Budget reflects the work of staff and community to identify the plan of activities, the expected revenue, and resources necessary to be spent in fiscal year ending 30 June 2009.

Whereas, continuing consultation on the budget has been conducted at ICANN's meeting in Paris, at constituency meetings, and during the public forum.

Resolved (2008.06.26.07), the Board adopts the Fiscal Year 2008-2009 Operating Plan and Budget. <<http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf>>

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Update on Draft Amendments to the Registrar Accreditation Agreement

(For discussion only.)

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Approval of PIR Request to Implement DNSSEC in .ORG

Whereas, Public Interest Registry has submitted a proposal to implement DNS Security Extensions (DNSSEC) in .ORG. <<http://icann.org/registries/rsep/pir-request-03apr08.pdf>>

Whereas, staff has evaluated the .ORG DNSSEC proposal as a new registry service via the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/>>, and the proposal included a requested amendment to Section 3.1(c)(i) of the .ORG Registry Agreement <<http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf>> which was posted for public comment along with the PIR proposal.

Whereas, the evaluation under the threshold test of the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/rsep.html>> found a likelihood of security and stability issues associated with the proposed implementation. The

RSTEP Review Team considered the proposal and found that there was a risk of a meaningful adverse effect on security and stability, which could be effectively mitigated by policies, decisions and actions to which PIR has expressly committed in its proposal or could be reasonably required to commit.

<<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf>>

Whereas, the Chair of the SSAC has advised that RSTEP's thorough investigation of every issue that has been raised concerning the security and stability effects of DNSSEC deployment concludes that effective measures to deal with all of them can be taken by PIR, and that this conclusion after exhaustive review greatly increases the confidence with which DNSSEC deployment in .ORG can be undertaken.

Whereas, PIR intends to implement DNSSEC only after extended testing and consultation.

Resolved (2008.06.26.08), that PIR's proposal to implement DNSSEC in .ORG is approved, with the understanding that PIR will continue to cooperate and consult with ICANN on details of the implementation. The President and the General Counsel are authorized to enter the associated amendment to the .ORG Registry Agreement, and to take other actions as appropriate to enable the deployment of DNSSEC in .ORG.

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ICANN Board of Directors' Code of Conduct

Whereas, the members of ICANN's Board of Directors are committed to maintaining a high standard of ethical conduct.

Whereas, the Board Governance Committee has developed a Code of Conduct to provide the Board with guiding principles for conducting themselves in an ethical manner.

Resolved (2008.06.26.09), the Board directs staff to post the newly proposed ICANN Board of Directors' Code of Conduct for public comment, for consideration by the Board as soon as feasible. [Reference to PDF will be inserted when posted.]

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Ratification of Selection of Consultant to Conduct Independent Review of the Board

Whereas, the Board Governance Committee has recommended that Boston Consulting Group be selected as the consultant to perform the independent review of the ICANN Board.

Whereas, the BGC's recommendation to retain BCG was approved by the Executive Committee during its meeting on 12 June 2008.

Resolved (2008.06.26.10), the Board ratifies the Executive Committee's approval of the Board Governance Committee's recommendation to select Boston Consulting Group as the consultant to perform the independent review of the ICANN Board.

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Appointment of Independent Review Working Groups

Whereas, the Board Governance Committee has recommended that several working groups should be formed to coordinate pending independent reviews of ICANN structures.

Resolved (2008.06.26.11), the Board establishes the following independent review working groups:

- ICANN Board Independent Review Working Group: Amadeu Abril i Abril, Roberto Gaetano (Chair), Steve Goldstein, Thomas Narten, Rajasekhar Ramaraj, Rita Rodin, and Jean Jacques Subrenat.
- DNS Root Server System Advisory Committee (RSSAC) Independent Review Working Group: Harald Alvestrand (Chair), Steve Crocker and Bruce Tonkin.
- Security and Stability Advisory Committee (SSAC) Independent Review Working Group: Robert Blokzijl, Dennis Jennings (Chair), Reinhard Scholl and Suzanne Woolf.

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Update on Independent Reviews of ICANN Structures

(For discussion only.)

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Board Committee Assignment Revisions

Whereas, the Board Governance Committee has recommended that the membership of several Board should be revised, and that all other committees should remain unchanged until the 2008 Annual Meeting.

Resolved (2008.06.26.12), the membership of the Audit, Finance, and Reconsideration committees are revised as follows:

- Audit Committee: Raimundo Beca, Demi Getschko, Dennis Jennings, Njeri Rionge and Rita Rodin (Chair).
- Finance Committee: Raimundo Beca, Peter Dengate Thrush, Steve Goldstein, Dennis Jennings, Rajasekhar Ramaraj (Chair), and Bruce Tonkin (as observer).
- Reconsideration Committee: Susan Crawford (Chair), Demi Getschko, Dennis Jennings, Rita Rodin, and Jean-Jacques Subrenat.

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Approval of BGC Recommendations on GNSO Improvements

Whereas, Article IV, Section 4 of ICANN's Bylaws calls for periodic reviews of the performance and operation of ICANN's structures by an entity or entities independent of the organization under review.

Whereas, the Board created the "Board Governance Committee GNSO Review Working Group" (Working Group) to consider the independent review of the GNSO and other relevant input, and recommend to the Board Governance Committee a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications.

Whereas, the Working Group engaged in extensive public consultation and discussions, considered all input, and developed a final report <<http://www.icann.org/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf>> containing a comprehensive and exhaustive list of proposed recommendations on GNSO improvements.

Whereas, the Board Governance Committee determined that the GNSO Improvements working group had fulfilled its charter and forwarded the final report to the Board for consideration.

Whereas, a public comment forum was held open for 60 days to receive, consider and summarize <<http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html>> public comments on the final report.

Whereas, the GNSO Council and Staff have worked diligently over the past few months to develop a top-level plan for approaching the implementation of the improvement recommendations, as requested by the Board at its New Delhi meeting.

Whereas, ICANN has a continuing need for a strong structure for developing policies that reflect to the extent possible a consensus of all stakeholders in the community including ICANN's contracted parties.

Resolved (2008.06.26.13), the Board endorses the recommendations of the Board Governance Committee's GNSO Review Working Group, other than on GNSO Council restructuring, and requests that the GNSO convene a small working group on Council restructuring including one representative from the current NomCom appointees, one member from each constituency and one member from each liaison-appointing advisory committee (if that advisory committee so desires), and that this group should reach consensus and submit a consensus recommendation on Council restructuring by no later than 25 July 2008 for consideration by the ICANN Board as soon as possible, but no later than the Board's meeting in August 2008.

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Receipt of Report of President's Strategy Committee Consultation

Whereas, the Chairman of the Board requested that the President's Strategy Committee undertake a process on how to strengthen and complete the ICANN multi-stakeholder model.

Whereas, the PSC has developed three papers that outline key areas and possible responses to address them: "Transition Action Plan," "Improving Institutional Confidence in ICANN," and "FAQ."

<<http://icann.org/en/announcements/announcement-16jun08-en.htm> >

Whereas, these documents and the proposals contained in them have been discussed at ICANN's meeting in Paris.

Whereas, a dedicated webpage has been launched to provide the community with information, including regular updates <<http://icann.org/jpa/iic/>>.

Resolved (2008.06.26.14), the Board thanks the President's Strategy Committee for its work to date, and instructs ICANN staff to undertake the public consultation recommended in the action plan, and strongly encourages the entire ICANN community to participate in the continuing consultations on the future of ICANN by

reviewing and submitting comments to the PSC by 31 July 2008.

Selection of Mexico City for March 2009 ICANN Meeting

Whereas, ICANN intends to hold its first meeting for calendar year 2009 in the Latin America region;

Whereas, the Mexican Internet Association (AMIPCI) has agreed to host the meeting;

Resolved (2008.06.26.15), the Board accepts the AMIPCI proposal to host ICANN's 34th global meeting in Mexico City, in March 2009.

Review of Paris Meeting Structure

(For discussion only.)

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Board Response to Discussions Arising from Paris Meeting

(For discussion only.)

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ICANN At-Large Summit Proposal

Whereas, at the ICANN meeting in New Delhi in February 2008, the Board resolved to direct staff to work with the ALAC to finalise a proposal to fund an ICANN At-Large Summit, for consideration as part of the 2008-2009 operating plan and budget process. <<http://www.icann.org/minutes/resolutions-15feb08.htm>>

Whereas, potential funding for such a summit has been identified in the FY09 budget. <<http://www.icann.org/financials/fiscal-30jun09.htm>>

Whereas, a proposal for the Summit was completed and submitted shortly before the ICANN Meeting in Paris.

Resolved (2008.06.26.16), the Board approves the proposal to hold an ICANN At-Large Summit as a one-time special event, and requests that the ALAC work with ICANN Staff to implement the Summit in a manner that achieves efficiency, including considering the Mexico meeting as the venue.

Resolved (2008.06.26.17), with the maturation of At-Large and the proposal for the At-Large Summit's objectives set out, the Board expects the ALAC to look to more self-funding for At-Large travel in the fiscal year 2010 plan, consistent with the travel policies of other constituencies.

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Other Business

(TBD)

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Thanks to Steve Conte

Whereas, Steve Conte has served as an employee of ICANN for over five years.

Whereas, Steve has served ICANN in a number of roles, currently as ICANN's Chief Security Officer, but also as a vital support to the Board and its work at meetings.

Whereas, Steve has given notice to ICANN that he has accepted a new position with the Internet Society (ISOC), and that his employment with ICANN will conclude at the end of this meeting.

Whereas, Steve is of gentle nature, possessed of endless patience and fierce integrity, a love of music, and great dedication to the Internet and those who nurture it.

Whereas, the ICANN Board wishes to recognize Steve for his service to ICANN and the global Internet community. In particular, Steve has tirelessly and with good nature supported the past 19 ICANN meetings and his extraordinary efforts have been most appreciated.

Resolved (2008.06.26.18), the ICANN Board formally thanks Steve Conte for his service to ICANN, and expresses its good wishes to Steve for his work with ISOC and all his future endeavors.

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Thanks to Sponsors

The Board extends its thanks to all sponsors of this meeting:

L'Association Française pour le Nommage Internet en Coopération (AFNIC), France Télécom, Groupe Jutheau Husson, Stichting Internet Domeinregistratie Nederland (SIDN), Association Marocaine des Professionnels des Telecommunications (MATI), Afilias Limited, Deutsches Network Information Center (DENIC), The European Registry of Domain Names (EURid), European Domain Name Registration (EuroDNS), INDOM, Toit de la Grande Arche Parvis de la Défense, Musée de L'informatique, NeuStar, Inc., Public Interest Registry, VeriSign, Inc., AusRegistry, Fundació puntCAT, Council of European National Top Level Domain Registries (CENTR), China Internet Network Information Center (CNNIC), Institut National de Recherche en Informatique et en Automatique (INRIA), InterNetX, Key-Systems GmbH, Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com, Nask, Nominet UK, The Internet Infrastructure Foundation (.SE), Registry ASP, Amen, DotAsia Organisation Ltd., Domaine FR, Golog, Iron Mountain Intellectual Property Management, Inc., Nameaction, Inc., NIC.AT Internet Verwaltungs und Betriebsgesellschaft m.b.H, UNINETT Norid A/S, IIT – CNR (Registro del [ccTLD.it](#)), Renater, Domaine.info, and ICANNWiki.

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Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others

The Board wishes to extend its thanks to the local host organizers, AGIFEM, its President Daniel Dardailler, Vice-President Pierre Bonis and CEO Sebastien Bachollet, as well as Board Members from Afnic, Amen, Domaine.fr, Eurodns, Indom, Internet Society France, Internet fr, Namebay, Renater, and [W3C](#).

The Board would also like to thank Eric Besson, the Minister for Forward Planning, Assessment of Public Policies and Development of the Digital Economy for his participation in the Welcome Ceremony and the Welcome Cocktail.

The Board thanks the Au Toit de la Grande Arche , its president, Francis Bouvier, and Directeur, Philippe Nieuwbourg, and Bertrand Delanoë, Maire de Paris, and Jean-Louis Missika, adjoint au Maire de Paris for their hospitality at the social events at the [ICANN](#) Paris meeting.

The Board expresses its appreciation to the scribes Laura Brewer, Teri Darrenougue, Jennifer Schuck, and Charles Motter and to the entire [ICANN](#) staff for their efforts in facilitating the smooth operation of the meeting. [ICANN](#) would particularly like to acknowledge the many efforts of Michael Evans for his assistance in organizing the past eighteen public board meetings and many other smaller events for the [ICANN](#) community.

The Board also wishes to express its appreciation to VeriLan Events Services, Inc.

for technical support, Auvitec and Prosn for audio/visual support, Calliope Interpreters France for interpretation, and France Telecom for bandwidth. Additional thanks are given to the Le Meridien Montparnasse for this fine facility, and to the event facilities and support.

The Board also wishes to thank all those who worked to introduce a Business Access Agenda for the first time at this meeting, Ayesha Hassan of the International Chamber of Commerce, Marilyn Cade, and ICANN Staff.

The members of the Board wish to especially thank their fellow Board Member Jean-Jacques Subrenat for his assistance in making the arrangements for this meeting in Paris, France.

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EXHIBIT C-22



FREQUENTLY ASKED QUESTIONS

1.1 What is the new gTLD Program?

The new gTLD program is an initiative that will enable the introduction of new gTLDs (including both ASCII and IDN) into the domain name space.

1.2 Why are new gTLDs being introduced?

One of ICANN's key commitments is to promote competition in the domain name market while ensuring Internet security and stability. New generic Top-Level Domains (gTLDs) help achieve that commitment by paving the way for increased consumer choice by facilitating competition among registry service providers. Soon entrepreneurs, businesses, governments and communities around the world will be able to apply to operate a Top-Level Domain registry of their own choosing.

1.3 Will the introduction of new gTLDs change how the Internet operates?

The increase in number of gTLDs into the root is not expected to affect the way the Internet operates, but it will, for example, potentially change the way people find information on the Internet or how businesses plan and structure their online presence.

1.4 How many new gTLDs are expected?

There is no way of knowing the exact number of applications ICANN will receive nor how many of these applications will qualify and become gTLD registries. Market speculations have varied widely. The process to evaluate applications is being constructed to economically accommodate a wide range.

1.5 Is applying for a new gTLD the same as buying a domain name?

No. Nowadays, organizations and individuals around the world can register second-level and, in some cases, third-level domain names. (In a URL such as maps.google.com, "google" is a second-level name and "maps" is a third-level domain.) They simply need to find an accredited registrar, comply with the registrant terms and conditions and pay registration and renewal fees. The application for a new gTLD is a much more complex process. An applicant for a new gTLD is, in fact, applying to create and operate a registry business supporting the Internet's domain name system. This involves a number of significant responsibilities, as the operator of a new gTLD is running a piece of visible Internet infrastructure.

1.6 How and when can I see which gTLD strings are being applied for and who is behind the application?

Approximately 2 weeks after the application submission period closes, ICANN will post the public portions of all applications received, including applied-for strings, applicant names, application type, mission/purpose of proposed gTLD, and other public application data.

1.7 Is ICANN initiating the New gTLD Program to make money?

ICANN is a not-for-profit organization and this is a not-for-profit initiative. The program is designed to be self-funding. It is possible ICANN will over-collect or even under-collect for this first round of applications. If the fee collection exceeds ICANN's expenses, the community will be consulted as to how that excess should be used. For detailed information on the New gTLD Program budget, please refer to the [New gTLD Budget Explanatory Memorandum](#).

1.8 I have an idea for a new gTLD. Can I register my idea with ICANN in advance of the next application period?

No, ICANN does not accept reservations or pre-registrations of new gTLDs. ICANN also does not endorse any third parties to do so.

1.9 Can I pre-register a second-level domain name?

Be wary of anyone who claims to be able to reserve your place in line for a second-level registration for one of these new gTLDs. Not only can no one predict which TLDs will be available, but the new TLD operator may choose not to sell second-level registrations.

1.10 Can I reserve my trademark as a gTLD?

No, ICANN does not accept reservations or pre-registrations based on trademarks. But registries will be required to operate sunrise or intellectual property claims services for the protection of trademarks. See section 5.4.1 of the [Applicant Guidebook](#) for details.

1.11 Is the upcoming application process going to be the same as for the previous new gTLD rounds in 2000 and 2003-4?

The application process will not be the same. The GNSO recommendations are intended to create a standing policy to guide the opening of a gTLD application round as well as the continuing procedures. Although this new implementation may share some similarities to the previous rounds, they are not identical.

1.12 If someone applies for a TLD that is a brand name or a trademark that does not belong to them, will the brand or trademark owners be notified by ICANN?

At this time, ICANN is not contemplating a notification system. ICANN is conducting global public outreach to educate the community on what their responsibilities are, as well as what the formal objection mechanism and timeline is, before the program launches. ICANN will publish the list of all applications received after the application submission period closes, and will continue to publicize the objection process and deadlines.

1.13 Does this application process cover new ccTLDs also?

No. Information on procedures for establishing ccTLDs is available at <http://www.iana.org/ctld/ctld-establishment-procedures-19mar03.htm>. However, anyone, including ccTLD operators, may apply to operate a new gTLD.

1.14 Where can I find more information about the Program?

Visit the New gTLD website at <http://icann.org/newgtlds>.

1.15 Will there be a publicly available web site where the new gTLD application information will be made available?

Yes. Approximately 2 weeks after the close of the application window, ICANN will post the public portions of all applications on its website.

Application & Evaluation Process

2.1 Who can apply for a new gTLD?

Any established public or private organization that meets eligibility requirements anywhere in the world can apply to create and operate a new gTLD Registry. Applicants will need to demonstrate the operational, technical and financial capability to run a registry and comply with additional specific requirements.

2.2 How do I apply for a new gTLD?

Any established public or private organization anywhere in the world can apply to create and operate a new generic Top-Level Domain (gTLD) registry. Applicants will need to demonstrate the operational, technical and financial capability to run a registry and comply with additional specific requirements. Please refer to the *Applicant Guidebook* for detail information on the application process, including the application questions in Module 2, attachment 2.

Please note that applying for a new gTLD is not the same as buying a domain name. An applicant for a new gTLD is, in fact, applying to create and operate a registry business supporting the Internet's domain name system. This involves a number of significant responsibilities, as the operator of a new gTLD is running a piece of visible Internet infrastructure.

The application window is expected to open on 12 January 2012 and close on 12 April 2012.

The evaluation fee is US\$185,000. Applicants will be required to pay a US\$5,000 deposit fee per requested application slot when registering. The deposit will be credited against the evaluation fee. Other fees may apply depending on the specific application path. See the section 1.5 of the *Applicant Guidebook* for details about the methods of payment, additional fees and refund schedules.

When the application round opens, candidates will apply via an online application system called TAS – TLD Application System.

2.3 Can I apply for more than one gTLD?

Yes. Each gTLD applied-for string requires its own application.

2.4 Can I apply for any kind of gTLD or are there any specific restrictions?

ICANN has a set of specific technical rules that apply to all proposed gTLD strings. For example, an application for a string composed entirely of numbers will be rejected. If an applicant chooses an IDN gTLD, additional technical requirements apply. There is also a list of reserved gTLD names that are unavailable for general use. Furthermore, applicants for a gTLD that is a geographic name must meet additional requirements. All the specific restrictions are outlined in section 2.2.1 of the *Applicant Guidebook*.

2.5 Can I simply reserve a gTLD and decide later whether or not to use it?

ICANN expects all new gTLDs to be operational. One of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. The application process requires applicants to provide a detailed plan for the launch and operation of the proposed gTLD. gTLDs are expected to be delegated within one year of signing a registry agreement with ICANN.

2.6 What will happen during the application window and how long will it last?

The application window is expected to open on 12 January 2012 and close on 12 April 2012. Applicants will use a dedicated web-based application interface named TLD Application System (TAS) to apply, where they will answer questions and upload supporting documents. TAS will only be available when the application window opens.

2.7 How long will the evaluation process take?

First let's define the "evaluation process" as starting at the point when the application window closes. There are several stages that an application may pass through prior to a final determination being rendered. Those stages are Administrative Check, Initial Evaluation, Extended Evaluation, String Contention, Dispute Resolution and Pre-delegation. The shortest path for a successful application is to pass Administrative Check (lasting 2 months), Initial Evaluation (lasting 5 months) and then move to Pre-delegation (lasting approximately 2 months) without any Objections filed or String Contention concerns. In this case the evaluation process could take as little as 9 months to complete. On the other hand if an application does not pass Initial Evaluation and elects Extended Evaluation and/or is in the Dispute Resolution or String Contention stages then the evaluation process could take up to 20 months to complete (or longer in the event that unforeseen circumstances arise). Please refer to Section 1.1.3 of the [Applicant Guidebook](#) for detailed information on timing estimates.

2.8 How will gTLD applications be assessed?

Independent, third-party, expert panels will evaluate applications against criteria and requirements outlined in the [Applicant Guidebook](#).

2.9 What happens if there are multiple applications for the same string?

It is not feasible for two or more identical top-level strings to exist in the Internet's domain name system. Each domain name must be unique. If there are two or more applications for the same string, the *String Contention* procedures would come into effect. The same would apply in cases where two or more strings are considered to be confusingly similar. The processes proposed by ICANN to deal with the identical and/or similar strings are described in detail in the [Applicant Guidebook](#). Applicants always have the opportunity to resolve contention by a mutually agreeable settlement amongst themselves.

2.10 If I want to apply for two similar or related TLDs, for example, ".thing" and ".thething" would that be two applications or one? And if two, do I have to pay \$185,000 for each?

If an applicant applies for .thing and .thething, those would be considered two separate applications. (Applicants should note carefully that the application process is currently designed to not allow two strings that are "confusingly similar" to each other to both be delegated into the DNS – please refer to the full text of the [Applicant Guidebook](#) for details.) If both applications were approved, they would result in two separate TLDs. Each application will be treated individually and there is no discount on application fees based upon the filing of multiple applications.

2.11 Can a New gTLD name contain numbers or dashes?

The ASCII label for a new gTLD name must consist entirely of letters (alphabetic characters a-z).

2.12 Can a New gTLD name be 2 letters?

Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country-codes based on the ISO 3166-1 standard.

2.13 Can I apply for country name under the New gTLD Program?

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program.

2.14 What happens after a new gTLD application is approved?

Once an application is deemed to satisfy the criteria outlined in the *Applicant Guidebook* and passes all evaluation and selection processes, including objection processes and final approval, the applicant is required to execute a registry agreement with ICANN and pass technical pre-delegation tests before the new gTLD can be delegated to the root zone. Refer to Module 5 of the *Applicant Guidebook* for information on the transition to delegation processes.

2.15 What happens if more applications are received than expected?

If the volume of applications exceeds expectations, applications will be processed in batches. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

2.16 How long will I have to wait for my TLD to go into the root?

Depending on what batch you are assigned to, it will then follow the timeline outlined in section 1.1.3 of the *Applicant Guidebook*.

2.17 If I apply for .thing, would the translation of the term thing in other languages also be protected in the new gTLD?

Each applied-for gTLD string requires its own application. ".thing" would be one application. A translation of ".thing" in Arabic characters, for example, would be another application.

2.18 Is an excel file of the financial projection templates available?

The excel file of the financial projection template can be downloaded by [clicking here](#).

2.19 Will ICANN consider reducing the ratings of financial institutions for the continued operations instrument given recent financial market conditions?

ICANN will review our credit ratings requirement in light of prevailing market conditions.

2.20 Can economic enterprises qualify as communities in the sense of the community priority evaluation criteria?

There is no provision in the Applicant Guidebook for an application to “qualify” as a community. The designation of an application as community-based is entirely at the discretion of the applicant.

A community priority evaluation may occur as a result of string contention. Where an applicant goes through community priority evaluation, according to the criteria in Module 4 of the [Applicant Guidebook](#), an application meeting the threshold score of 14 will be awarded priority in the contention set.

2.21 Do “.brand” applications have to comply with all requirements in the Applicant Guidebook?

The [Applicant Guidebook](#) specifies only 2 types of applications, standard and community. “.brand” is not an application type provided for in the [Applicant Guidebook](#). All applicants must comply with requirements specified in the [Applicant Guidebook](#).

TLD Applicant System (TAS)

3.1 Will there be a TAS demo prior to the opening of the application window?

Yes. A TAS interactive demonstration is being made available in advance of the application window. Check www.icann.org/newgtlds for updates and to see whether it is available. The demonstration will allow users to click through the various TAS screens but will not allow data entry.

3.2 When will I have access to TAS?

TAS will be available when the application window opens, which is currently expected to be on 12 January 2012, and not before. You can access TAS only after registering.

3.3 How will I access TAS?

A link to TAS will be provided on the ICANN website at www.icann.org/newgtlds when the application window opens, which is expected to be on 12 January 2012.

3.4 What formats will TAS allow for the input of text?

TAS supports Unicode or plain text. Hyperlinks or stylized, formatted text, drawings or diagrams, cannot be included in line with text. Supporting visuals will be allowed as attachments.

3.5 Will there be a fill-able table in TAS for the financial projections?

No. ICANN will make available a downloadable template in TAS for the completion of the financial projections. Applicants will then be able to upload the completed template back into TAS.

3.6 How will I embed or attach graphics to my application?

Graphics, images, tables, diagrams may be uploaded as attachments. ICANN strongly recommends that applicants label all graphics, images, tables, diagrams and attachments appropriately and reference them in their responses.

3.7 Is there a limit in the number of characters/words for each response?

Yes. Every response is limited to a certain number of characters based on guidance provided in the

Applicant Guidebook. One page approximately equates to 4,000 characters (including spaces). Character limitation are by question, not by application. Applicants cannot transfer unused characters from one response to another. Applicants may not use attachments to extend their text response.

3.8 Will I be timed-out or logged-off while completing an application?

For security purposes, TAS is programmed to detect inactivity and will automatically log off users after a defined period of time. Please note that any data that have not been saved when the system logs a user off will be lost. A user who is actively working in the system should not be kicked off.

3.9 Will TAS allow bullets, dashes, numberings?

TAS supports Unicode or plain text only. Applicants may use hyphens and numbers as plain text only.

3.10 Can I provide hyperlinks to online information as references, answers, or appendices?

No. ICANN will not accept hyperlinks to online information as part of the response unless specifically requested or called for in the question. The entire application should be self-contained. Evaluation panels will only consider information provided within the allotted space in TAS for a particular question (plus attachments for those questions where ICANN explicitly asks for them) as the applicant's response.

Objection & Dispute Resolution

4.1 How can I object to an application?

Approximately 2 weeks after the close of the application window, ICANN will post the public portions of all applications that have been received on our website. At this time, the formal objection period will begin and will last for approximately 7 months. Formal objections using pre-established Dispute Resolution Procedures (DRP) may be filed on any of the following grounds:

- String confusion
- Legal rights
- Community
- Limited public interest

In all but exceptional circumstances, objections will be administered by independent Dispute Resolution Service Providers (DRSP), rather than by ICANN. Refer to Module 3 of the *Applicant Guidebook* for more information on objection procedures.

4.2 How much does it cost to file an objection?

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant Dispute Resolution Provider (DRSP). If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. After the hearing has taken place and the panel makes its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

For details, see Sections 1.5.2 of the *Applicant Guidebook*.

There will also be costs involved in preparing an objection, which should be taken into account.

4.3 What can I do if someone applies for a string that represents my brand or trademark?

You can file an objection with the DRSP selected to administer "legal rights" objections. Details about these procedures, such as who has standing, where and how objections are filed, and how much objections will cost can be found in Module 3 of the Applicant Guidebook and the related New gTLD Dispute Resolution Procedure. You must pay close attention to the objection deadlines that are publically available on ICANN's website.

4.4 What are the estimated costs associated with registering a trademark with the proposed Trademark Clearinghouse?

The costs are not currently known. We expect to request proposals from service providers of which cost will be a key component in determining the appropriate provider.

4.5 Will ICANN prevent the registration of objectionable or racist extensions?

Consistent with the policy advice on new gTLDs, all applied-for strings could be subject to an objection-based process based on Limited Public Interest grounds. This process will be conducted by the qualified DRSP utilizing standards drawing on provisions in a number of international treaties. In addition to Limited Public Interest objection, the GAC may also submit to ICANN a formal GAC advice on any application. The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

Fees & Timelines

5.1 When can I apply for a new gTLD?

The application window is expected to open on 12 January 2012.

5.2 How much is the evaluation fee?

The evaluation fee is estimated at US\$185,000. Applicants will be required to pay a US\$5,000 deposit fee per requested application slot when registering. The US\$5,000 will be credited against the evaluation fee. Other fees may apply depending on the specific application path. See the section 1.5 of the [Applicant Guidebook](#) for details about the methods of payment, additional fees and refund schedules.

5.3 Are there any additional costs I should be aware of in applying for a new gTLD?

Yes. Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable, and should expect to account for their own business start-up costs. See Section 1.5.2 of the [Applicant Guidebook](#).

5.4 Will ICANN offer refunds?

Yes, refunds will apply in specific circumstances. Details about refund conditions are specified in section 1.5.1 of the [Applicant Guidebook](#).

5.5 If I withdraw my application, will I get a refund?

In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of refund will depend on the point in the process at which the withdrawal is requested. Please refer to section 1.5.1 of the *Applicant Guidebook* for a schedule of refunds.

5.6 If my application does not get approved, will I be refunded the \$185,000 application fee?

A full refund of the application fee is not available. Any applicant that has not been successful has the option of withdrawing its application at the end of Initial Evaluation or Extended Evaluation for a partial refund. Please refer to section 1.5.1 of the *Applicant Guidebook* for a schedule of refunds.

5.7 Are there any ongoing fees once a gTLD is approved by ICANN?

Yes. Once an application has successfully passed all the evaluation steps, the applicant is required to sign a New gTLD Agreement (also called Registry Agreement) with ICANN. Under the agreement, there are two fees: (a) a fixed fee of US\$6,250 per calendar quarter; (b) and a transaction fee of US\$0.25. The latter does not apply until and unless more than 50,000 transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period. Please refer to section 6.1 of the New gTLD Agreement in the *Applicant Guidebook*.

5.8 One of my clients would like me to handle all of the contracts on their behalf. Do any scenarios exist in which a party may execute a Registry Contract on behalf of a Registry Operator?

No. ICANN will only enter into an agreement with the applicant. There's no provision for Party X to enter a registry agreement with ICANN designating Party Y as the registry operator.

Applicant Guidebook

6.1 What is the "Applicant Guidebook"?

The *Applicant Guidebook* provides a step-by-step procedure for new gTLD applicants. It specifies what documents and information are required to apply; the financial and legal commitments; and what to expect during the application and evaluation periods. The *Applicant Guidebook* can be found at <http://icann.org/newgtlds> [PDF, 4.81 MB]

6.2 Why is ICANN asking for so much information from the applicants?

One of ICANN's core missions is to preserve the security, stability and global interoperability of the Internet. Future new gTLD registries are expected to comply with ICANN's contract and follow all best practices and standards to ensure this mission is fulfilled.

6.3 I understand that ICANN will only make available the Applicant Guidebook in English (official version), Spanish, French, Chinese, Russian, and Arabic. Will ICANN allow other independent parties to translate the Applicant Guidebook into a language outside of the 6 UN languages mentioned?

Yes, the Applicant Guidebook may be translated from the official English version into multiple languages under the following conditions:

- Provide attribution to the source (ICANN's English version of the Applicant Guidebook)
- Use the materials in context; and
- Do not use the materials in a way that implies ICANN sponsorship or approval of your work. This includes not reproducing the ICANN logo separate from where it may appear within the materials.

In addition, the following disclaimer must appear in a prominent position on the translated version, in the same language as the translated document: "This document is an unofficial translation not produced by or endorsed by ICANN and is for information only. The original and authoritative text (in English) may be found at: [link to the most recent English version of the Applicant Guidebook on the ICANN website]."

gTLD History & Policy Development

7.1 How are new gTLDs created?

The decision to establish the New gTLD Program followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinates global Internet policy at ICANN—completed its policy development work on new gTLDs and approved a set of recommendations. Contributing to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO) and Security and Stability Advisory Committee (SSAC). The ICANN Board of Directors adopted the policy in June 2008. A thorough brief to the policy process can be found at <http://gns0.icann.org/issues/new-gtlds/>.

There are eight gTLDs that predate the formal establishment of ICANN as an organization. These are: **.com .edu .gov .int .mil .net .org .arpa**. ICANN held two previous application rounds, one in 2000 and another in 2003-4, where several proposals were submitted and evaluated. The gTLDs approved during the 2000 round are: **.aero .biz .coop .info .museum .name .pro**. The gTLDs approved during the 2004 round are **.asia .cat .jobs .mobi .tel .travel**. You can find additional information about these previous application rounds at <http://www.icann.org/tlds/app-index.htm> (2000) and <http://www.icann.org/tlds/stld-apps-19mar04/> (2003-4). Applications received during these rounds were evaluated against previously-published criteria, and those applicants who were successful went on to sign **TLD Registry Agreements** with ICANN.

7.2 How did the new gTLD policy development process work?

The Generic Names Supporting Organization (GNSO) is responsible for creating policy applicable to gTLDs. The GNSO policy development process on new gTLDs was aimed at creating a standing policy to guide the ongoing introduction of new gTLDs. The GNSO Policy Development Process (PDP) is formally defined in the ICANN Bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The GNSO's final report on the introduction of New gTLDs can be found here ([Part A](#), [Part B](#)).

7.3 How are the GNSO's policy recommendations being implemented?

ICANN staff reviewed the 19 GNSO recommendations for the introduction of new gTLDs and developed a set of steps to put each of them into practice, while also being cognizant of the guiding principles and

implementation guidelines. One of the main outputs of this implementation work is the *Applicant Guidebook* [PDF, 3.1 MB], which can be thought of as a roadmap for potential gTLD applicants.

Domain Name Basics

8.1 What is a domain name?

Every computer that accesses the Internet has a unique identifying address which is a string of numbers called an "IP address" (IP stands for "Internet Protocol"). As IP addresses are often difficult to remember, these numbers are transposed into characters or letters (the "domain name") and are what a user types in when searching for websites or sending an email.

8.2 What is the Domain Name System (DNS)?

The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a "mnemonic" device that makes addresses easier to remember.

8.3 What is a top-level domain (TLD)?

Every domain name around the world ends with a top-level domain (TLD); these are the 2 or more letters that come after the dot. There are currently two types of TLDs: generic top-level domain (gTLDs) such as .com, .mobi, and .info, and country code top-level domains (ccTLDs) such as .uk, .br, and .cn. A gTLD or a ccTLD is managed by a registry operator, an organization that maintains the registry database, including the nameserver information for names registered in the TLD.

8.4 What are second-level and third-level domain names?

The portion of the domain name that precedes the top-level domain is called the second-level domain name (for example, the "icann" in "icann.org"). There are also third-level domain names that appear before the second-level domain name and again are separated by a dot (for example, events.icann.org). Third-level domain names are also called sub-domains and are often used to categorize special sections of a website.

8.5 What is a gTLD?

gTLD stands for generic Top-Level Domain. (what Internet users see as an Internet extension such as .COM, .ORG, or .INFO) and they are part of the structure of the Internet's domain name system. The gTLDs are also sometimes called labels, strings, or extensions.

8.6 What is a ccTLD?

ccTLD stands for country-code Top-Level Domain and are two-letter, top-level domains that identify a country or territory. There are approximately 250 ccTLDs, for example: .ca for Canada, .jp for Japan, and .eu for the European Union. A listing of existing ccTLDs is available at <http://www.iana.org/domains/root/db/>.

8.7 What is an IDN?

IDN stands for Internationalized Domain Name. IDNs are domain names represented by local language characters, or letter equivalents. These domain names could contain characters with diacritical marks (accents) as required by many European languages, or characters from non-Latin scripts (for example, Arabic or Chinese). IDNs make the domain name label as it is displayed and viewed by the end user different from that transmitted in the DNS. To avoid confusion the following terminology is used: **The A-label** is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di". **The U-label** is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.

Miscellaneous

9.1 What is the process for submitting questions about new gTLDs?

ICANN encourages community inquiries on the gTLD process. Questions may be sent to newgtld@icann.org. This FAQ will also be updated periodically based on questions received. Please also check [the New gTLD site](http://newgtlds.icann.org) at <http://newgtlds.icann.org> and [Twitter](#) to find out about the latest developments.

9.2 If I apply for a TLD for my exclusive use and will only issue domain registration for internal use, must I use an ICANN accredited registrar?

Yes. Registry operators must use only ICANN accredited registrars in registering domain names. If a registry operator wishes to issue domain names, it must become an ICANN accredited registrar in order to do so.

9.3 If I want to register a gTLD solely for my own use, for example, solely for use by my company, partners, consultants, shareholders, auditors, etc., can I limit the issuance of second level domains to those individuals? Can I refuse to accept applications for second level domains from members of the public in general?

Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

9.4 If I want to register a gTLD solely to promote my own brand and undertake my own marketing plans, can I refuse applications for second level domains from my competitors? Can I also refuse applications for second level domains from individuals who appear to be cybersquatters or scammers?

Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

9.5 After delegation, if the applicant's business plan for the new gTLD were to change from the mission/purpose originally stated on question #18, would the now-gTLD operator be penalized?

One of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. ICANN recognizes that business models may evolve as the market matures. ICANN will only hold TLD operators responsible for complying with the terms of the registry agreement.

9.6 Will applications be categorized as “sponsored” or “unsponsored” in this New

gTLD application round?

No, applications will not be categorized as “sponsored” or “unsponsored” in this new gTLD application round. ICANN carried out 2 previous new gTLD application rounds. Sponsored and unsponsored TLDs were part of these 2 previous programs. These distinctions are not relevant to the New gTLD program. Under the New gTLD program, a community-based designation can be made on any application. Please refer to section 1.2.3 of the Applicant Guidebook for more information on community-based designation.

The information presented here about the application and evaluation process is the most up-to-date available. However, it is a high-level summary and is subject to change. For exact details about the program please review the actual text of the [Applicant Guidebook](#).

[ICANN](#) [APPLICANT GUIDEBOOK](#) [NAMING SERVICES PORTAL](#) [GLOBAL SUPPORT](#)

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EXHIBIT C-23



Resources

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

Note: this page is an archive of an old version of the bylaws. The current [ICANN](#) bylaws are always available at:

<https://www.icann.org/resources/pages/governance/bylaws-en>

As amended 11 February 2016

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ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("[ICANN](#)") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, [ICANN](#):

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as "[DNS](#)");
 - b. Internet protocol ("[IP](#)") addresses and autonomous system ("[AS](#)") numbers; and
 - c. [Protocol](#) port and parameter numbers.
2. Coordinates the operation and evolution of the [DNS](#) root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of [ICANN](#):

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting [ICANN](#)'s activities to those matters within [ICANN](#)'s mission requiring or significantly benefiting from global coordination.
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the

interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board. With respect to any matters that would fall within the provisions of [Article III, Section 6](#), the Board may act only by a majority vote of all members of the Board. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of those present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those members present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "all of the members of the Board."

Section 2. RESTRICTIONS

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN. Nothing in this Section is intended to prevent ICANN from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 3. NON-DISCRIMINATORY TREATMENT

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations, and Advisory Committees; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN's budget, annual audit, financial contributors and the

amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about ICANN activities of interest to significant segments of the ICANN community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN's physical meetings and public forums; and (ix) other information of interest to the ICANN community.

Section 3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN, including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 5. MINUTES AND PRELIMINARY REPORTS

1. All minutes of meetings of the Board and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary for posting on the Website.
2. No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any resolutions passed by the Board of Directors at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board of Directors and the Chairs of the Supporting Organizations (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (as set forth in Article XI of these

Bylaws) informing them that the resolutions have been posted.

3. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 5.2 above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.
4. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN's principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

1. With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:
 - a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
 - b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and
 - c. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in [Section 6\(1\)\(b\) of this Article](#), prior to any final Board action.
3. After taking action on any policy subject to this Section, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in [Article I of these Bylaws](#). The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of [Article III](#) and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
 - a. one or more staff actions or inactions that contradict established ICANN policy(ies); or
 - b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could

- have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
 - a. evaluate requests for review or reconsideration;
 - b. summarily dismiss insufficient requests;
 - c. evaluate requests for urgent consideration;
 - d. conduct whatever factual investigation is deemed appropriate;
 - e. request additional written submissions from the affected party, or from other parties;
 - f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
 - g. make a recommendation to the Board of Directors on the merits of the request, as necessary.
 4. ICANN shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.
 5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:
 - a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or
 - b. for requests challenging staff actions, the date on which the party

submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or

- c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.
6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN website. at <http://www.icann.org/en/groups/board/governance/reconsideration>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.
 7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
 8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.
 9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.
 10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.
 11. The Board Governance Committee may ask the ICANN staff for its views

on the matter, which comments shall be made publicly available on the Website.

12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.
13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.
14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.
15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.
16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN's website.
17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the

recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN's headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.
19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.
20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
 - a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;
 - b. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any request pending for more than ninety (90) days;
 - c. an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and
 - d. whether or not, in the Board Governance Committee's view, the

criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in [Section 2 of this Article](#), ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.
3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.
4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:
 - a. did the Board act without conflict of interest in taking its decision?;
 - b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
 - c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
5. Requests for independent review shall not exceed 25 pages (double-

spaced, 12-point font) of argument. ICANN's response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.

6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.
7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN.
8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this [Section 3](#).
9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.
10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.
11. The IRP Panel shall have the authority to:
 - a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;
 - b. request additional written submissions from the party seeking review, the Board, the [Supporting Organizations](#), or from other

parties;

- c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
 - d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;
 - e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and
 - f. determine the timing for each proceeding.
12. In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.
 13. All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.
 14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN.org and is incorporated into this Section 3 of the Bylaws.
 15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.
 16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable

fees and costs incurred by ICANN in the proceeding, including legal fees.

17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.
18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.
19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN's website when they become available.
20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.
21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

Section 4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

1. The Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of

the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all members of the Board.

2. The Governmental Advisory Committee shall provide its own review mechanisms.

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.
2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.
3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.
4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN budget recommended by the ICANN President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article IV](#) or the Independent Review Policy set forth in [Section 3 of Article IV](#) have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or

an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;
2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;
3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);
4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;
5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and
6. comply with all ICANN conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

1. No ICANN employee, Board member, or other participant in Supporting

Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

2. ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.
3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.
4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.
5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

Section 5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

The ICANN Board of Directors ("Board") shall consist of sixteen voting members ("Directors"). In addition, four non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in [Section 9 of this Article](#). Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN Board.

Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

1. The Directors shall consist of:
 - a. Eight voting members selected by the Nominating Committee established by [Article VII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.
 - b. Two voting members selected by the [Address Supporting Organization](#) according to the provisions of [Article VIII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.
 - c. Two voting members selected by the [Country-Code Names Supporting Organization](#) according to the provisions of [Article IX of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.
 - d. Two voting members selected by the [Generic Names Supporting Organization](#) according to the provisions of [Article X of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.
 - e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.
 - f. The President ex officio, who shall be a voting member.
2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the [ICANN Board](#) is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At no time when it makes its selection shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) from countries in any one Geographic Region (as defined in [Section 5 of this Article](#)) to exceed five; and the Nominating Committee shall ensure when it makes its selections that the Board includes at least one Director who is from a country in each [ICANN Geographic Region](#) ("Diversity Calculation").

For purposes of this sub-section 2 of Article VI, Section 2 of the [ICANN Bylaws](#), if any candidate for director maintains citizenship of more than one

country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

3. In carrying out their responsibilities to fill Seats 9 through 15, the Supporting Organizations and the At-Large Community shall seek to ensure that the ICANN Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At any given time, no two Directors selected by a Supporting Organization shall be citizens from the same country or of countries located in the same Geographic Region.

For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Supporting Organization or the At-Large Community to use for selection purposes. For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

4. The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors, not including the President.

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;
2. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and

- committed to the success of ICANN;
3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;
 4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and
 5. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.
2. No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board. If such a person accepts a nomination to be considered for selection by the Supporting Organization Council or the At-Large Community to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization Council or the committee designated by the At-Large Community relating to the selection of Directors by the Council or Community, until the Council or committee(s) designated by the At-Large Community has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the At-Large Advisory Committee accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by [Article VII, Section 8](#).

Section 5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the selection of Directors by the Nominating Committee, each Supporting Organization and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN. Each Director shall be responsible for disclosing to ICANN any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to ICANN any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The Board shall adopt policies specifically addressing Director, Officer, and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

Section 8. TERMS OF DIRECTORS

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:
 - a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
 - b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
 - c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;
 - d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN's ICANN's annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN's annual meeting in 2015 and each ICANN annual meeting every third year after 2015;
 - e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN's annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN's annual meeting in 2013 and each ICANN annual meeting every third year after 2013; and
 - f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN's annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN's annual meeting in 2014 and each ICANN annual meeting every third year after 2014.
2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.
3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.
4. At least six months before the date specified for the commencement of the term as specified in paragraphs 1.d-f above, any Supporting Organization or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN written notice of

its selection.

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (Note: In the period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.)
6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:
 - a. One appointed by the [Governmental Advisory Committee](#);
 - b. One appointed by the Root Server System [Advisory Committee](#) established by [Article XI of these Bylaws](#);
 - c. One appointed by the [Security and Stability Advisory Committee](#) established by [Article XI of these Bylaws](#);
 - d. One appointed by the Internet Engineering Task Force.
2. The non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of [ICANN](#) written notice of its appointment.
3. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.
4. The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section for the purpose of consulting with their respective committee or organization.

Section 10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN) or by giving written notice thereof to the President or the Secretary of ICANN. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to [Section 12 of this Article](#).

Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

1. Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.
2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee, any non-voting liaison may be removed, following notice to that liaison and to the organization by which that liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that liaison following such notice. The Board may request the Governmental Advisory Committee to consider the replacement of the non-voting liaison appointed by that Committee if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization, in

which case that vacancy shall be filled by that Supporting Organization, or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of [Article XIII of these Bylaws](#). The selecting body shall give written notice to the Secretary of ICANN of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

2. The organizations selecting the non-voting liaisons identified in [Section 9 of this Article](#) are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the Secretary of ICANN written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

Annual meetings of ICANN shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting for ICANN shall be held at the principal office of ICANN, or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN.

Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of ICANN. In the absence of designation, special meetings shall be held at the principal office of ICANN.

Section 16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and non-voting liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile,

charges prepaid, addressed to each Director and non-voting liaison at the Director's or non-voting liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section to the contrary, notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time, or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN adopts and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the

telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 20. ELECTRONIC MAIL

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 21. RIGHTS OF INSPECTION

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN. ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

1. Except for the President of ICANN, who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.
2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN for services to ICANN as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.
3. As part of the process, the Board shall retain an Independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable

Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.
5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.
6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.
7. As used in this Section 22, the following terms shall have the following meanings:
 - a. An "Independent Valuation Expert" means a person retained by ICANN to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN; (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (iv) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.
 - b. A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such

compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

c. "Reasonable Compensation" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

8. Each of the non-voting liaisons to the Board, with the exception of the Governmental Advisory Committee liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison. If the Board determines to offer a compensation arrangement to one or more non-voting liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of ICANN immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

ARTICLE VII: NOMINATING COMMITTEE

Section 1. DESCRIPTION

There shall be a Nominating Committee of ICANN, responsible for the selection of all ICANN Directors except the President and those Directors selected by ICANN's Supporting Organizations, and for such other selections as are set forth in these Bylaws.

Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN Board;
2. A non-voting Chair-Elect, appointed by the ICANN Board as a non-voting advisor;
3. A non-voting liaison appointed by the ICANN Root Server System Advisory Committee established by [Article XI of these Bylaws](#);
4. A non-voting liaison appointed by the ICANN Security and Stability Advisory Committee established by [Article XI of these Bylaws](#);
5. A non-voting liaison appointed by the Governmental Advisory Committee;
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee established by [Article XI of these Bylaws](#);
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization, established by [Article X of these Bylaws](#), as follows:
 - a. One delegate from the Registries Stakeholder Group;
 - b. One delegate from the Registrars Stakeholder Group;
 - c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
 - d. One delegate from the Internet Service Providers Constituency;
 - e. One delegate from the Intellectual Property Constituency; and
 - f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.
8. One voting delegate each selected by the following entities:
 - a. The Council of the Country Code Names Supporting Organization established by [Article IX of these Bylaws](#);
 - b. The Council of the Address Supporting Organization established by [Article VIII of these Bylaws](#); and
 - c. The Internet Engineering Task Force.
9. A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in

carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 3. TERMS

Subject to the provisions of the [Transition Article of these Bylaws](#):

1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
2. The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.
3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.
4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.
5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article, or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.
6. The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 5. DIVERSITY

In carrying out its responsibilities to select members of the ICANN Board (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by [Section 4 of this Article](#), make selections guided by Core Value 4 in [Article I, Section 2](#).

Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for selection by any means to any position on the Board or any other ICANN body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in [Section 2 of this Article](#).

ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

1. The Address Supporting Organization (ASO) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.
2. The ASO shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN and the Number Resource Organization (NRO), an organization of the existing regional Internet registries (RIRs).

Section 2. ADDRESS COUNCIL

1. The ASO shall have an Address Council, consisting of the members of the NRO Number Council.
2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO.

ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;

2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

Section 2. ORGANIZATION

The ccNSO shall consist of (i) ccTLD managers that have agreed in writing to be members of the ccNSO (see [Section 4\(2\) of this Article](#)) and (ii) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

Section 3. ccNSO COUNCIL

1. The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of ICANN's Geographic Regions in the manner described in [Section 4\(7\) through \(9\) of this Article](#); (b) three ccNSO Council members selected by the ICANN Nominating Committee; (c) liaisons as described in [paragraph 2 of this Section](#); and (iv) observers as described in [paragraph 3 of this Section](#).
2. There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in [Section 5 of this Article](#). These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

3. The ccNSO Council may agree with the Council of any other ICANN Supporting Organization to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO Council at any time by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.
4. Subject to the provisions of the [Transition Article of these Bylaws](#): (a) the regular term of each ccNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the third ICANN annual meeting thereafter; (b) the regular terms of the three ccNSO Council members selected by the ccNSO members within each ICANN Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (c) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.
5. A ccNSO Council member may resign at any time by giving written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.
6. ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO Council.
7. A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, with a notification copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in [Section 4\(7\) through \(9\) of this Article](#).
8. The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting,

of ccNSO members as described in [Section 4\(6\) of this Article](#)) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.

9. The ccNSO Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's selections shall be given by the ccNSO Council Chair in writing to the ICANN Secretary, consistent with Article VI, [Sections 8\(4\)](#) and [12\(1\)](#).
10. The ccNSO Council shall select from among its members the ccNSO Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. The term of office of the ccNSO Council Chair and any Vice Chair(s) shall be as specified by the ccNSO Council at or before the time the selection is made. The ccNSO Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.
11. The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.
12. Except as provided by [paragraphs 9 and 10 of this Section](#), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in [paragraph 14 of this Section](#). Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.
13. Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO Council shall be provided to each ccNSO Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by

postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

14. Members of the ccNSO Council may participate in a meeting of the ccNSO Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO Council members participating in the meeting can speak to and hear one another, (b) all ccNSO Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO Council, and (c) there is a reasonable means of verifying the identity of ccNSO Council members participating in the meeting and their votes. A majority of the ccNSO Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO Council members present at any meeting at which there is a quorum shall be actions of the ccNSO Council, unless otherwise provided in these Bylaws. The ccNSO Council shall transmit minutes of its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 4. MEMBERSHIP

1. The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in [paragraph 2 of this Section](#) shall be entitled to be members of the ccNSO. For purposes of this Article, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain and referred to in the IANA database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.
2. Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules,

(b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of this Article](#) shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.
4. The Geographic Regions of ccTLDs shall be as described in [Article VI, Section 5 of these Bylaws](#). For purposes of this Article, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.
5. Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager. In the absence of such a designation, the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA database.
6. There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

7. The ccNSO Council members selected by the ccNSO members from each Geographic Region (see [Section 3\(1\)\(a\) of this Article](#)) shall be selected through nomination, and if necessary election, by the ccNSO members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.
8. Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.
9. If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.
10. Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (a) only address issues that are within scope of the ccNSO according to Article IX, Section 6 and Annex C; (b) have been developed through the ccPDP as described in [Section 6 of this Article](#), and (c) have been recommended as such by the ccNSO to the Board, and (d) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.
11. A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (a) implementation of the policy would require

the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)), and (b) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (a) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)) and (b) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

Section 5. REGIONAL ORGANIZATIONS

The ccNSO Council may designate a Regional Organization for each ICANN Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO Council and shall be subject to review according to procedures established by the Board.

Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 7. STAFF SUPPORT AND FUNDING

1. Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may designate, at ccNSO expense, another person to serve as ccNSO Staff Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.
2. Upon request of the ccNSO Council, ICANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by ccNSO participants for travel to any meeting of the ccNSO or for any other purpose. The ccNSO Council may make provision, at ccNSO expense, for administrative and operational support in addition or as an alternative to support provided by ICANN.
3. The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in [paragraphs 1 and 2 of this Section](#), as approved by the ccNSO members.
4. Written notices given to the ICANN Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO Council on request. The ICANN Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative, and which shall be posted on the Website.

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO shall consist of:

- i. A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in [Section 5 of this Article](#);

- ii. Four Stakeholder Groups organized within Houses as described in [Section 5 of this Article](#);
- iii. Two Houses within the GNSO Council as described in [Section 3\(8\) of this Article](#); and
- iv. a GNSO Council responsible for managing the policy development process of the GNSO, as described in [Section 3 of this Article](#).

Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the ICANN Board of Directors.

Section 3. GNSO COUNCIL

1. Subject to the provisions of [Transition Article XX, Section 5 of these Bylaws](#) and as described in [Section 5 of Article X](#), the GNSO Council shall consist of:
 - a. three representatives selected from the Registries Stakeholder Group;
 - b. three representatives selected from the Registrars Stakeholder Group;
 - c. six representatives selected from the Commercial Stakeholder Group;
 - d. six representatives selected from the Non-Commercial Stakeholder Group; and
 - e. three representatives selected by the ICANN Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in [Section 3\(8\) of this Article](#)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO Council at the same time.

Stakeholder Groups should, in their charters, ensure their representation on the GNSO Council is as diverse as possible and practicable, including

considerations of geography, GNSO Constituency, sector, ability and gender.

There may also be liaisons to the GNSO Council from other ICANN Supporting Organizations and/or Advisory Committees, from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO Council.

2. Subject to the provisions of the [Transition Article XX, and Section 5 of these Bylaws](#), the regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO Operating Procedures.

3. A vacancy on the GNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled

for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO Council member selected by the Nominating Committee may be removed for cause: i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see [Section 3\(8\) of this Article](#)). Such removal shall be subject to reversal by the ICANN Board on appeal by the affected GNSO Council member.

4. The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "GNSO Operating Procedures") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in [Section 6 of this Article](#).
5. No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO Council at any given time.
6. The GNSO shall make selections to fill Seats 13 and 14 on the ICANN Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO, as described in [Section 3\(8\) of this Article](#), shall make a selection to fill one of two ICANN Board seats, as outlined below; any such selection must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:
 - a. the Contracted Party House shall select a representative to fill Seat 13; and
 - b. the Non-Contracted Party House shall select a representative to fill Seat 14

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

7. The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies, but not longer than one year. Each House (as described in [Section 3.8 of this Article](#)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.
8. Except as otherwise required in these Bylaws, for voting purposes, the GNSO Council (see [Section 3\(1\) of this Article](#)) shall be organized into a bicameral House structure as described below:
 - a. the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN Nominating Committee for a total of seven voting members; and
 - b. the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO Council.

9. Except as otherwise specified in these Bylaws, [Annex A](#), [Annex A-1](#) and [Annex A-2](#) hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:
 - a. Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
 - b. Initiate a Policy Development Process ("PDP") Within Scope (as described in [Annex A](#)): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one

House.

- c. Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority.
- d. Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- e. Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.
- f. Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under d. or e. above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.
- g. Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in favor of termination.
- h. Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.
- i. Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority,
- j. Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.
- k. Modification of Approved PDP Recommendation: Prior to Final Approval by the ICANN Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.
- l. Initiation of an Expedited Policy Development Process (EPDP): requires an affirmative vote of a GNSO Supermajority.
- m. Approve an EPDP Team Charter: requires an affirmative vote of a GNSO Supermajority.

- n. Approval of EPDP recommendations: requires an affirmative vote of a GNSO Supermajority.
- o. Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.
- p. Initiation of a GNSO Guidance Process (GGP): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- q. Rejection of initiation of a GGP requested by the ICANN Board: requires an affirmative vote of a GNSO Supermajority.
- r. Approval of GGP recommendations: requires an affirmative vote of a GNSO Supermajority.
- s. A "GNSO Supermajority" shall mean: (a) two-thirds (2/3) of the Council members of each House, or (b) three-fourths (3/4) of one House and a majority of the other House."

Section 4. STAFF SUPPORT AND FUNDING

1. A member of the ICANN staff shall be assigned to support the GNSO, whose work on substantive matters shall be assigned by the Chair of the GNSO Council, and shall be designated as the GNSO Staff Manager (Staff Manager).
2. ICANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any meeting of the GNSO or for any other purpose. ICANN may, at its discretion, fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 5. STAKEHOLDER GROUPS

1. The following Stakeholder Groups are hereby recognized as representative of a specific group of one or more Constituencies or interest groups and subject to the provisions of the [Transition Article XX, Section 5 of these Bylaws](#):
 - a. Registries Stakeholder Group representing all gTLD registries under

- contract to ICANN;
- b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN;
 - c. Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet; and
 - d. Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.
2. Each Stakeholder Group is assigned a specific number of Council seats in accordance with [Section 3\(1\) of this Article](#).
 3. Each Stakeholder Group identified in [paragraph 1 of this Section](#) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.
 4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:
 - a. A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities;
 - b. A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;
 - c. A recommendation for organizational placement within a particular Stakeholder Group; and
 - d. A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

5. The Board may create new Constituencies as described in [Section 5\(3\)](#) in

response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO shall be as stated in [Annex A](#) to these Bylaws. These procedures may be supplemented or revised in the manner stated in [Section 3\(4\) of this Article](#).

ARTICLE XI: ADVISORY COMMITTEES

Section 1. GENERAL

The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee
 - a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.
 - b. Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations,

on the invitation of the Governmental Advisory Committee through its Chair.

- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.
- g. The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.
- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN's supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.
- i. The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.
- j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the

formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

- k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

2. Security and Stability Advisory Committee

- a. The role of the Security and Stability Advisory Committee ("SSAC") is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:
 - 1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.
 - 2. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.
 - 3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC, RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly

synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

4. To report periodically to the Board on its activities.
 5. To make policy recommendations to the ICANN community and Board.
- b. The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointment or re-appointment each year. The Board shall also have to power to remove SSAC appointees as recommended by or in consultation with the SSAC. (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC chair shall recommend the re-appointment of all current SSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)
- c. The SSAC shall annually appoint a non-voting liaison to the ICANN Board according to [Section 9 of Article VI](#).

3. Root Server System Advisory Committee

- a. The role of the Root Server System Advisory Committee ("RSSAC") is to advise the ICANN community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:
1. Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.

2. Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.
 3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.
 4. Respond to requests for information or opinions from the ICANN Board of Directors.
 5. Report periodically to the Board on its activities.
 6. Make policy recommendations to the ICANN community and Board.
- b. The RSSAC shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.
1. RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC chairs shall provide recommendations to the Board regarding appointments to the RSSAC. If the board declines to appoint a person nominated by the RSSAC then it will provide the rationale for its decision. The RSSAC chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointment or re-appointment each year. The Board shall also have to power to remove RSSAC appointees as recommended by or in consultation with the RSSAC. (Note: The first term under this paragraph shall commence on 1 July 2013 and end on 31 December 2015, and shall be considered a full term for all purposes. All other full terms under this paragraph shall begin on 1 January of the corresponding year. Prior to 1 July 2013, the RSSAC shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC chairs shall recommend the re-appointment of all current RSSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)

2. The RSSAC shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.
- c. The RSSAC shall annually appoint a non-voting liaison to the ICANN Board according to Section 9 of Article VI.

4. At-Large Advisory Committee

- a. The At-Large Advisory Committee (ALAC) is the primary organizational home within ICANN for individual Internet users. The role of the ALAC shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate. The ALAC, which plays an important role in ICANN's accountability mechanisms, also coordinates some of ICANN's outreach to individual Internet users.
- b. The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to [Section 5 of Article VI](#).
- c. Subject to the provisions of the [Transition Article of these Bylaws](#), the regular terms of members of the ALAC shall be as follows:
 1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.
 2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-numbered year.
 3. The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

4. The regular term of each member shall end at the conclusion of the second ICANN annual meeting after the term began.
- d. The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the Committee.
 - e. The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to [Section 5 of Article VI](#)) to the Nominating Committee.
 - f. Subject to the provisions of the [Transition Article of these Bylaws](#), the At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.
 - g. There shall be one RALO for each Geographic Region established according to [Section 5 of Article VI](#). Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.
 - h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to [paragraph 4\(i\) of this Section](#). If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.
 - i. Membership in the At-Large Community
 1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each

Geographic Region.

2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in [Section 5 of Article VI](#)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.
 3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.
 4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.
 5. Once the criteria and standards have been established as provided in this Clause i, the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.
 6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS applications shall be subject to review by the RALOs and by the ICANN Board.
 7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.
 8. On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.
- j. The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:
1. Making a selection by the At-Large Community to fill Seat 15

on the Board. Notification of the At-Large Community's selection shall be given by the ALAC Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).

2. Keeping the community of individual Internet users informed about the significant news from ICANN;
3. Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;
4. Promoting outreach activities in the community of individual Internet users;
5. Developing and maintaining on-going information and education programs, regarding ICANN and its work;
6. Establishing an outreach strategy about ICANN issues in each RALO's Region;
7. Participating in the ICANN policy development processes and providing input and advice that accurately reflects the views of individual Internet users;
8. Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;
9. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and
10. Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.

Section 3. PROCEDURES

Each Advisory Committee shall determine its own rules of procedure and quorum requirements.

Section 4. TERM OF OFFICE

The chair and each member of a committee shall serve until his or her successor is appointed, or until such committee is sooner terminated, or until he or she is

removed, resigns, or otherwise ceases to qualify as a member of the committee.

Section 5. VACANCIES

Vacancies on any committee shall be filled in the same manner as provided in the case of original appointments.

Section 6. COMPENSATION

Committee members shall receive no compensation for their services as a member of a committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by committee members, including Directors, performing their duties as committee members.

ARTICLE XI-A: OTHER ADVISORY MECHANISMS

Section 1. EXTERNAL EXPERT ADVICE

1. Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN. In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.
2. Types of Expert Advisory Panels.
 - a. On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of [Section 1\(3\)\(b\) of this Article](#) shall apply.
 - b. In addition, in accordance with [Section 1\(3\) of this Article](#), the Board may refer issues of public policy pertinent to matters within ICANN's mission to a multinational governmental or treaty organization.
3. Process for Seeking Advice-Public Policy Matters.
 - a. The Governmental Advisory Committee may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.
 - b. In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be

sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.

- c. The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee, with the suggestion that the request be transmitted by the Governmental Advisory Committee to the multinational governmental or treaty organization.
4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with [Section 1\(2\)\(a\) of this Article](#) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.
5. Receipt of Expert Advice and its Effect. External advice pursuant to this Section shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.
6. Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 2. TECHNICAL LIAISON GROUP

1. Purpose. The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities.
2. TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB).
3. Role. The role of the TLG organizations shall be to channel technical

information and guidance to the Board and to other ICANN entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

- a. In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.
 - b. As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.
4. TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.
 5. Technical Work with the IETF. The TLG shall have no involvement with the ICANN's work for the Internet Engineering Task Force (IETF), Internet Research Task Force, or the Internet Architecture Board (IAB), as described in the IETF-ICANN Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.
 6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN's activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN when ICANN does not ask a specific TLG organization directly.

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:
 - a. The filling of vacancies on the Board or on any committee;
 - b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
 - c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
 - d. The appointment of committees of the Board or the members thereof;
 - e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;
 - f. The approval of the annual budget required by [Article XVI](#); or
 - g. The compensation of any officer described in [Article XIII](#).
2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless

these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings shall be governed by the provisions of [Article VI](#) applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

The officers of ICANN shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN.

Section 2. ELECTION OF OFFICERS

The officers of ICANN shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chairman of the ICANN Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all the members of the Board. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The

President shall serve as an ex officio member of the Board, and shall have all the same rights and privileges of any Board member. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of ICANN's annual budget. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

Section 7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers

other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN.

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

ICANN shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE XV: GENERAL PROVISIONS

Section 1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments made by ICANN to Directors (including reimbursements of expenses). ICANN shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

Section 4. ANNUAL BUDGET

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board, a proposed annual budget of ICANN for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

Section 5. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

ARTICLE XVII: MEMBERS

ICANN shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN document, or in any action of the ICANN Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE XIX: AMENDMENTS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by

a two-thirds (2/3) vote of all members of the Board.

ARTICLE XX: TRANSITION ARTICLE

Section 1. PURPOSE

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "[Old Bylaws](#)"), to the processes and structures defined by the Bylaws of which this Article is a part (the "[New Bylaws](#)"). [Explanatory Note (dated 10 December 2009): For Section 5(3) of this Article, reference to the Old Bylaws refers to the Bylaws as amended and restated through to 20 March 2009.]

Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in [paragraph 5 of this Section 2](#), the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of [Article VI, Section 12 of the New Bylaws](#), vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by [Article VI, Section 9 of the New Bylaws](#). The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.
2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.
3. The "New Board" is that Board described in [Article VI, Section 2\(1\) of the New Bylaws](#).
4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in [Article VII, Section 2 of the New Bylaws](#), with terms to end at the conclusion of the ICANN annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the

commencement of the first regular terms specified for those Seats in [Article VI, Section 8\(1\)\(a\)-\(c\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of that selection.

5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN in 2003 that begins not less than seven calendar days after the ICANN Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN Board of Directors. Subject to Section 4 of this Article, the Directors ([Article VI, Section 2\(1\)\(a\)-\(d\)](#)) and non-voting liaisons ([Article VI, Section 9](#)) as to which the ICANN Secretary has received notice of selection shall, along with the President ([Article VI, Section 2\(1\)\(e\)](#)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN Secretary's receipt of notice of their selection.
6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.
7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.
8. In applying the term-limitation provision of [Section 8\(5\) of Article VI](#), a Director's service on the Board before the Effective Date and Time of the New Board shall count as one term.

Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization shall continue in operation according to the provisions of the [Memorandum of Understanding originally entered on 18 October 1999](#) between ICANN and a group of regional Internet registries (RIRs), and [amended in October 2000](#), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization shall make selections, and give the ICANN Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in [Article VI, Section 8\(1\)\(d\) and \(e\) of the New Bylaws](#); and
2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization, as called for in [Article VII, Section 2\(8\)\(f\) of the New Bylaws](#).

With respect to the ICANN Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization may select those Directors from among the persons it previously selected as ICANN Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization does not provide the ICANN Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization shall be deemed to have selected for Seat 9 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2002.

Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

1. Upon the enrollment of thirty ccTLD managers (with at least four within each Geographic Region) as members of the ccNSO, written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO Council to be selected by the ccNSO members shall be selected according to the procedures stated in [Article IX, Section 4\(8\) and \(9\)](#). Upon the completion of that selection process, a written notice that the ccNSO Council has been constituted shall be posted on the Website. Three ccNSO Council members shall be selected by the ccNSO members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. (The definition of "ccTLD manager" stated in [Article IX, Section 4\(1\)](#) and the definitions stated in [Article IX, Section 4\(4\)](#) shall apply within this Section 4 of Article XX.)
2. After the adoption of [Article IX of these Bylaws](#), the Nominating Committee shall select the three members of the ccNSO Council described in [Article IX, Section 3\(1\)\(b\)](#). In selecting three individuals to serve on the ccNSO Council, the Nominating Committee shall designate one to serve a term

that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. The three members of the ccNSO Council selected by the Nominating Committee shall not take their seats before the ccNSO Council is constituted.

3. Upon the ccNSO Council being constituted, the At-Large Advisory Committee and the Governmental Advisory Committee may designate one liaison each to the ccNSO Council, as provided by [Article IX, Section 3\(2\)\(a\) and \(b\)](#).
4. Upon the ccNSO Council being constituted, the Council may designate Regional Organizations as provided in [Article IX, Section 5](#). Upon its designation, a Regional Organization may appoint a liaison to the ccNSO Council.
5. Until the ccNSO Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO Council is constituted, the ccNSO shall, through the ccNSO Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term specified for each of those Seats in [Article VI, Section 8\(1\)\(d\) and \(f\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of its selections.
6. Until the ccNSO Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD community. Upon the ccNSO Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN's annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in [Article VII, Section 2\(8\)\(c\)](#) shall be made by the ccNSO Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization ("GNSO"), upon the adoption of this Transition Article, shall continue its operations; however, it shall be

restructured into four new Stakeholder Groups which shall represent, organizationally, the former Constituencies of the GNSO, subject to ICANN Board approval of each individual Stakeholder Group Charter:

- a. The gTLD Registries Constituency shall be assigned to the Registries Stakeholder Group;
 - b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group;
 - c. The Business Constituency shall be assigned to the Commercial Stakeholder Group;
 - d. The Intellectual Property Constituency shall be assigned to the Commercial Stakeholder Group;
 - e. The Internet Services Providers Constituency shall be assigned to the Commercial Stakeholder Group; and
 - f. The Non-Commercial Users Constituency shall be assigned to the Non-Commercial Stakeholder Group.
2. Each GNSO Constituency described in paragraph 1 of this subsection shall continue operating substantially as before and no Constituency official, working group, or other activity shall be changed until further action of the Constituency, provided that each GNSO Constituency described in paragraph 1 (c-f) shall submit to the ICANN Secretary a new or revised Charter inclusive of its operating procedures, adopted according to the Constituency's processes and consistent with these Bylaws Amendments, no later than the ICANN meeting in October 2009, or another date as the Board may designate by resolution.
 3. Prior to the commencement of the ICANN meeting in October 2009, or another date the Board may designate by resolution, the GNSO Council shall consist of its current Constituency structure and officers as described in [Article X, Section 3\(1\) of the Bylaws](#) (as amended and restated on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO Council shall be as provided in these Bylaws, as they may be amended from time to time. All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO Council and in existence immediately before the adoption of this Transition Article shall continue in existence with the same charters, membership, and activities, subject to any change by action of the GNSO Council or ICANN Board.
 4. Beginning with the commencement of the ICANN Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date

of the Transition"), the GNSO Council seats shall be assigned as follows:

- a. The three seats currently assigned to the Registry Constituency shall be reassigned as three seats of the Registries Stakeholder Group;
- b. The three seats currently assigned to the Registrar Constituency shall be reassigned as three seats of the Registrars Stakeholder Group;
- c. The three seats currently assigned to each of the Business Constituency, the Intellectual Property Constituency, and the Internet Services Provider Constituency (nine total) shall be decreased to be six seats of the Commercial Stakeholder Group;
- d. The three seats currently assigned to the Non-Commercial Users Constituency shall be increased to be six seats of the Non-Commercial Stakeholder Group;
- e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member to the Contracted Party House, one voting member to the Non-Contracted Party House, and one non-voting member assigned to the GNSO Council at large.

Representatives on the GNSO Council shall be appointed or elected consistent with the provisions in each applicable Stakeholder Group Charter, approved by the Board, and sufficiently in advance of the October 2009 ICANN Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO Council, as part of its Restructure Implementation Plan, will document: (a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.
6. As soon as practical after the commencement of the ICANN meeting in October 2009, or another date the Board may designate by resolution, the GNSO Council shall, in accordance with [Article X, Section 3\(7\)](#) and its GNSO Operating Procedures, elect officers and give the ICANN Secretary written notice of its selections.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The [Protocol Supporting Organization referred to in the Old Bylaws](#) is discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the [Governmental Advisory Committee](#) shall continue in operation according to its existing operating principles and practices, until further action of the committee. The [Governmental Advisory Committee](#) may designate liaisons to serve with other [ICANN](#) bodies as contemplated by the New Bylaws by providing written notice to the [ICANN](#) Secretary. Promptly upon the adoption of this Transition Article, the [Governmental Advisory Committee](#) shall notify the [ICANN](#) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2 of the New Bylaws](#).
2. The organizations designated as members of the Technical Liaison Group under [Article XI-A, Section 2\(2\) of the New Bylaws](#) shall each designate the two individual technical experts described in [Article XI-A, Section 2\(6\) of the New Bylaws](#), by providing written notice to the [ICANN](#) Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to [Article XI-A, Section 2\(7\) of the New Bylaws](#).
3. Upon the adoption of the New Bylaws, the [Security and Stability Advisory Committee](#) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the [Security and Stability Advisory Committee](#) shall notify the [ICANN](#) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(4\) of the New Bylaws](#).
4. Upon the adoption of the New Bylaws, the [Root Server System Advisory Committee](#) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the [Root Server Advisory Committee](#) shall notify the [ICANN](#) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(3\) of the New Bylaws](#).
5. [At-Large Advisory Committee](#)
 - a. There shall exist an Interim [At-Large Advisory Committee](#) until such time as [ICANN](#) recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs)

identified in [Article XI, Section 2\(4\) of the New Bylaws](#). The Interim At-Large Advisory Committee shall be composed of (i) ten individuals (two from each ICANN region) selected by the ICANN Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in [Article VII, Section 5 of the New Bylaws](#). The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2005.

- b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the At-Large Advisory Committee established by [Article XI, Section 2\(4\) of the New Bylaws](#). Upon the entity's written notification to the ICANN Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee members previously selected by the Board from the RALO's region.
- c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee shall become the At-Large Advisory Committee, as established by [Article XI, Section 2\(4\) of the New Bylaws](#). The five individuals selected to the Interim At-Large Advisory Committee by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.
- d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in [Article VII, Section 2\(6\) of the New Bylaws](#).

Section 8. OFFICERS

ICANN officers (as defined in [Article XIII of the New Bylaws](#)) shall be elected by the then-existing Board of ICANN at the annual meeting in 2002 to serve until the annual meeting in 2003.

Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and

other groups appointed by the ICANN President shall continue unchanged in membership, scope, and operation until changes are made by the President.

Section 10. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.

Annex A: GNSO Policy Development Process

The following process shall govern the GNSO policy development process ("PDP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the Council may act through other processes.

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party is affected by the issue;
- b. Formal initiation of the Policy Development Process by the Council;
- c. Formation of a Working Group or other designated work method;
- d. Initial Report produced by a Working Group or other designated work method;
- e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;
- f. Council approval of PDP Recommendations contained in the Final Report, by the required thresholds;
- g. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]; and
- h. Board approval of PDP Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO shall maintain a Policy Development Process Manual (PDP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.6.

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee Request. An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO Council; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (a "Preliminary Issue Report"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the request for the Issue Report;
- c. How that party is affected by the issue, if known;
- d. Support for the issue to initiate the PDP, if known;

- e. The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN's mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.
- f. The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN website for a public comment period that complies with the designated practice for public comment periods within ICANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

Section 5. **Initiation of the PDP**

The Council may initiate the PDP as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.

GNSO Council or Advisory Committee Requests: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in [Article X, Section 3, paragraph 9\(b\) and \(c\)](#) in favor of initiating the PDP.

Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the

PDP Manual.

The Council approval process is set forth in [Article X, Section 3, paragraph 9\(d\) through \(g\)](#), as supplemented by the PDP Manual.

Section 8. Preparation of the Board Report

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the ICANN Board.

Section 9. Board Approval Processes

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental

Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each PDP issue. Such status page will outline the completed and upcoming steps in the PDP process, and contain links to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

Section 12. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO Council.

"Staff Manager" means an ICANN staff person(s) who manages the PDP.

"GNSO Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of

transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be feasibly transitioned to these updated procedures, the PDP shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex A-1: GNSO Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO Council invokes the GNSO Expedited Policy Development Process ("EPDP"). The GNSO Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the ICANN Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the ICANN Board of Directors. Where a conflict arises in relation to an EPDP between the PDP Manual (see Annex 2 of the GNSO Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO is outlined in Article X of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus Policy; however, in all cases where the GNSO is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. Required Elements of a GNSO Expedited Policy Development Process

The following elements are required at a minimum to develop expedited GNSO policy recommendations, including recommendations that could result in amendments to an existing Consensus Policy, as part of a GNSO Expedited Policy Development Process:

- a. Formal initiation of the GNSO Expedited Policy Development Process by the GNSO Council, including an EPDP scoping document;
- b. Formation of an EPDP Team or other designated work method;

- c. Initial Report produced by an EPDP Team or other designated work method;
- d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;
- e. GNSO Council approval of EPDP Policy Recommendations contained in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;
- f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and
- g. Board approval of EPDP Recommendation(s).

Section 2. **Expedited Policy Development Process Manual**

The GNSO shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO Policy Development Process Manual (PDP Manual), described in Annex 5 of the GNSO Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The EPDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.4.

Section 3. **Initiation of the EPDP**

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C;
2. Origin of issue (e.g. previously completed PDP);
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);

4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the ICANN Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO policy issue that had been scoped previously as part of a PDP that was not completed or other similar effort, including relevant supporting information in either case;
5. If not provided as part of item 4, the opinion of the ICANN General Counsel as to whether the issue proposed for consideration is properly within the scope of the ICANN's mission, policy process and more specifically the role of the GNSO;
6. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers);
7. Method of operation, if different from GNSO Working Group Guidelines;
8. Decision-making methodology for EPDP mechanism, if different from GNSO Working Group Guidelines;
9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in in Article X, Section 3, paragraphs 9 n-o, as supplemented by the PDP Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO Council, a Recommendation(s) Report shall be approved by the GNSO Council for delivery to the ICANN Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the

EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 7. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN staff to work with the GNSO Council to create a guidance implementation plan, based upon the guidance recommendations identified in the

Final EPDP Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the EPDP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

Annex A-2: GNSO Guidance Process

The following process shall govern the GNSO guidance process ("GGP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are intended to result in a Consensus Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO Guidance Process**

The following elements are required at a minimum to develop GNSO guidance:

1. Formal initiation of the GNSO Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;

7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

Section 2. GNSO Guidance Process Manual

The GNSO shall maintain a GNSO Guidance Process (GGP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.4.

Section 3. Initiation of the GGP

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN Board. Initiation of a GGP requires a vote as set forth in Article X, Section 3, paragraph 9.p in favor of initiating the GGP. In the case of a GGP requested by the ICANN Board, a GGP will automatically be initiated unless the GNSO Council votes against the initiation of a GGP as set forth in Article X, Section 3, paragraph 9 q¹.

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG, DT, individual volunteers)
5. Method of operation, if different from GNSO Working Group Guidelines
6. Decision-making methodology for GGP mechanism, if different from GNSO Working Group Guidelines
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Article X, Section 3, paragraph 9. r² as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the ICANN Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any GGP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO Guidance recommendation(s) adopted by a GNSO Supermajority Vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN.

Section 7. **Implementation of Approved GNSO Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the GNSO Guidance. If deemed necessary, the Board may direct ICANN Staff to work with the GNSO Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the GGP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments Fora" and "Website" refer to one or more websites designated by ICANN on which notifications and comments regarding the GGP will be posted.

"GGP Staff Manager" means an ICANN staff person(s) who manages the GGP.

Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP").

1. **Request for an Issue Report**

An Issue Report may be requested by any of the following:

- a. *Council*. The ccNSO Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board*. The ICANN Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization*. One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN Supporting Organization or Advisory Committee*. An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO*. The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
 1. The issue is within the scope of ICANN's mission statement;
 2. Analysis of the relevant factors according to [Article IX, Section 6\(2\)](#) and [Annex C](#) affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3. Implicates or affects an existing ICANN policy;
4. Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this [Annex B](#)) or to the scope of the ccNSO ([Annex C](#)) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the

Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

- f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).
- g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.
- b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and the ccNSO Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

- a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

- b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Lines set out in the Issue Report.

5. **Composition and Selection of Task Forces**

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see [Article IX, Section 6](#)) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.
- c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

6. **Public Notification of Initiation of the PDP and Comment Period**

After initiation of the PDP, ICANN shall post a notification of such action to the Website and to the other ICANN Supporting Organizations and Advisory Committees. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. The

Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

- a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

- b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP Time Line. Such Charter shall include:
 1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
 2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
 3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of [Article IX, Section 3\(14\)](#) shall apply to

Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

- i. If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;
- ii. If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;
- iii. A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- iv. A statement of the position on the issue of any ccNSO members that are not members of the Regional Organization;

- v. An analysis of how the issue would affect the Region, including any financial impact on the Region; and
 - vi. An analysis of the period of time that would likely be necessary to implement the policy.
2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.
- e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the Website and to the other ICANN Supporting Organizations and Advisory Committees. Each Task Force Report must include:
1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
 2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
 3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
 4. An analysis of the period of time that would likely be necessary to implement the policy; and

5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during

the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

10. Council Deliberation

- a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.
- b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.
- c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation;
- b. The Final Report submitted to the Council; and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed if at least 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO Recommendation being made in accordance with Item 13 incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.
 - 1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
 - 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
 - 3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be

conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").
5. In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;
- b. PDP Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;

- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in [Article IX, Section 6\(2\)](#) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the ICANN Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

Within a TLD two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database (Data Entry Function) and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Name Server Function).

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

- a. under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.
- b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF)

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers

Policy role: IETF, RSSAC (ICANN)

Executive role: Root Server System Operators

Accountability role: RSSAC (ICANN), (US DoC-ICANN MoU)

Level 2: ccTLD Registry Name Servers in respect to interoperability

Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized
Executive role: ccTLD Manager
Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers

Policy role: ccTLD Manager, IETF (RFC)
Executive role: Registrant
Accountability role: ccTLD Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO Policy Development Process (ICANN)
Executive role: ICANN (IANA)
Accountability role: ICANN community, ccTLD Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD Registry

Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure
Executive role: ccTLD Manager
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels

Policy role: Registrant
Executive role: Registrant
Accountability role: Registrant, users of lower-level domain names

¹A GNSO Supermajority Vote will be required to not initiate a GGP following a formal request from the ICANN Board.

²Approval of GGP recommendations requires a GNSO Supermajority Vote.



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EXHIBIT C-24

New gTLD Application Submitted to ICANN by: NU DOT CO LLC

String: WEB

Originally Posted: 13 June 2012

Application ID: 1-1296-36138

Applicant Information

1. Full legal name

NU DOT CO LLC

2. Address of the principal place of business

Contact information Redacted

3. Phone number

Contact information Redacted

4. Fax number

Contact Information Redacted

5. If applicable, website or URL

Primary Contact

6(a). Name

Jose Ignacio Rasco

6(b). Title

Manager

6(c). Address

6(d). Phone Number

Contact Information Redacted

6(e). Fax Number

6(f). Email Address

Contact Information Redacted

Secondary Contact

7(a). Name

Mr. Nicolai Bezsonoff

7(b). Title

Manager

7(c). Address

7(d). Phone Number

Contact information Redacted

7(e). Fax Number

7(f). Email Address

Contact Information Redacted

Proof of Legal Establishment

8(a). Legal form of the Applicant

Limited liability company

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

NU DOTCO LLC is a UNITED STATES entity, registered in the STATE of DELAWARE as a limited liability company.

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

9(c). If the applying entity is a joint venture, list all joint venture partners.

Applicant Background

11(a). Name(s) and position(s) of all directors

Jose Ignacio Rasco III	Manager
Juan Diego Calle	Manager
Nicolai Bezsonoff	Manager

11(b). Name(s) and position(s) of all officers and partners

Jose Ignacio Rasco III	CFO
Juan Diego Calle	CEO
Nicolai Bezsonoff	COO

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

Domain Marketing Holdings, LLC	Not Applicable
NUCO LP, LLC	Not Applicable

11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

WEB

14(a). If an IDN, provide the A-label (beginning with "xn--").

14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

14(c). If an IDN, provide the language of the label (in English).

14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).

14(d). If an IDN, provide the script of the label (in English).

14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).

14(e). If an IDN, list all code points contained in the U-label according to Unicode form.

15(a). If an IDN, Attach IDN Tables for the proposed registry.

Attachments are not displayed on this form.

15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

NU DOTCO, LLC ("NU.CO") foresees no known rendering issues in connection with the proposed .LAW TLD which it is seeking to apply for as a gTLD. This answer is based upon consultation with NU.CO's backend provider, Neustar, which has successfully launched a number of new gTLDs over the last decade. In reaching this determination, the following data points were analyzed: • ICANN's Security Stability Advisory Committee (SSAC) entitled Alternative TLD Name Systems and Roots: Conflict, Control and Consequences (SAC009); • IAB - RFC3696 "Application Techniques for Checking and Transformation of Names" • Known software issues which Neustar has encountered during the last decade launching new gTLDs; • Character type and length; • ICANN supplemental notes to Question 16; and • ICANN's presentation during its Costa Rica regional meeting on TLD Universal Acceptance;

17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

Mission/Purpose

18(a). Describe the mission/purpose of your proposed gTLD.

18.1 Mission/purpose of .WEB

The mission of .WEB is to provide the internet community at-large with an alternative “home domain” for their online presence. We envision that through strategic marketing campaigns designed to brand the domain, it will become a premium online namespace for a variety of businesses and websites. This general domain will provide new registrants with better, more relevant alternatives to the limited options remaining for current commercial TLD names.

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

18.2 How will .WEB benefit registrants, Internet users, and others?

.WEB seeks to offer registrants and the broader internet community, with a reliable, trusted, and secure top level domain (TLD). Congestion in the current availability of commercial TLD names fundamentally advantages older incumbent players. Providing access to additional high-value second level domain names (i.e. shorter and more memorable) will provide an opportunity for new entrants to compete effectively for internet users’ finite attention. The domain’s coherent and consistent branding will assist registrants in developing meaningful emotional connection with users, allowing them to further differentiate themselves as premium destinations. These marketing efforts along with the initial adoption of key industry players, should reinforce the implicit attribution of “cutting-edge” and “innovativeness” upon its registrants. Prospective users benefit from the long-term commitment of a proven executive team that has a track-record of building and successfully marketing affinity TLD’s (e.g., .CO targeting innovative businesses and entrepreneurs).

The demand for having an online presence continues to grow worldwide, especially as more people and businesses become active internet users, enjoying the increases in productivity and promotional effectiveness that the internet offers. A clear example of this is the number of worldwide internet users, which has grown at an average 18% annual rate over the past decade, and domain registrations which have experienced similar adoption rates having grown from approximately 25mm in 2000 to over 225mm today.

In particular for small businesses and entrepreneurs, the Internet offers an incredibly useful way to promote themselves to a wider audience, both locally and globally. Moreover, it allows them to cost-effective offer their products and services directly to consumers, leveling the playing field with larger and more established competitors. A number of new and innovative business models have been established that were not possible prior to the Internet, creating substantial value for society.

However, until a few years ago it was difficult and costly for individuals and small businesses to establish an internet presence. This has changed as prices decreased dramatically and offerings became more accessible and intuitive. This is the result of having many retailers (i.e. registrars or resellers) that compete amongst each other on price, along with product and service differentiation. Differentiation has mainly centered around higher value-add services ancillary to the domain registration itself, such as hosting, web-site builders, SSL, e-mail, etc. The basic product (a domain) has not changed much, and until now, there have been few feasible alternatives to the commercial TLDs. The proposed new TLDs will provide users with more relevant and customized

options. Just as ICANN opened up the market for the distribution and registration of domains and created the Registrar industry, which ultimately benefitted hundreds of millions of people and businesses worldwide, we expect that the introduction of new TLDs will yield similar benefits.

The experienced team behind this application initially launched and currently operates the .CO ccTLD. The intention is for .WEB to be added to .CO's product portfolio, where it can benefit from economies of scale along with the firm's experience and expertise in marketing and branding TLD properties. Their successful track record proves that properly branded affinity domains can help sites form deeper emotional connections with their users, providing significant value-add. The .CO re-launch is a great illustration of how a new option in TLDs can address the unmet needs an affinity group (e.g., small businesses and start-ups), and we continue to firmly believe that the new .WEB domain will provide better, more relevant solutions for registrants .

Since its launch, .CO's marketing has primarily focused on developing a worldwide ecosystem of innovative small businesses and entrepreneurs. To date, the .CO registry, .CO Internet S.A.S, has reached close to 1.3 million domains under management, with more than one million individual new Registrations in the first year alone and a renewal rate for domains purchased during launch of nearly 70% and a current average renewal rate of 65%. The renewal rate is one of the highest amongst the industry and especially high considering it has not yet reached the multiple year expiration dates, where it's expected to climb even higher. In addition, .CO has become the standard secondary option to .COM for the leading global registrars, having the most conversions when presented with a non-.COM option. Further, .CO has secured a strong position with the tech startup community by securing such high profile users as Twitter (t.co), Google (g.co), tech influencers like Angel list (angel.co) and 500 Startups (500.co), and entrepreneurship organizations like Startup America (s.co).

.CO has differentiated itself from other existing TLDs by combining innovative branding with the highest standards in trademark protection, unprecedented marketing campaigns, and pro-active security monitoring. We plan to implement a very similar strategy for .WEB in its launch, operation, promotion and growth.

We plan to target a similar community of entrepreneurs, startups, and progressive corporate entities that are looking for an online presence with a suitable domain name. We anticipate the addressable community will continue to grow as traditional businesses choose to launch an online presence for their pre-existing operations and as entrepreneurs launch new start-ups. The domain's marketing strategy will utilize a 3 pillar framework, similar to that used with .CO:

- Awareness: We plan to launch marketing campaigns to both the small businesses and entrepreneurs promoting .WEB via a combination of:

- o Media placements online and offline
- o Social media campaigns
- o Events
- o Sponsorships
- o Endorsements
- o PR efforts
- o Direct marketing
- o Channel marketing

- Usage: We plan to foster the community of users of .WEB via a combination community engagement and outreach, use-case development and direct marketing to base.

- Distribution: The distribution will be done through the existing ICANN accredited registrar channel and will include marketing at the point of sale, packages and bundles, campaigns, etc.

The marketing plans will evolve depending on market conditions, but using .CO as an example, we implemented an awareness and branding strategy that included the creation of a brand identity and logo; mass media placements including 2 super-bowl commercials with one of our partners plus many TV placements; billboards and other outdoors campaigns; several online media campaigns including networks, re-targeting and videos; ongoing Twitter, Facebook engagements; sponsorship and presence in a variety of events for TMs (INTA), Tech startups (SxSW, Web 2.0, Internetweek, etc.), Startups (Task Rabbit TR.co), Community (ICANN, LACTLD, etc.), etc. We also implemented for .CO a strong usage promotion of the domain by creating and fostering a community of .CO users and case studies. We achieved this through a combination of events, sponsorships, and partnerships with different entities like Angel.co, 500.co, Startup America (s.co), founders institute (fi.co), etc. We also cultivated many case studies of successful .CO users, remaining in close contact with them. Finally, we implemented a rigorous channel marketing and sales plan that included marketing placements at the

point of purchase plus co-marketing and community outreach.

While we do plan to follow a similar strategy to achieve widespread awareness, usage and distribution, the budget and actual placements for promoting .WEB will be scaled down accordingly, as neither its volume of registrations or revenues is expected to be in line with that of .CO.

By launching the .WEB domain we expect to provide more descriptive/ relevant options for end-users, including access to desirable second level domain names which are unavailable or occupied by current general TLD's. As illustrated with .CO, the rapid growth to 1.3 million domains is evidence of pent up demand in the marketplace for good, descriptive domain names. We expect that our marketing strategies will result in a new branded and available option that will emotionally connect with potential users and allow them to differentiate themselves through the use of a branded premium domain.

We will also follow the same ICANN rules and distribution methods of major gTLDs thereby ensuring Registrars and Resellers do not have to change their systems to distribute the .WEB domain. As our systems are already integrated with largest registrars in the world and we have implemented industry best practices, the transition to delegation and launch should be seamless to the registrar channel as well as consumers.

We will also implement a thick whois and adopt any ICANN recommendations or requirements in the future. In order to protect the privacy of our users, we will allow the use of Privacy or Proxy registrations by reputable registrars that comply with applicable policies specified by ICANN. We find this service is highly valuable for registrants that want to ensure their information is not available online and would like to maintain a higher level privacy.

18(c). What operating rules will you adopt to eliminate or minimize social costs?

18.3 .WEB operating rules to benefit consumers

We plan to follow all ICANN policies, including the best practices and recommendations for gTLDs. This will allow us to ensure end-users, have an easy way to register/purchase, administer, and use their domains. Adopting these policies will also prevent malicious behavior by third parties and ensure a smooth operation of the domain. The plans for the launch will be similar to the launch process used in .CO, which included:

- Gradual Offering Plan: The .CO launch included a very comprehensive gradual opening plan that both protected trademarks and provided transparency to end users. The launch was lauded by ICANN for its comprehensiveness and management. For the launch of .WEB we will follow ICANN's policies especially as it relates to the Trademark Clearinghouse which was similar to the process we used for .CO:
 -
 - o Sunrise: Provide a period of a few weeks to allow the TM and IP community to register their .WEB domains prior to the opening to the public. Trademark validations will be done by the Trademark Clearinghouse or as specified by ICANN in their policies. If there are multiple validated applications, these would go to auction and allocated based on these results.
 - o Landrush: Provide a period of a few weeks to allow domain investors and others that are interested in premium domains to apply for these domains. Once the period of the Landrush phase is over, a process to check the applications will determine if these were unique or if there were multiple applicants. If single applicants, then the domain is awarded at that time. If multiple applicants then the domain would go to an auction in which all applicants would be able to participate. For .CO this process included close to 30,000 applications and the resulting auctions were managed by Pool.com. The process was very successful managing to allocate very efficiently domains according to their perceived value by applicants and bidders at the resulting auctions.
- General Availability: For .CO we had 100k registrations in the first 10 minutes and we didn't have a single issue nor service degradation through the launch or afterwards. We achieved this through a combination of strong planning between our partners, especially Neustar our back-end provider; communication with our Registrars prior and during the launch in a very structured way; strong infrastructure planning and provisioning; and effective load, contingency, and disaster recovery planning. We plan to use similar methods for the launch of .WEB.
 - o First come first serve during GA and afterwards, which we believe is the best mechanism to ensure a fair allocation of domains once the domain has been launched.
 - o Use of UDRP and any other best-practices in rights protection mechanisms

o Highly managed General Availability launch

- Premium Domains: We will keep some domains for premium sales and these will be restricted prior to the Gradual Offering Plan begins, but can be applied for during the Sunrise phase. These premium domains will be brokered or sold via auction directly or through an accredited 3rd party. With .CO we used this mechanism as a way to allocate high value domains and also to promote the usage of the domain by high profile companies including Twitter with t.co, Google with g.co, Startup America with s.co, as well as a myriad of smaller startups and other endorsements.

Community-based Designation

19. Is the application for a community-based TLD?

No

20(a). Provide the name and full description of the community that the applicant is committing to serve.

20(b). Explain the applicant's relationship to the community identified in 20(a).

20(c). Provide a description of the community-based purpose of the applied-for gTLD.

20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).

20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).

Attachments are not displayed on this form.

Geographic Names

21(a). Is the application for a geographic name?

No

Protection of Geographic Names

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

In preparation for answering this question, NU DOTCO, LLC (NU.CO) reviewed the following relevant background material regarding the protection of geographic names in the DNS, including:

- ICANN Board Resolution 01-92 regarding the methodology developed for the reservation and release of country names in the .INFO top-level domain (see <http://www.icann.org/en/minutes/minutes-10sep01.htm>);
- ICANN's Proposed Action Plan on .INFO Country Names (see <http://www.icann.org/en/meetings/montevideo/action-plan-country-names-09oct01.htm>);
- "Report of the Second WIPO Internet Domain Name Process: The Recognition and Rights and the Use of Names in the Internet Domain Name System," Section 6, Geographical Identifiers (see <http://www.wipo.int/amc/en/processes/process2/report/html/report.html>);
- ICANN's Governmental Advisory Committee (GAC) Principles Regarding New gTLDs, (see https://gacweb.icann.org/download/attachments/1540128/gTLD_principles_0.pdf?version=1&modificationDate=1312358178000); and
- ICANN's Generic Names Supporting Organization (GNSO) Reserved Names Working Group - Final Report (see <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>).

Initial Reservation of Country and Territory Names

NU.CO is committed to initially reserving the country and territory names contained in the internationally recognized lists described in Article 5 of Specification 5 attached to the New gTLD Applicant Guidebook at the second level and at all other levels within the .WEB gTLD at which domain name registrations will be provided. Specifically, NU.CO will reserve:

- The short form (in English) of all country and territory names contained on the ISO 3166- 1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union (see http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU);
- The United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
- The list of United Nations member states in six official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

Potential Future Release of Two Character Names

While NU.CO foresees no immediate need for plans to make use of these initially reserved country names at the second level within the .WEB namespace, NU.CO recognizes that there has been several successful and non-misleading use of country names by new gTLD operators as evidenced below:

AUSTRALIA.COOP - Is operated by Co-operatives Australia the national body for State Co-operative Federations and provides a valuable resource about cooperatives within Australia.

UK.COOP - Is operated by Co-operatives UK the national trade body that campaigns for co-operation and works to promote, develop and unite co-operative enterprises within the United Kingdom.

NZ.COOP - Is operated by the New Zealand Cooperatives Association which brings together the country's cooperative mutual business in a not-for-profit incorporated society.

USA.JOBS - Is operated by DirectEmployers Association (DE). While Employ Media the registry operator of the .JOBS gTLD is currently in a dispute with ICANN regarding the allocation of this and other domain names. Direct Employers has a series of partnerships and programs with the United States Department of Labor, the National Association of State Workforce Agencies and Facebook to help unemployed workers find jobs.

MALDIVIAN.AERO - Is the dominant domestic air carrier in Maldives, and provides a range of commercial and leisure air transport services.

The more likely request by NU.CO will come in connection with the un-reservation and allocation of two-letter .WEB domain names, e.g. US.WEB, UK.WEB, etc. If NU.CO should decide in the future to attempt and allocate these domain names, it would submit the proper Registry Service Evaluation Processes (RSEP) with ICANN. In evaluating similar RSEP requests that have been submitted to ICANN by other gTLD registry operators, NU.CO believes that its request would be favorably granted.

Creation and Updating the Policies

NU.CO is committed to continually reviewing and updating when necessary its policies in this area. Consistent with this commitment, NU.CO intends to remain an active participant in any ongoing ICANN policy discussion regarding the protection of geographic names within the DNS.

Registry Services

23. Provide name and full description of all the Registry Services to be provided.

23.1 Introduction

NU DOTCO LLC has elected to partner with NeuStar, Inc ("Neustar") to provide back-end services for the .WEB registry. In making this decision, NU DOTCO LLC recognized that Neustar already possesses a production-proven registry system that can be quickly deployed and smoothly operated over its robust, flexible, and scalable world-class infrastructure. The existing registry services will be leveraged for the .WEB registry. The following section describes the registry services to be provided.

23.2 Standard Technical and Business Components

Neustar will provide the highest level of service while delivering a secure, stable and comprehensive registry platform. NU DOTCO LLC will use Neustar's Registry Services platform to deploy the .WEB registry, by providing the following Registry Services (none of these services are offered in a manner that is unique to .WEB):

- Registry-Registrar Shared Registration Service (SRS)
- Extensible Provisioning Protocol (EPP)
- Domain Name System (DNS)
- WHOIS
- DNSSEC
- Data Escrow
- Dissemination of Zone Files using Dynamic Updates
- Access to Bulk Zone Files

- Dynamic WHOIS Updates
- IPv6 Support
- Rights Protection Mechanisms
- Internationalized Domain Names (IDN)

The following is a description of each of the services.

23.2.1 SRS

Neustar's secure and stable SRS is a production-proven, standards-based, highly reliable, and high-performance domain name registration and management system. The SRS includes an EPP interface for receiving data from registrars for the purpose of provisioning and managing domain names and name servers. The response to Question 24 provides specific SRS information.

23.2.2 EPP

The .WEB registry will use the Extensible Provisioning Protocol (EPP) for the provisioning of domain names. The EPP implementation will be fully compliant with all RFCs. Registrars are provided with access via an EPP API and an EPP based Web GUI. With more than 10 gTLD, ccTLD, and private TLDs implementations, Neustar has extensive experience building EPP-based registries. Additional discussion on the EPP approach is presented in the response to Question 25.

23.2.3 DNS

NU DOTCO LLC will leverage Neustar's world-class DNS network of geographically distributed nameserver sites to provide the highest level of DNS service. The service utilizes "Anycast" routing technology, and supports both IPv4 and IPv6. The DNS network is highly proven, and currently provides service to over 20 TLDs and thousands of enterprise companies. Additional information on the DNS solution is presented in the response to Questions 35.

23.2.4 WHOIS

Neustar's existing standard WHOIS solution will be used for the .WEB. The service provides supports for near real-time dynamic updates. The design and construction is agnostic with regard to data display policy is flexible enough to accommodate any data model. In addition, a searchable WHOIS service that complies with all ICANN requirements will be provided. The following WHOIS options will be provided:

- Standard WHOIS (Port 43)
- Standard WHOIS (Web)
- Searchable WHOIS (Web)

23.2.5 DNSSEC

An RFC compliant DNSSEC implementation will be provided using existing DNSSEC capabilities. Neustar is an experienced provider of DNSSEC services, and currently manages signed zones for three large top level domains: .biz, .us, and .co. Registrars are provided with the ability to submit and manage DS records using EPP, or through a web GUI. Additional information on DNSSEC, including the management of security extensions is found in the response to Question 43.

23.2.6 Data Escrow

Data escrow will be performed in compliance with all ICANN requirements in conjunction with an approved data escrow provider. The data escrow service will:

- Protect against data loss
- Follow industry best practices
- Ensure easy, accurate, and timely retrieval and restore capability in the event of a hardware failure
- Minimizes the impact of software or business failure.

Additional information on the Data Escrow service is provided in the response to Question 38.

23.2.7 Dissemination of Zone Files using Dynamic Updates

Dissemination of zone files will be provided through a dynamic, near real-time process. Updates will be performed within the specified performance levels. The proven technology ensures that updates pushed to all nodes within a few minutes of the changes being received by the SRS. Additional information on the DNS updates may be found in the response to Question 35.

23.2.8 Access to Bulk Zone Files

NU DOTCO LLC will provide third party access to the bulk zone file in accordance with specification 4, Section 2 of the Registry Agreement. Credentialing and dissemination of the zone files will be facilitated through the Central Zone Data Access Provider.

23.2.9 Dynamic WHOIS Updates

Updates to records in the WHOIS database will be provided via dynamic, near real-time updates. Guaranteed delivery message oriented middleware is used to ensure each individual WHOIS server is refreshed with dynamic updates. This component ensures that all WHOIS servers are kept current as changes occur in the SRS, while also decoupling WHOIS from the SRS. Additional information on WHOIS updates is presented in response to Question 26.

23.2.10 IPv6 Support

The .WEB registry will provide IPv6 support in the following registry services: SRS, WHOIS, and DNS/DNSSEC. In addition, the registry supports the provisioning of IPv6 AAAA records. A detailed description on IPv6 is presented in the response to Question 36.

23.2.11 Required Rights Protection Mechanisms

NU DOTCO LLC, will provide all ICANN required Rights Mechanisms, including:

- Trademark Claims Service
- Trademark Post-Delegation Dispute Resolution Procedure (PDDRP)
- Registration Restriction Dispute Resolution Procedure (RRDRP)
- UDRP
- URS
- Sunrise service.

More information is presented in the response to Question 29.

23.2.12 Internationalized Domain Names (IDN)

IDN registrations are provided in full compliance with the IDNA protocol. Neustar possesses extensive experience offering IDN registrations in numerous TLDs, and its IDN implementation uses advanced technology to accommodate the unique bundling needs of certain languages. Character mappings are easily constructed to block out characters that may be deemed as confusing to users. A detailed description of the IDN implementation is presented in response to Question 44.

23.3 Unique Services

NU DOTCO LLC will not be offering services that are unique to .WEB.

23.4 Security or Stability Concerns

All services offered are standard registry services that have no known security or stability concerns. Neustar has demonstrated a strong track record of security and stability within the industry.

Demonstration of Technical & Operational Capability

24. Shared Registration System (SRS) Performance

24.1 Introduction

NU DOTCO LLC has partnered with NeuStar, Inc ("Neustar"), an experienced TLD registry operator, for the operation of the .WEB Registry. The applicant is confident that the plan in place for the operation of a robust and reliable Shared Registration System (SRS) as currently provided by Neustar will satisfy the criterion established by ICANN.

Neustar built its SRS from the ground up as an EPP based platform and has been operating it reliably and at scale since 2001. The software currently provides registry services to five TLDs (.BIZ, .US, TEL, .CO and .TRAVEL) and is used to provide gateway services to the .CN and .TW registries. Neustar's state of the art registry has a proven track record of being secure, stable, and robust. It manages more than 6 million domains, and has over 300 registrars connected today. The following describes a detailed plan for a robust and reliable SRS that meets all ICANN requirements including compliance with Specifications 6 and 10.

24.2 The Plan for Operation of a Robust and Reliable SRS

24.2.1 High-level SRS System Description

The SRS to be used for .WEB will leverage a production-proven, standards-based, highly reliable and high-performance domain name registration and management system that fully meets or exceeds the requirements as identified in the new gTLD Application Guidebook.

The SRS is the central component of any registry implementation and its quality, reliability and capabilities are essential to the overall stability of the TLD. Neustar has a documented history of deploying SRS implementations with proven and verifiable performance, reliability and availability. The SRS adheres to all industry standards and protocols. By leveraging an existing SRS platform, NU DOTCO LLC is mitigating the significant risks and costs associated with the development of a new system. Highlights of the SRS include:

- State-of-the-art, production proven multi-layer design
- Ability to rapidly and easily scale from low to high volume as a TLD grows
- Fully redundant architecture at two sites
- Support for IDN registrations in compliance with all standards
- Use by over 300 Registrars
- EPP connectivity over IPv6
- Performance being measured using 100% of all production transactions (not sampling).

24.2.2 SRS Systems, Software, Hardware, and Interoperability

The systems and software that the registry operates on are a critical element to providing a high quality of service. If the systems are of poor quality, if they are difficult to maintain and operate, or if the registry personnel are unfamiliar with them, the registry will be prone to outages. Neustar has a decade of experience operating registry infrastructure to extremely high service level requirements. The infrastructure is designed using best of breed systems and software. Much of the application software that performs registry-specific operations was developed by the current engineering team and as a result the team is intimately familiar with its operations.

The architecture is highly scalable and provides the same high level of availability and performance as volumes increase. It combines load balancing technology with scalable server technology to provide a cost effective and efficient method for scaling.

The Registry is able to limit the ability of any one registrar from adversely impacting other registrars by consuming too many resources due to excessive EPP transactions. The system uses network layer 2 level packet shaping to limit the number of simultaneous connections registrars can open to the protocol layer.

All interaction with the Registry is recorded in log files. Log files are generated at each layer of the system. These log files record at a minimum:

- The IP address of the client
- Timestamp
- Transaction Details
- Processing Time.

In addition to logging of each and every transaction with the SRS Neustar maintains audit records, in the database, of all transformational transactions. These audit records allow the Registry, in support of the applicant, to produce a complete history of changes for any domain name.

24.2.3 SRS Design

The SRS incorporates a multi-layer architecture that is designed to mitigate risks and easily scale as volumes increase. The three layers of the SRS are:

- Protocol Layer
- Business Policy Layer
- Database.

Each of the layers is described below.

24.2.4 Protocol Layer

The first layer is the protocol layer, which includes the EPP interface to registrars. It consists of a high availability farm of load-balanced EPP servers. The servers are designed to be fast processors of transactions. The servers perform basic validations and then feed information to the business policy engines as described below. The protocol layer is horizontally scalable as dictated by volume.

The EPP servers authenticate against a series of security controls before granting service, as follows:

- The registrar's host exchanges keys to initiate a TLS handshake session with the EPP server.
- The registrar's host must provide credentials to determine proper access levels.
- The registrar's IP address must be preregistered in the network firewalls and traffic-shapers.

24.2.5 Business Policy Layer

The Business Policy Layer is the "brain" of the registry system. Within this layer, the policy engine servers perform rules-based processing as defined through configurable attributes. This process takes individual transactions, applies various validation and policy rules, persists data and dispatches notification through the central database in order to publish to various external systems. External systems fed by the Business Policy Layer include backend processes such as dynamic update of DNS, WHOIS and Billing.

Similar to the EPP protocol farm, the SRS consists of a farm of application servers within this layer. This design ensures that there is sufficient capacity to process every transaction in a manner that meets or exceeds all service level requirements. Some registries couple the business logic layer directly in the protocol layer or within the database. This architecture limits the ability to scale the registry. Using a decoupled architecture enables the load to be distributed among farms of inexpensive servers that can be scaled up or down as demand changes.

The SRS today processes over 30 million EPP transactions daily.

24.2.6 Database

The database is the third core components of the SRS. The primary function of the SRS database is to provide highly reliable, persistent storage for all registry information required for domain registration services. The database is highly secure, with access limited to transactions from authenticated registrars, trusted application-server processes, and highly restricted access by the registry database administrators. A full description of the database can be found in response to Question 33.

Figure 24-1 attached depicts the overall SRS architecture including network components.

24.2.7 Number of Servers

As depicted in the SRS architecture diagram above Neustar operates a high availability architecture where at each level of the stack there are no single points of failures. Each of the network level devices run with dual pairs as do the databases. For the .WEB registry, the SRS will operate with 8 protocol servers and 6 policy engine servers. These expand horizontally as volume increases due to additional TLDs, increased load, and through organic growth. In addition to the SRS servers described

above, there are multiple backend servers for services such as DNS and WHOIS. These are discussed in detail within those respective response sections.

24.2.8 Description of Interconnectivity with Other Registry Systems

The core SRS service interfaces with other external systems via Neustar's external systems layer. The services that the SRS interfaces with include:

- WHOIS
- DNS
- Billing
- Data Warehouse (Reporting and Data Escrow).

Other external interfaces may be deployed to meet the unique needs of a TLD. At this time there are no additional interfaces planned for .WEB.

The SRS includes an "external notifier" concept in its business policy engine as a message dispatcher. This design allows time-consuming backend processing to be decoupled from critical online registrar transactions. Using an external notifier solution, the registry can utilize "control levers" that allow it to tune or to disable processes to ensure optimal performance at all times. For example, during the early minutes of a TLD launch, when unusually high volumes of transactions are expected, the registry can elect to suspend processing of one or more back end systems in order to ensure that greater processing power is available to handle the increased load requirements. This proven architecture has been used with numerous TLD launches, some of which have involved the processing of over tens of millions of transactions in the opening hours. The following are the standard three external notifiers used the SRS:

24.2.9 WHOIS External Notifier

The WHOIS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on WHOIS. It is important to note that, while the WHOIS external notifier feeds the WHOIS system, it intentionally does not have visibility into the actual contents of the WHOIS system. The WHOIS external notifier serves just as a tool to send a signal to the WHOIS system that a change is ready to occur. The WHOIS system possesses the intelligence and data visibility to know exactly what needs to change in WHOIS. See response to Question 26 for greater detail.

24.2.10 DNS External Notifier

The DNS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on DNS. Like the WHOIS external notifier, the DNS external notifier does not have visibility into the actual contents of the DNS zones. The work items that are generated by the notifier indicate to the dynamic DNS update sub-system that a change occurred that may impact DNS. That DNS system has the ability to decide what actual changes must be propagated out to the DNS constellation. See response to Question 35 for greater detail.

24.2.11 Billing External Notifier

The billing external notifier is responsible for sending all billable transactions to the downstream financial systems for billing and collection. This external notifier contains the necessary logic to determine what types of transactions are billable. The financial systems use this information to apply appropriate debits and credits based on registrar.

24.2.12 Data Warehouse

The data warehouse is responsible for managing reporting services, including registrar reports, business intelligence dashboards, and the processing of data escrow files. The Reporting Database is used to create both internal and external reports, primarily to support registrar billing and contractual reporting requirement. The data warehouse databases are updated on a daily basis with full copies of the production SRS data.

24.2.13 Frequency of Synchronization between Servers

The external notifiers discussed above perform updates in near real-time, well within the prescribed service level requirements. As transactions from registrars update the core SRS, update notifications are pushed to the external systems such as DNS and WHOIS. These updates are typically live in the

external system within 2-3 minutes.

24.2.14 Synchronization Scheme (e.g., hot standby, cold standby)

Neustar operates two hot databases within the data center that is operating in primary mode. These two databases are kept in sync via synchronous replication. Additionally, there are two databases in the secondary data center. These databases are updated real time through asynchronous replication. This model allows for high performance while also ensuring protection of data. See response to Question 33 for greater detail.

24.2.15 Compliance with Specification 6 Section 1.2

The SRS implementation for .WEB is fully compliant with Specification 6, including section 1.2. EPP Standards are described and embodied in a number of IETF RFCs, ICANN contracts and practices, and registry-registrar agreements. Extensible Provisioning Protocol or EPP is defined by a core set of RFCs that standardize the interface that make up the registry-registrar model. The SRS interface supports EPP 1.0 as defined in the following RFCs shown in Table 24-1 attached.

Additional information on the EPP implementation and compliance with RFCs can be found in the response to Question 25.

24.2.16 Compliance with Specification 10

Specification 10 of the New TLD Agreement defines the performance specifications of the TLD, including service level requirements related to DNS, RDDS (WHOIS), and EPP. The requirements include both availability and transaction response time measurements. As an experienced registry operator, Neustar has a long and verifiable track record of providing registry services that consistently exceed the performance specifications stipulated in ICANN agreements. This same high level of service will be provided for the .WEB Registry. The following section describes Neustar's experience and its capabilities to meet the requirements in the new agreement.

To properly measure the technical performance and progress of TLDs, Neustar collects data on key essential operating metrics. These measurements are key indicators of the performance and health of the registry. Neustar's current .biz SLA commitments are among the most stringent in the industry today, and exceed the requirements for new TLDs. Table 24-2 compares the current SRS performance levels compared to the requirements for new TLDs, and clearly demonstrates the ability of the SRS to exceed those requirements.

Their ability to commit and meet such high performance standards is a direct result of their philosophy towards operational excellence. See response to Question 31 for a full description of their philosophy for building and managing for performance.

24.3 Resourcing Plans

The development, customization, and on-going support of the SRS are the responsibility of a combination of technical and operational teams, including:

- Development/Engineering
- Database Administration
- Systems Administration
- Network Engineering.

Additionally, if customization or modifications are required, the Product Management and Quality Assurance teams will be involved in the design and testing. Finally, the Network Operations and Information Security play an important role in ensuring the systems involved are operating securely and reliably.

The necessary resources will be pulled from the pool of operational resources described in detail in the response to Question 31. Neustar's SRS implementation is very mature, and has been in production for over 10 years. As such, very little new development related to the SRS will be required for the implementation of the .WEB registry. The following resources are available from those teams:

- Development/Engineering - 19 employees
- Database Administration- 10 employees
- Systems Administration - 24 employees

-Network Engineering - 5 employees

The resources are more than adequate to support the SRS needs of all the TLDs operated by Neustar, including the .WEB registry.

25. Extensible Provisioning Protocol (EPP)

25.1 Introduction

NU DOTCO LLC's back-end registry operator, Neustar, has over 10 years of experience operating EPP based registries. They deployed one of the first EPP regis

EXHIBIT C-25



New gTLD Program Explanatory Memorandum

Discussion Draft: Market & Economic Impacts

Date of Original Publication:

15 April 2011

Background – New gTLD Program

This is one of a series of new Explanatory Memos related to recent consultations between ICANN's Board and Governmental Advisory Committee concerning ICANN's New gTLD Program.

These memos were developed to document the latest position on these topics by taking into account the current thinking, discussions and public comments received. Each memo not only reflects GAC advice but also contains the reasoning and rationale on each of the relevant issues regarding the Applicant Guidebook and the launch of the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <<http://www.icann.org/en/topics/new-gtld-program.htm>>.

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

Introduction

Current Environment

Through a formal development process, the ICANN Board approved a GNSO Policy recommendation that additional new gTLDs should be delegated based upon the conclusion, among others, that new gTLDs would bring net benefit to the Internet community. Following that approval, several economic studies were conducted to study: whether new gTLDs would bring net benefit and potential market restrictions (i.e., domain name pricing policy; and vertical separation rules).

None of the studies were able to specifically quantify projected net benefits, stating, among other things, that innovation was difficult or possible to predict, as were the effectiveness of the many cost mitigation tools being implemented along with the program. All studies described benefits; some were more bullish on their likelihood and effect than others. All studies recommended that cost mitigations be put in place such as property rights protections and malicious conduct mitigation measures.

In their Indicative Scorecard, the GAC recommended the following action:

Amend the final Draft Applicant Guidebook to incorporate the following:

- Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.
- A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.
- Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.

During the consultations in Brussels and San Francisco, the GAC indicated that the next weighing of costs and benefits should take place as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments (rather than as a prerequisite to evaluating and delegating gTLD applications).

Recommendation

- I. The Guidebook will be amended, i.e., the applicant questions will be augmented, to include questions requiring new gTLD applicants to provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.

ICANN retained economists familiar with these issues to suggest which questions should be asked. Anticipating that a portion of the program review undertaken after the first round will be performed by economists, it was thought that the review would be more effective if the question design was also performed by professionals in the same field.

After some discussion and iteration, questions have been developed and are provided in the annex to this paper. The questions will be public facing, i.e., the answers will be published. The answers will *not* be used to score or otherwise evaluate the applications. (Answers to other questions already in the application will be scored according to the current scheme and also will be used in the study.)

- II. It is agreed that operating restrictions be put into place to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.

ICANN Board resolved that the GNSO should be provided a briefing paper and should examine this question (see, <http://icann.org/en/minutes/resolutions-10dec10-en.htm> - 8). The GNSO was provided that paper, including a proposed model for determining under which circumstances a community TLD registry operator may amend the registration restriction in the registry agreement. The procedure is intended to allow changes to Community TLD restrictions, recognizing that changes will be necessary to best meet community needs. Conditions change and anticipated ways to meet community needs are not always correct. The test within that procedure is intended to ensure that the TLD still meets the needs of the targeted community after the changes are made – or to disallow the change.

Rationale for recommendation

Post-launch economic study

Because it is mostly that economists will conduct the post-launch study, it was decided that economists should also write the questions. The questions will not be scored because openness is encouraged and because the existing scored questions were formed to match the GNSO gTLD allocation policy.

The economists suggested some questions already in the application. They were not repeated in the new section. Questions concerning confidential business plans were avoided.

While it is understood the applicants will not be held to their answers and therefore may exaggerate claims, the questions and answers will be published so that the public will be able to test the applicants' accuracy and thoughtfulness afterward.

Ensuring Community-based gTLDs will serve their targeted communities

When considering changes to Community TLDs, the Board Reconsideration Committee stated, "because such a process may impact gTLDs greatly and is a policy issue, the GNSO is the natural starting point for evaluating such a process." (See, <http://www.icann.org/en/committees/reconsideration/bgc-recommendation-09dec10-en.pdf>.) Therefore, the Board resolved that the issue be referred to the GNSO.

Prior to that resolution, considerable work had been done creating a model for achieving that same end. When the Board requested briefing paper was sent to the GNSO, a proposed model for evaluating change was included. It can, if the GNSO so chooses, to serve as a starting point for that discussion.

The published model can also serve as a notice to potential Community TLD applicants of the future pre-requisites for changes. The Board might decide to include the proposed model in the Guidebook, pending GNSO deliberation and decision.

ANNEX – ICANN APPLICATION QUESTIONS

Note: The information gathered in response to these questions is intended to inform the review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space.

The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments, after new gTLDs have been in operation for one year. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.

The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring, except to the extent that the information may overlap with questions or evaluation areas that are scored.

Expected Benefits of the Proposed gTLD

1. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?
 - a. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?
 - b. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?
 - c. Provide a complete description of the applicant's intended registration policies in support of these goals.
 - d. What goals does your proposed gTLD have in terms of user experience?
 - e. Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.
 - f. Please describe if outreach and communications will help to achieve your projected benefits? If so, please describe how.

Eliminating or Minimizing Costs to Registrants and Consumers

2. What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?
 - a. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?
 - b. Explain any cost benefits for registrants you intend to implement, such as advantageous pricing, introductory discounts, bulk registration discounts, etc.
 - c. Do you intend to offer registrants the ability to obtain long term (or permanent) contracts for domain names? Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.
 - d. Will you impose any constraints on parked sites, or sites that offer only advertising?

Existing application questions that are directly relevant to the review. (All questions, to some extent, go to mitigating cost and providing benefit.)

18. Mission/purpose
20. Community-based designation
23. Registry services
28. Abuse prevention and mitigation
29. Rights protection mechanisms

EXHIBIT C-26

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

11 **Domain and Designation.** The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the earlier of the expiration of the Term (as defined in Section 4.1) or the termination of this Agreement pursuant to Article 4, ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

12 **Technical Feasibility of String.** While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

13 **Representations and Warranties.**

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and has obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding

obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and has obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the Specification 6 attached hereto (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a material modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth in Specification 1 attached hereto (“Specification 1”).

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto (“Specification 2”) within fourteen (14) calendar days after delegation.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, commencing with the first calendar month in which the TLD is delegated in the root zone, Registry Operator shall deliver to ICANN reports in the format

set forth in Specification 3 attached hereto (“Specification 3”); provided, however, that if the TLD is delegated in the root zone after the fifteenth (15th) calendar day of the calendar month, Registry Operator may defer the delivery of the reports for such first calendar month and instead deliver to ICANN such month’s reports no later than the time that Registry Operator is required to deliver the reports for the immediately following calendar month. Registry Operator must include in the Per-Registrar Transactions Report any domain name created during pre-delegation testing that has not been deleted as of the time of delegation (notably but not limited to domains registered by Registrar IDs 9995 and/or 9996).

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with Specification 4 attached hereto (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the requirements set forth in Specification 5 attached hereto (“Specification 5”). Registry Operator may at any time establish or modify policies concerning Registry Operator’s ability to reserve (i.e., withhold from registration or allocate to Registry Operator, but not register to third parties, delegate, use, activate in the DNS or otherwise make available) or block additional character strings within the TLD at its discretion. Except as specified in Specification 5, if Registry Operator is the registrant for any domain names in the registry TLD, such registrations must be through an ICANN accredited registrar, and will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-level transaction fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6 attached hereto (“Specification 6”).

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) All domain name registrations in the TLD must be registered through an ICANN accredited registrar; provided, that Registry Operator need not use a registrar if it registers names in its own name in order to withhold such names from delegation or use in accordance with Section 2.6. Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD (the "Registry-Registrar Agreement"). Registry Operator may amend the Registry-Registrar Agreement from time to time; provided, however, that any material revisions thereto must be approved by ICANN before any such revisions become effective and binding on any registrar. Registry Operator will provide ICANN and all registrars authorized to register names in the TLD at least fifteen (15) calendar days written notice of any revisions to the Registry-Registrar Agreement before any such revisions become effective and binding on any registrar. During such period, ICANN will determine whether such proposed revisions are immaterial, potentially material or material in nature. If ICANN has not provided Registry Operator with notice of its determination within such fifteen (15) calendar-day period, ICANN shall be deemed to have determined that such proposed revisions are immaterial in nature. If ICANN determines, or is deemed to have determined under this Section 2.9(a), that such revisions are immaterial, then Registry Operator may adopt and implement such revisions. If ICANN determines such revisions are either material or potentially material, ICANN will thereafter follow its procedure regarding review and approval of changes to Registry-Registrar Agreements at <http://www.icann.org/en/resources/registries/rra-amendment-procedure>, and such revisions may not be adopted and implemented until approved by ICANN. Notwithstanding the foregoing provisions of this Section 2.9(a), any change to the Registry-Registrar Agreement that relates exclusively to the fee charged by Registry Operator to register domain names in the TLD will not be subject to the notice and approval process specified in this Section 2.9(a), but will be subject to the requirements in Section 2.10 below.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will treat such contract or related documents that are appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15 (except that ICANN may disclose such contract and related documents to relevant competition authorities). ICANN reserves the right, but not the obligation, to refer any such contract,

related documents, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, related documents, transaction or other arrangement might raise significant competition issues under applicable law. If feasible and appropriate under the circumstances, ICANN will give Registry Operator advance notice prior to making any such referral to a competition authority.

(c) For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current

price (i.e., the price in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit during regular business hours and in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely

provide all responsive documents, data and any other information reasonably necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than ten (10) calendar days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% in a given quarter to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of Registry Operator's knowledge of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in Specification 8 attached hereto ("Specification 8").

2.13 Emergency Transition. Registry Operator agrees that, in the event that any of the emergency thresholds for registry functions set forth in Section 6 of Specification 10 is reached, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at <<http://www.icann.org/en/resources/registries/transition-processes>>) (as the same may be amended from time to time, the "Registry Transition Process") until such

time as Registry Operator has demonstrated to ICANN’s reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process, provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in Specification 9 attached hereto (“Specification 9”).

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data related to the operation of the TLD reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold (a) any internal analyses or evaluations prepared by Registry Operator with respect to such data and (b) any data to the extent that the delivery of such data would be in violation of applicable law. Any data delivered to ICANN or its designee pursuant to this Section 2.15 that is appropriately marked as confidential (as required by Section 7.15) shall be treated as Confidential Information of Registry Operator in accordance with Section 7.15, provided that, if ICANN aggregates and makes anonymous such data, ICANN or its designee may disclose such data to any third party. Following completion of an economic study for which Registry Operator has provided data, ICANN will destroy all data provided by Registry Operator that has not been aggregated and made anonymous.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in Specification 10 attached hereto (“Specification 10”). Registry Operator shall comply with such Performance Specifications and, for a period of at least one (1) year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Additional Public Interest Commitments. Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto (“Specification 11”).

2.18 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the Registry-Registrar Agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.19 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at <http://www.icann.org/en/resources/registries/rrdrp> with respect to disputes arising pursuant to this Section 2.19. Registry Operator shall implement and comply with the community registration policies set forth on Specification 12 attached hereto.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by

Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system (the "Authoritative Root Server System"), ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten (10) years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten (10) years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) or a court of competent jurisdiction on at least three (3) separate occasions to have been in (A) fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or (B) breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then-current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any material property of Registry Operator that, if levied, would reasonably be expected to materially and adversely affect Registry Operator's ability to operate the registry for the TLD, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement (if such proceedings are instituted by Registry Operator or its Affiliates) or one hundred and eighty (180) calendar days of their commencement (if such proceedings are instituted by a third party against Registry Operator), or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to a determination by any PDDRP panel or RRDRP panel under Section 2 of Specification 7 or a determination by any PICDRP panel under Section 2, Section 3 or any other applicable Section of Specification 11, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement as specified in Section 7.5.

(h) [*Applicable to intergovernmental organizations or governmental entities only.*] ICANN may terminate this Agreement pursuant to Section 7.16.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court of competent jurisdiction has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that (i) ICANN will take into consideration any intellectual property rights of Registry Operator (as communicated to ICANN by Registry Operator) in determining whether to transition operation of the TLD to a successor registry operator and (ii) if Registry Operator demonstrates to ICANN's reasonable satisfaction that (A) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator or its Affiliates for their exclusive use, (B) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (C) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN’s designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator’s consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Mediation. In the event of any dispute arising under or in connection with this Agreement, before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

(a) A party shall submit a dispute to mediation by written notice to the other party. The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days of delivery of written notice pursuant to this Section 5.1, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law, has no ongoing business relationship with either party and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 5.1(a).

(b) The mediator shall conduct the mediation in accordance with the rules and procedures that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either party in any later proceeding relating to the dispute, including any arbitration pursuant to Section 5.2. The mediator may not testify for either party in any later proceeding relating to the dispute.

(c) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15.

(d) If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.2 below.

5.2 Arbitration. Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (the "ICC"). The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or

7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party nominating one arbitrator for confirmation by the ICC and the two selected arbitrators nominating the third arbitrator for confirmation by the ICC. For an arbitration in front of a sole arbitrator, Registry Operator and ICANN may, by mutual agreement, nominate the sole arbitrator for confirmation by the ICC. If the parties fail to nominate a sole arbitrator or, in the case of an arbitration in front of three arbitrators, either party fails to nominate an arbitrator, in each case within thirty (30) calendar days from the date when a party's request for arbitration has been received by the other party, or within such additional time as may be allowed by the Secretariat of the Court of the ICC, the arbitrator(s) shall be appointed by the ICC. If any nominated arbitrator is not confirmed by the ICC, the party or persons that appointed such arbitrator shall promptly nominate a replacement arbitrator for confirmation by the ICC. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). Each party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

"Arbitration. Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (the "ICC"). The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or 7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with

each party nominating one arbitrator for confirmation by the ICC and the two selected arbitrators nominating the third arbitrator for confirmation by the ICC. For an arbitration in front of a sole arbitrator, Registry Operator and ICANN may, by mutual agreement, nominate the sole arbitrator for confirmation by the ICC. If the parties fail to nominate a sole arbitrator or, in the case of an arbitration in front of three arbitrators, either party fails to nominate an arbitrator, in each case within thirty (30) calendar days from the date when a party's request for arbitration has been received by the other party, or within such additional time as may be allowed by the Secretariat of the Court of the ICC, the arbitrator(s) shall be appointed by the ICC. If any nominated arbitrator is not confirmed by the ICC, the party or persons that appointed such arbitrator shall promptly nominate a replacement arbitrator for confirmation by the ICC. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). Each party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2, except with respect to Registry Operator's indemnification obligations pursuant to Section 7.1 and Section 7.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party

makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator or court of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees.

(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US\$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the "Registry-Level Fees"). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any consecutive four calendar quarter period in the aggregate (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator's obligation to pay the quarterly registry-level fixed fee will begin on the date on which the TLD is delegated in the DNS to Registry Operator. The first quarterly payment of the registry-level fixed fee will be prorated based on the number of calendar days between the delegation date and the end of the calendar quarter in which the delegation date falls.

(b) Subject to Section 6.1(a), Registry Operator shall pay the Registry-Level Fees on a quarterly basis to an account designated by ICANN within thirty (30) calendar days following the date of the invoice provided by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within fourteen (14) calendar days of receipt of a copy of the RSTEP invoice from ICANN,

unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (accounting, in the aggregate, for payment of two-thirds of all registrar-level fees (or such portion of ICANN accredited registrars necessary to approve variable accreditation fees under the then-current registrar accreditation agreement), do not approve, pursuant to the terms of their registrar accreditation agreements with ICANN, the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a variable registry-level fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year (the "Variable Registry-Level Fee"). The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars that are party to a Registry-Registrar Agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve, pursuant to the terms of their registrar accreditation agreements with ICANN, the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN accredited registrar to another) per year.

6.4 Pass Through Fees. Registry Operator shall pay to ICANN (i) a one-time fee equal to US\$5,000 for access to and use of the Trademark Clearinghouse as described in Specification 7 (the “RPM Access Fee”) and (ii) US\$0.25 per Sunrise Registration and Claims Registration (as such terms are used in Trademark Clearinghouse RPMs incorporated herein pursuant to Specification 7) (the “RPM Registration Fee”). The RPM Access Fee will be invoiced as of the Effective Date of this Agreement, and Registry Operator shall pay such fee to an account specified by ICANN within thirty (30) calendar days following the date of the invoice. ICANN will invoice Registry Operator quarterly for the RPM Registration Fee, which shall be due in accordance with the invoicing and payment procedure specified in Section 6.1.

6.5 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then-current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN’s discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the “CPI”) for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.5 shall be effective as of the first day of the first calendar quarter following at least thirty (30) days after ICANN’s delivery to Registry Operator of such fee adjustment notice.

6.6 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

6.7 Fee Reduction Waiver. In ICANN’s sole discretion, ICANN may reduce the amount of registry fees payable hereunder by Registry Operator for any period of time (“Fee Reduction Waiver”). Any such Fee Reduction Waiver may, as determined by ICANN in its sole discretion, be (a) limited in duration and (b) conditioned upon Registry Operator’s acceptance of the terms and conditions set forth in such waiver. A Fee Reduction Waiver shall not be effective unless executed in writing by ICANN as contemplated by Section 7.6(i). ICANN will provide notice of any Fee Reduction Waiver to Registry Operator in accordance with Section 7.9.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court of competent jurisdiction or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court of competent jurisdiction or arbitrator."]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are

engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [**Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.**]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN's policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [**Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.**]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b) For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the

relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator’s delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change of Control; Assignment and Subcontracting. Except as set forth in this Section 7.5, neither party may assign any of its rights and obligations under this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any subcontracting arrangement that relates to any Critical Function (as identified in Section 6 of Specification 10) for the TLD (a “Material Subcontracting Arrangement”) shall be deemed an assignment.

(a) Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator.

(b) Within thirty (30) calendar days of either such notification pursuant to Section 7.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any case, the “Contracting Party”) and the ultimate parent entity of the Contracting Party meets the ICANN-adopted specification or policy on registry operator criteria then in effect (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

(c) Registry Operator agrees that ICANN’s consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party’s Affiliates).

(d) If ICANN fails to expressly provide or withhold its consent to any assignment, direct or indirect change of control of Registry Operator or any Material Subcontracting Arrangement within thirty (30) calendar days of ICANN's receipt of notice of such transaction (or, if ICANN has requested additional information from Registry Operator as set forth above, thirty (30) calendar days of the receipt of all requested written information regarding such transaction) from Registry Operator, ICANN shall be deemed to have consented to such transaction.

(e) In connection with any such assignment, change of control or Material Subcontracting Arrangement, Registry Operator shall comply with the Registry Transition Process.

(f) Notwithstanding the foregoing, (i) any consummated change of control shall not be voidable by ICANN; provided, however, that, if ICANN reasonably determines to withhold its consent to such transaction, ICANN may terminate this Agreement pursuant to Section 4.3(g), (ii) ICANN may assign this Agreement without the consent of Registry Operator upon approval of the ICANN Board of Directors in conjunction with a reorganization, reconstitution or re-incorporation of ICANN upon such assignee's express assumption of the terms and conditions of this Agreement, (iii) Registry Operator may assign this Agreement without the consent of ICANN directly to an Affiliated Assignee, as that term is defined herein below, upon such Affiliated Assignee's express written assumption of the terms and conditions of this Agreement, and (iv) ICANN shall be deemed to have consented to any assignment, Material Subcontracting Arrangement or change of control transaction in which the Contracting Party is an existing operator of a generic top-level domain pursuant to a registry agreement between such Contracting Party and ICANN (provided that such Contracting Party is then in compliance with the terms and conditions of such registry agreement in all material respects), unless ICANN provides to Registry Operator a written objection to such transaction within ten (10) calendar days of ICANN's receipt of notice of such transaction pursuant to this Section 7.5. Notwithstanding Section 7.5(a), in the event an assignment is made pursuant to clauses (ii) or (iii) of this Section 7.5(f), the assigning party will provide the other party with prompt notice following any such assignment. For the purposes of this Section 7.5(f), (A) "Affiliated Assignee" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (B) "control" (including the terms "controlled by" and "under common control with") shall have the same meaning specified in Section 2.9(c) of this Agreement.

7.6 Amendments and Waivers.

(a) If the ICANN Board of Directors determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable Registry Operators (the "Applicable Registry Agreements") is desirable (each, a "Special Amendment"), ICANN may adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 7.6; provided that a Special Amendment may not be a Restricted Amendment.

(b) Prior to submitting a Special Amendment for Registry Operator Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such proposed amendment to the Applicable Registry Operators in accordance with Section 7.9. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(c) If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the “Approval Period”), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject matter of the Special Amendment posted for public comment, as modified to reflect and/or address input from the Working Group and public comments), ICANN shall provide notice of, and submit, such Special Amendment for approval or disapproval by the Applicable Registry Operators. If, during the sixty (60) calendar day period following the date ICANN provides such notice to the Applicable Registry Operators, such Special Amendment receives Registry Operator Approval, such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Approved Amendment to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment does not receive Registry Operator Approval, the Special Amendment shall be deemed not approved by the Applicable Registry Operators (a “Rejected Amendment”). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, except as set forth below.

(d) If the ICANN Board of Directors reasonably determines that a Rejected Amendment falls within the subject matter categories set forth in Section 1.2 of Specification 1, the ICANN Board of Directors may adopt a resolution (the date such resolution is adopted is referred to herein as the “Resolution Adoption Date”) requesting an Issue Report (as such term is defined in ICANN’s Bylaws) by the Generic Names Supporting Organization (the “GNSO”) regarding the substance of such Rejected Amendment. The policy development process undertaken by the GNSO pursuant to such requested Issue Report is referred to herein as a “PDP.” If such PDP results in a Final Report supported by a GNSO Supermajority (as defined in ICANN’s Bylaws) that either (i) recommends adoption of the Rejected Amendment as Consensus Policy or (ii) recommends against adoption of the Rejected Amendment as Consensus Policy, and, in the case of (i) above, the Board adopts such Consensus Policy, Registry Operator shall comply with its obligations pursuant to Section 2.2 of this Agreement. In either case, ICANN will abandon the Rejected Amendment and it will have no effect on the terms and conditions of this Agreement. Notwithstanding the foregoing provisions of this Section 7.6(d), the ICANN Board of Directors shall not be required to initiate a PDP with respect to a Rejected Amendment if, at any time in the twelve (12) month period preceding the submission of such Rejected

Amendment for Registry Operator Approval pursuant to Section 7.6(c), the subject matter of such Rejected Amendment was the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation.

(e) If (a) a Rejected Amendment does not fall within the subject matter categories set forth in Section 1.2 of Specification 1, (b) the subject matter of a Rejected Amendment was, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Registry Operator Approval pursuant to Section 7.6(c), the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation, or (c) a PDP does not result in a Final Report supported by a GNSO Supermajority that either (A) recommends adoption of the Rejected Amendment as Consensus Policy or (B) recommends against adoption of the Rejected Amendment as Consensus Policy (or such PDP has otherwise been abandoned or terminated for any reason), then, in any such case, such Rejected Amendment may still be adopted and become effective in the manner described below. In order for the Rejected Amendment to be adopted, the following requirements must be satisfied:

(i) the subject matter of the Rejected Amendment must be within the scope of ICANN's mission and consistent with a balanced application of its core values (as described in ICANN's Bylaws);

(ii) the Rejected Amendment must be justified by a Substantial and Compelling Reason in the Public Interest, must be likely to promote such interest, taking into account competing public and private interests that are likely to be affected by the Rejected Amendment, and must be narrowly tailored and no broader than reasonably necessary to address such Substantial and Compelling Reason in the Public Interest;

(iii) to the extent the Rejected Amendment prohibits or requires conduct or activities, imposes material costs on the Applicable Registry Operators, and/or materially reduces public access to domain names services, the Rejected Amendment must be the least restrictive means reasonably available to address the Substantial and Compelling Reason in the Public Interest;

(iv) the ICANN Board of Directors must submit the Rejected Amendment, along with a written explanation of the reasoning related to its determination that the Rejected Amendment meets the requirements set out in subclauses (i) through (iii) above, for public comment for a period of no less than thirty (30) calendar days; and

(v) following such public comment period, the ICANN Board of Directors must (a) engage in consultation (or direct ICANN management to engage in consultation) with the Working Group, subject matter experts, members of the GNSO, relevant advisory committees and other interested stakeholders with respect to such Rejected Amendment for a period of no

less than sixty (60) calendar days; and (b) following such consultation, reapprove the Rejected Amendment (which may be in a form different than submitted for Registry Operator Approval, but must address the subject matter of the Rejected Amendment, as modified to reflect and/or address input from the Working Group and public comments) by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy (a "Board Amendment").

Such Board Amendment shall, subject to Section 7.6(f), be deemed an Approved Amendment, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Board Amendment to Registry Operator (which effective date shall be deemed the Amendment Effective Date hereunder). Notwithstanding the foregoing, a Board Amendment may not amend the registry fees charged by ICANN hereunder, or amend this Section 7.6.

(f) Notwithstanding the provisions of Section 7.6(e), a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the Working Group, on the behalf of the Applicable Registry Operators, submits to the ICANN Board of Directors an alternative to the Board Amendment (an "Alternative Amendment") that meets the following requirements:

(i) sets forth the precise text proposed by the Working Group to amend this Agreement in lieu of the Board Amendment;

(ii) addresses the Substantial and Compelling Reason in the Public Interest identified by the ICANN Board of Directors as the justification for the Board Amendment; and

(iii) compared to the Board Amendment is: (a) more narrowly tailored to address such Substantial and Compelling Reason in the Public Interest, and (b) to the extent the Alternative Amendment prohibits or requires conduct or activities, imposes material costs on Affected Registry Operators, or materially reduces access to domain name services, is a less restrictive means to address the Substantial and Compelling Reason in the Public Interest.

Any proposed amendment that does not meet the requirements of subclauses (i) through (iii) in the immediately preceding sentence shall not be considered an Alternative Amendment hereunder and therefore shall not supersede or delay the effectiveness of the Board Amendment. If, following the submission of the Alternative Amendment to the ICANN Board of Directors, the Alternative Amendment receives Registry Operator Approval, the Alternative Amendment shall supersede the Board Amendment and shall be

deemed an Approved Amendment hereunder (and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Alternative Amendment to Registry Operator, which effective date shall be deemed the Amendment Effective Date hereunder), unless, within a period of sixty (60) calendar days following the date that the Working Group notifies the ICANN Board of Directors of Registry Operator Approval of such Alternative Amendment (during which time ICANN shall engage with the Working Group with respect to the Alternative Amendment), the ICANN Board of Directors by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy, rejects the Alternative Amendment. If (A) the Alternative Amendment does not receive Registry Operator Approval within thirty (30) calendar days of submission of such Alternative Amendment to the Applicable Registry Operators (and the Working Group shall notify ICANN of the date of such submission), or (B) the ICANN Board of Directors rejects the Alternative Amendment by such two-thirds vote, the Board Amendment (and not the Alternative Amendment) shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice to Registry Operator (which effective date shall be deemed the Amendment Effective Date hereunder). If the ICANN Board of Directors rejects an Alternative Amendment, the board shall publish a written rationale setting forth its analysis of the criteria set forth in Sections 7.6(f)(i) through 7.6(f)(iii). The ability of the ICANN Board of Directors to reject an Alternative Amendment hereunder does not relieve the Board of the obligation to ensure that any Board Amendment meets the criteria set forth in Section 7.6(e)(i) through 7.6(e)(v).

(g) In the event that Registry Operator believes an Approved Amendment does not meet the substantive requirements set out in this Section 7.6 or has been adopted in contravention of any of the procedural provisions of this Section 7.6, Registry Operator may challenge the adoption of such Special Amendment pursuant to the dispute resolution provisions set forth in Article 5, except that such arbitration shall be conducted by a three-person arbitration panel. Any such challenge must be brought within sixty (60) calendar days following the date ICANN provided notice to Registry Operator of the Approved Amendment, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process.

(h) Registry Operator may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an "Exemption Request") during the thirty (30) calendar day period following the date ICANN provided notice to Registry Operator of such Approved Amendment. Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with

the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN's receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement; provided, that any conditions, alternatives or variations of the Approved Amendment required by ICANN shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN's determination, appeal ICANN's decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(j), agreed to by ICANN following mediation pursuant to Section 5.1 or through an arbitration decision pursuant to Section 5.2 shall exempt Registry Operator from any Approved Amendment, and no Exemption Request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(i) Except as set forth in this Section 7.6, Section 7.7 and as otherwise set forth in this Agreement and the Specifications hereto, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 or Section 7.7 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Sections 7.6 or 7.7 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(j) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) “Applicable Registry Operators” means, collectively, the registry operators of top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) “Registry Operator Approval” means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable, at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For the avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) “Restricted Amendment” means the following: (A) an amendment of Specification 1, (B) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (C) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (D) an amendment to the length of the Term.

(iv) “Substantial and Compelling Reason in the Public Interest” means a reason that is justified by an important, specific, and articulated public interest goal that is within ICANN's mission and consistent with a balanced application of ICANN's core values as defined in ICANN's Bylaws.

(v) “Working Group” means representatives of the Applicable Registry Operators and other members of the community that the Registry Stakeholders Group appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(i)).

(k) Notwithstanding anything in this Section 7.6 to the contrary, (i) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for Approved Amendment to become effective with respect to Registry Operator, and (ii) no Approved Amendment adopted pursuant to Section 7.6 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).

7.7 Negotiation Process.

(a) If either the Chief Executive Officer of ICANN (“CEO”) or the Chairperson of the Registry Stakeholder Group (“Chair”) desires to discuss any revision(s) to this Agreement, the CEO or Chair, as applicable, shall provide written notice to the other person, which shall set forth in reasonable detail the proposed revisions to this Agreement (a “Negotiation Notice”). Notwithstanding the foregoing, neither the CEO nor the Chair may (i) propose revisions to this Agreement that modify any Consensus Policy then existing, (ii) propose revisions to this Agreement pursuant to this Section 7.7 on or before June 30, 2014, or (iii) propose revisions or submit a Negotiation Notice more than once during any twelve (12) month period beginning on July 1, 2014.

(b) Following receipt of the Negotiation Notice by either the CEO or the Chair, ICANN and the Working Group (as defined in Section 7.6) shall consult in good faith negotiations regarding the form and substance of the proposed revisions to this Agreement, which shall be in the form of a proposed amendment to this Agreement (the “Proposed Revisions”), for a period of at least ninety (90) calendar days (unless a resolution is earlier reached) and attempt to reach a mutually acceptable agreement relating to the Proposed Revisions (the “Discussion Period”).

(c) If, following the conclusion of the Discussion Period, an agreement is reached on the Proposed Revisions, ICANN shall post the mutually agreed Proposed Revisions on its website for public comment for no less than thirty (30) calendar days (the “Posting Period”) and provide notice of such revisions to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval (as defined in Section 7.6) and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(d) If, following the conclusion of the Discussion Period, an agreement is not reached between ICANN and the Working Group on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (the “Mediation Notice”) requiring each party to attempt to resolve the disagreements related to the Proposed Revisions through impartial, facilitative (non-evaluative) mediation in accordance with the terms and conditions set forth below. In the event that a Mediation Notice is provided, ICANN and the Working Group shall, within fifteen (15) calendar days thereof, simultaneously post the text of their desired version of the Proposed Revisions and a position paper with respect thereto on ICANN’s website.

(i) The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15)

calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law, who has no ongoing business relationship with either party and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or an Applicable Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 7.7(d)(i).

(ii) The mediator shall conduct the mediation in accordance with the rules and procedures for facilitative mediation that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(iii) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

(iv) If an agreement is reached during the mediation, ICANN shall post the mutually agreed Proposed Revisions on its website for the Posting Period and provide notice to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the agreed Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(v) If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the mediation shall automatically terminate (unless extended by agreement of the parties). The mediator shall deliver to the parties a definition of the issues that could be considered in future arbitration, if invoked. Those issues are subject to the limitations set forth in Section 7.7(e)(ii) below.

(e) If, following mediation, ICANN and the Working Group have not reached an agreement on the Proposed Revisions, either the CEO or the Chair may provide

the other person written notice (an “Arbitration Notice”) requiring ICANN and the Applicable Registry Operators to resolve the dispute through binding arbitration in accordance with the arbitration provisions of Section 5.2, subject to the requirements and limitations of this Section 7.7(e).

(i) If an Arbitration Notice is sent, the mediator’s definition of issues, along with the Proposed Revisions (be those from ICANN, the Working Group or both) shall be posted for public comment on ICANN’s website for a period of no less than thirty (30) calendar days. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators), and information regarding such comments and consideration shall be provided to a three (3) person arbitrator panel. Each party may modify its Proposed Revisions before and after the Posting Period. The arbitration proceeding may not commence prior to the closing of such public comment period, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. Except as set forth in this Section 7.7, the arbitration shall be conducted pursuant to Section 5.2.

(ii) No dispute regarding the Proposed Revisions may be submitted for arbitration to the extent the subject matter of the Proposed Revisions (i) relates to Consensus Policy, (ii) falls within the subject matter categories set forth in Section 1.2 of Specification 1, or (iii) seeks to amend any of the following provisions or Specifications of this Agreement: Articles 1, 3 and 6; Sections 2.1, 2.2, 2.5, 2.7, 2.9, 2.10, 2.16, 2.17, 2.19, 4.1, 4.2, 7.3, 7.6, 7.7, 7.8, 7.10, 7.11, 7.12, 7.13, 7.14, 7.16; Section 2.8 and Specification 7 (but only to the extent such Proposed Revisions seek to implement an RPM not contemplated by Sections 2.8 and Specification 7); Exhibit A; and Specifications 1, 4, 6, 10 and 11.

(iii) The mediator will brief the arbitrator panel regarding ICANN and the Working Group’s respective proposals relating to the Proposed Revisions.

(iv) No amendment to this Agreement relating to the Proposed Revisions may be submitted for arbitration by either the Working Group or ICANN, unless, in the case of the Working Group, the proposed amendment has received Registry Operator Approval and, in the case of ICANN, the proposed amendment has been approved by the ICANN Board of Directors.

(v) In order for the arbitrator panel to approve either ICANN or the Working Group’s proposed amendment relating to the Proposed Revisions, the arbitrator panel must conclude that such proposed amendment is consistent with a balanced application of ICANN’s core values (as described in ICANN’s Bylaws) and reasonable in light of the balancing of

the costs and benefits to the business interests of the Applicable Registry Operators and ICANN (as applicable), and the public benefit sought to be achieved by the Proposed Revisions as set forth in such amendment. If the arbitrator panel concludes that either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions meets the foregoing standard, such amendment shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator and deemed an Approved Amendment hereunder.

(f) With respect to an Approved Amendment relating to an amendment proposed by ICANN, Registry may apply in writing to ICANN for an exemption from such amendment pursuant to the provisions of Section 7.6.

(g) Notwithstanding anything in this Section 7.7 to the contrary, (a) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Registry Operator, and (b) no Approved Amendment adopted pursuant to Section 7.7 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).

7.8 **No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.9 **General Notices.** Except for notices pursuant to Sections 7.6 and 7.7, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this Agreement. All notices under Sections 7.6 and 7.7 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Other than notices under Sections 7.6 or 7.7, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within three (3) calendar days. Any notice required by Sections 7.6 or 7.7 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Telephone: +1-310-301-5800
Facsimile: +1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[_____]
[_____]
[_____]

Telephone:
With a Required Copy to:
Email: (As specified from time to time.)

7.10 **Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

7.11 **English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.12 **Ownership Rights.** Nothing contained in this Agreement shall be construed as (a) establishing or granting to Registry Operator any property ownership rights or interests of Registry Operator in the TLD or the letters, words, symbols or other characters making up the TLD string, or (b) affecting any existing intellectual property or ownership rights of Registry Operator.

7.13 **Severability; Conflicts with Laws.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good

faith to modify this Agreement so as to effect the original intent of the parties as closely as possible. ICANN and the Working Group will mutually cooperate to develop an ICANN procedure for ICANN's review and consideration of alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement. Until such procedure is developed and implemented by ICANN, ICANN will review and consider alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement in a manner similar to ICANN's Procedure For Handling WHOIS Conflicts with Privacy Law.

7.14 **Court Orders.** ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement

7.15 Confidentiality

(a) Subject to Section 7.15(c), during the Term and for a period of three (3) years thereafter, each party shall, and shall cause its and its Affiliates' officers, directors, employees and agents to, keep confidential and not publish or otherwise disclose to any third party, directly or indirectly, any information that is, and the disclosing party has marked as, or has otherwise designated in writing to the receiving party as, "confidential trade secret," "confidential commercial information" or "confidential financial information" (collectively, "Confidential Information"), except to the extent such disclosure is permitted by the terms of this Agreement.

(b) The confidentiality obligations under Section 7.15(a) shall not apply to any Confidential Information that (i) is or hereafter becomes part of the public domain by public use, publication, general knowledge or the like through no fault of the receiving party in breach of this Agreement, (ii) can be demonstrated by documentation or other competent proof to have been in the receiving party's possession prior to disclosure by the disclosing party without any obligation of confidentiality with respect to such information, (iii) is subsequently received by the receiving party from a third party who is not bound by any obligation of confidentiality with respect to such information, (iv) has been published by a third party or otherwise enters the public domain through no fault of the receiving party, or (v) can be demonstrated by documentation or other competent evidence to have been independently developed by or for the receiving party without reference to the disclosing party's Confidential Information.

(c) Each party shall have the right to disclose Confidential Information to the extent that such disclosure is (i) made in response to a valid order of a court of competent jurisdiction or, if in the reasonable opinion of the receiving party's legal counsel, such disclosure is otherwise required by applicable law; provided, however, that the receiving party shall first have given notice to the disclosing party and given the disclosing party a reasonable opportunity to quash such order or to obtain a protective order or confidential treatment order requiring that the Confidential Information that is the subject of such order or other applicable law be held in confidence by such court or other third

party recipient, unless the receiving party is not permitted to provide such notice under such order or applicable law, or (ii) made by the receiving party or any of its Affiliates to its or their attorneys, auditors, advisors, consultants, contractors or other third parties for use by such person or entity as may be necessary or useful in connection with the performance of the activities under this Agreement, provided that such third party is bound by confidentiality obligations at least as stringent as those set forth herein, either by written agreement or through professional responsibility standards.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.16 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by mediation pursuant to the procedures set forth in Section 5.1. In addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such mediation, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such noncompliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry

Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.16, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.16(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.16(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____ [-
_____]]
President and CEO
Date:

[Registry Operator]

By: _____ [-
_____]]
[_____]]
Date:

EXHIBIT A

Approved Services

The ICANN gTLD Applicant Guidebook (located at <http://newgtlds.icann.org/en/applicants/agb>) and the RSEP specify processes for consideration of proposed registry services. Registry Operator may provide any service that is required by the terms of this Agreement. In addition, the following services (if any) are specifically identified as having been approved by ICANN prior to the effective date of the Agreement, and Registry Operator may provide such services:

1. DNS Service – TLD Zone Contents

Notwithstanding anything else in this Agreement, as indicated in section 2.2.3.3 of the gTLD Applicant Guidebook, permissible contents for the TLD's DNS service are:

1.1. For the "Internet" (IN) Class:

- 1.1.1. Apex SOA record
- 1.1.2. Apex NS records and in-bailiwick glue for the TLD's DNS servers
- 1.1.3. NS records and in-bailiwick glue for DNS servers of registered names in the TLD
- 1.1.4. DS records for registered names in the TLD
- 1.1.5. Records associated with signing the TLD zone (e.g., RRSIG, DNSKEY, NSEC, NSEC3PARAM and NSEC3)
- 1.1.6. Apex TXT record for zone versioning purposes
- 1.1.7. Apex TYPE65534 record for automatic dnssec signaling

1.2. For the "Chaos" (CH) Class:

- 1.2.1. TXT records for server version/identification (e.g., TXT records for "version.bind.", "id.server.", "authors.bind" and/or "hostname.bind.")

(Note: The above language effectively does not allow, among other things, the inclusion of DNS resource records that would enable a dotless domain name (e.g., apex A, AAAA, MX records) in the TLD zone.)

If Registry Operator wishes to place any DNS resource record type or class into its TLD DNS service (other than those listed in Sections 1.1 or 1.2 above), it must describe in detail its proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be

evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records and/or classes in the TLD zone, even if approved, might not work as intended for all users due to lack of software support.

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN’s Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN’s Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2 functional and performance specifications for the provision of Registry Services;
 - 1.2.3 Security and Stability of the registry database for the TLD;
 - 1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:
 - 1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;

- 1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4 maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:
- 1.4.1 prescribe or limit the price of Registry Services;
 - 1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("**Temporary Policies**").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1 ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why

the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.

2.1.2 If the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one (1) year period expires or, if during such one (1) year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.

3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“**Escrow Agent**”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1. “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.
 - 1.2. “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., all additions, modifications or removals of data).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1. Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2. The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
 - 3.1. **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the “DNDE Specification”). The DNDE Specification describes some elements as

optional; Registry Operator will include those elements in the Deposits if they are available. If not already an RFC, Registry Operator will use the most recent draft version of the DNDE Specification available at the Effective Date. Registry Operator may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Registry Operator will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.

- 3.2. **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case basis to represent that data. These “extension schemas” will be specified as described in Part A, Section 9, reference 2 of this Specification. Data related to the “extensions schemas” will be included in the deposit file described in Part A, Section 3.1 of this Specification. ICANN and the respective Registry Operator shall work together to agree on such new objects’ data escrow specifications.
4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see Part A, Section 9, reference 3 of this Specification. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see Part A, Section 9, reference 4 of this Specification, that are also royalty-free. The process to follow for the data file in original text format is:
 - (1) The XML file of the deposit as described in Part A, Section 9, reference 1 of this Specification must be named as the containing file as specified in Section 5 but with the extension xml.
 - (2) The data file(s) are aggregated in a tarball file named the same as (1) but with extension tar.
 - (3) A compressed and encrypted OpenPGP Message is created using the tarball file as sole input. The suggested algorithm for compression is ZIP as per RFC 4880. The compressed data will be encrypted using the escrow agent’s public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (4) The file may be split as necessary if, once compressed and encrypted, it is larger than the file size limit agreed with the escrow agent. Every part of a

split file, or the whole file if not split, will be called a processed file in this section.

- (5) A digital signature file will be generated for every processed file using the Registry Operator's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 Section 9, reference 3, and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
- (6) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
- (7) The Escrow Agent will then validate every (processed) transferred datafile using the procedure described in Part A, Section 8 of this Specification.

5. **File Naming Conventions**. Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:

- 5.1. {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
- 5.2. {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
- 5.3. {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in Section 3 of Specification 4;
 - (4) "thick-{gudid}", if the data represent Thick Registration Data from a specific registrar, as defined in Section 3.2 of Specification 4. The {gudid} element must be replaced with the IANA Registrar ID associated with the data.
- 5.4. {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".

- 5.5. {rev} is replaced by the number of revision (or resend) of the file beginning with “0”:
- 5.6. {ext} is replaced by “sig” if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by “ryde”.
6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party’s public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry Operator and ICANN will exchange public keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification (the “Interface Specification”)) a written statement from Registry Operator (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. The preparation and submission of this statement must be performed by the Registry Operator or its designee, provided that such designee may not be the Escrow Agent or any of Escrow Agent’s Affiliates. Registry Operator will include the Deposit’s “id” and “resend” attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

If not already an RFC, Registry Operator will use the most recent draft version of the Interface Specification at the Effective Date. Registry Operator may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Registry Operator will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

8. **Verification Procedure.**

- (1) The signature file of each processed file is validated.
- (2) If processed files are pieces of a bigger file, the latter is put together.
- (3) Each file obtained in the previous step is then decrypted and uncompressed.
- (4) Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.

- (5) The data escrow agent extended verification process, as defined below in reference 2 of Part A of this Specification 2, as well as any other data escrow verification process contained in such reference.

If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9. **References.**

- (1) Domain Name Data Escrow Specification (work in progress),
<http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
- (2) Domain Name Registration Data (DNRD) Objects Mapping,
<http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping>
- (3) OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
- (4) OpenPGP parameters,
<http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>
- (5) ICANN interfaces for registries and data escrow agents,
<http://tools.ietf.org/html/draft-lozano-icann-registry-interfaces>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis, for any use related to the operation, maintenance or transition of the TLD.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent’s applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent’s compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow

sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four (24) hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
 - 6.1. the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2. ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent; or
 - 6.3. ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit; or
 - 6.4. ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (x) ICANN provided notice to Registry Operator of the receipt of such notifications; and (y) ICANN has not, within seven (7) calendar days after delivery of such notice to Registry Operator, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit; or

- 6.5. Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
- 6.6. Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Agreement; or
- 6.7. a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or
- 6.8. pursuant to Contractual and Operational Compliance Audits as specified under Section 2.11 of the Agreement.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**

- 7.1. Within twenty-four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit. Reports will be delivered electronically using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification.
- 7.2. If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Registry Operator either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non-receipt within twenty-four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.

8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.

9. **Indemnity.** Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders (“Indemnitees”) absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys’ fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD, using the API described in draft-lozano-icann-registry-interfaces, see Specification 2, Part A, Section 9, reference 5, with the following content.

ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the month to which the reports relate. Unless set forth in this Specification 3, any reference to a specific time refers to Coordinated Universal Time (UTC). Monthly reports shall consist of data that reflects the state of the registry at the end of the month (UTC).

1. **Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field name	Description
01	registrar-name	Registrar’s full corporate name as registered with IANA
02	iana-id	For cases where the registry operator acts as registrar (i.e., without the use of an ICANN accredited registrar) either 9998 or 9999 should be used depending on registration type (as described in Specification 5), otherwise the sponsoring Registrar IANA id should be used as specified in http://www.iana.org/assignments/registrar-ids
03	total-domains	total domain names under sponsorship in any EPP status but pendingCreate that have not been purged
04	total-nameservers	total name servers (either host objects or name server hosts as domain name attributes) associated with domain names registered for the TLD in any EPP status but pendingCreate that have not been purged
05	net-adds-1-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of one (1) year (and not deleted within the add grace period). A transaction must be reported

		in the month the add grace period ends.
06	net-adds-2-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of two(2) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
07	net-adds-3-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of three (3) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
08	net-adds-4-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of four (4) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
09	net-adds-5-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of five (5) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
10	net-adds-6-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of six (6) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
11	net-adds-7-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of seven (7) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
12	net-adds-8-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of eight (8) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
13	net-adds-9-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of nine (9) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
14	net-adds-10-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial

		term of ten (10) years (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
15	net-renews-1-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of one (1) year (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
16	net-renews-2-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of two (2) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
17	net-renews-3-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of three (3) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
18	net-renews-4-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of four (4) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
19	net-renews-5-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of five (5) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
20	net-renews-6-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of six (6) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew

		grace period ends.
21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
22	net-renews-8-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of eight (8) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
23	net-renews-9-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of nine (9) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
24	net-renews-10-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of ten (10) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
25	transfer-gaining-successful	number of domain transfers initiated by this registrar that were successfully completed (either explicitly or automatically approved) and not deleted within the transfer grace period. A transaction must be reported in the month the transfer grace period ends.
26	transfer-gaining-nacked	number of domain transfers initiated by this registrar that were rejected (e.g., EPP transfer op="reject") by the other registrar
27	transfer-losing-successful	number of domain transfers initiated by another registrar that were successfully completed (either explicitly or automatically approved)
28	transfer-losing-nacked	number of domain transfers initiated by another registrar that this registrar rejected (e.g., EPP

		transfer op="reject")
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed (reported in the month where the determination happened)
30	transfer-disputed-lost	number of transfer disputes this registrar lost (reported in the month where the determination happened)
31	transfer-disputed-nodescription	number of transfer disputes involving this registrar with a split or no decision (reported in the month where the determination happened)
32	deleted-domains-grace	domains deleted within the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
33	deleted-domains-nograce	domains deleted outside the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
34	restored-domains	domain names restored during reporting period
35	restored-noreport	total number of restored names for which a restore report is required by the registry, but the registrar failed to submit it
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (both successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. **Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-activity-yyyymm.csv", where "gTLD" is the gTLD name; in case of an

IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars in the production system at the end of the reporting period
02	zfa-passwords	number of active zone file access passwords at the end of the reporting period; "CZDS" may be used instead of the number of active zone file access passwords, if the Centralized Zone Data Service (CZDS) is used to provide the zone file to the end user
03	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
04	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
05	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
06	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
07	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
08	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
09	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
10	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
11	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
12	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
13	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during

Field #	Field Name	Description
		the reporting period
14	srs-dom-renew	number of SRS (EPP and any other interface) domain name "renew" requests responded during the reporting period
15	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
16	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
17	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
18	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
19	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
20	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
21	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
22	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period
23	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
24	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the

Field #	Field Name	Description
		reporting period
25	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period
26	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
27	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
28	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period
29	srs-cont-create	number of SRS (EPP and any other interface) contact "create" requests responded during the reporting period
30	srs-cont-delete	number of SRS (EPP and any other interface) contact "delete" requests responded during the reporting period
31	srs-cont-info	number of SRS (EPP and any other interface) contact "info" requests responded during the reporting period
32	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact "transfer" requests to approve transfers responded during the reporting period
33	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact "transfer" requests to cancel transfers responded during the reporting period
34	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact "transfer" requests to query about a transfer responded during the reporting period
35	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact "transfer" requests to reject transfers responded during the reporting period
36	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact "transfer" requests to request transfers responded during the reporting period
37	srs-cont-update	number of SRS (EPP and any other interface) contact "update" requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

For gTLDs that are part of a single-instance Shared Registry System, the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.

SPECIFICATION 4

REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

Registry Operator shall implement a new standard supporting access to domain name registration data (SAC 051) no later than one hundred thirty-five (135) days after it is requested by ICANN if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); and 2) its implementation is commercially reasonable in the context of the overall operation of the registry.

- 1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.
- 1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.
- 1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.
- 1.4. The fields specified below set forth the minimum output requirements. Registry Operator may output data fields in addition to those specified below, subject to approval by ICANN, which approval shall not be unreasonably withheld.

1.5. Domain Name Data:

1.5.1 **Query format:** whois EXAMPLE.TLD

1.5.2 Response format:

Domain Name: EXAMPLE.TLD

Domain ID: D1234567-TLD

WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234

Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Registrar Data:

1.6.1 **Query format:** whois "registrar Example Registrar, Inc."

1.6.2 **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213
Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. Nameserver Data:

1.7.1 **Query format:** whois "nameserver (nameserver name)", or whois "nameserver (IP Address)." For example: whois "nameserver NS1.EXAMPLE.TLD".

1.7.2 Response format:

Server Name: NS1.EXAMPLE.TLD
IP Address: 192.0.2.123
IP Address: 2001:0DB8::1
Registrar: Example Registrar, Inc.
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

- 1.8. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers (the extension will be provided as a separate field as shown above), email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.
- 1.9. In order to be compatible with ICANN's common interface for WHOIS (InterNIC), WHOIS output shall be in the format outline above.
- 1.10. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.
 - 1.10.1 Registry Operator will offer searchability on the web-based Directory Service.
 - 1.10.2 Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).
 - 1.10.3 Registry Operator will offer exact-match capabilities, at least, on the following fields: Registrar ID, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).
 - 1.10.4 Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.
 - 1.10.5 Search results will include domain names matching the search criteria.
 - 1.10.6 Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate

authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

- 1.11. Registry Operator shall provide a link on the primary website for the TLD (i.e., the website provided to ICANN for publishing on the ICANN website) to a web page designated by ICANN containing WHOIS policy and educational materials.

2. Zone File Access

2.1. Third-Party Access

- 2.1.1 **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user, which will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider, which may be ICANN or an ICANN designee (the "CZDA Provider"). Registry Operator (optionally through the CZDA Provider) will provide access to zone file data per Section 2.1.3 of this Specification and do so using the file format described in Section 2.1.4 of this Specification. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 below or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5 below.
- 2.1.2 **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address and IP address.
- 2.1.3 **Grant of Access.** Each Registry Operator (optionally through the CZDA Provider) will provide the Zone File SFTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, nontransferable, limited right to access Registry Operator's (optionally CZDA Provider's) Zone File hosting server, and to transfer

a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using SFTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator (or the CZDA Provider) also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4 **File Format Standard.** Registry Operator (optionally through the CZDA Provider) will provide zone files using a subformat of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as:
<domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.
3. TTL must be present as a decimal integer.
4. Use of \X and \DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.

16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each zone goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5 **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that (a) user takes all reasonable steps to protect against unauthorized access to, use of, and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to (i) allow, enable or otherwise support any marketing activities to entities other than the user's existing customers, regardless of the medium used (such media include but are not limited to transmission by e-mail, telephone, facsimile, postal mail, SMS, and wireless alerts of mass unsolicited, commercial advertising or solicitations to entities), (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar, or (iii) interrupt, disrupt or interfere in the normal business operations of any registrant.

2.1.6 **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7 **No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2. Co-operation

2.2.1 **Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3. **ICANN Access.** Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time. Access will be provided at least daily. Zone files will include SRS data committed as close as possible to 00:00:00 UTC.

- 2.4. **Emergency Operator Access.** Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. **Bulk Registration Data Access to ICANN**

- 3.1. **Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1 **Contents.** Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar id (IANA ID), hostname of registrar Whois server, and URL of registrar.

3.1.2 **Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3 **Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

- 3.2. **Exceptional Access to Thick Registration Data.** In case of a registrar failure, deaccreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data as soon as commercially practicable, but in no event later than five (5) calendar days following ICANN's request. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for

download by ICANN in the same manner as the data specified in Section 3.1 of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES

Except to the extent that ICANN otherwise expressly authorizes in writing, and subject to the terms and conditions of this Specification, Registry Operator shall reserve the following labels from initial (i.e., other than renewal) registration within the TLD. If using self-allocation, the Registry Operator must show the registration in the RDDS. In the case of IDN names (as indicated below), IDN variants will be identified according to the registry operator IDN registration policy, where applicable.

1. **Example.** The ASCII label “EXAMPLE” shall be withheld from registration or allocated to Registry Operator at the second level and at all other levels within the TLD at which Registry Operator offers registrations (such second level and all other levels are collectively referred to herein as, “All Levels”). Such label may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator’s designation as operator of the registry for the TLD, such withheld or allocated label shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such name without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
2. **Two-character labels.** All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator’s designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
3. **Reservations for Registry Operations.**
 - 3.1. The following ASCII labels must be withheld from registration or allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: WWW, RDDS and WHOIS. The following ASCII label must be allocated to Registry Operator upon delegation into the root zone at All Levels for use in connection with the operation of the registry for the TLD: NIC. Registry Operator may activate WWW, RDDS and WHOIS in the DNS,

but must activate NIC in the DNS, as necessary for the operation of the TLD (in accordance with the provisions of Exhibit A, the ASCII label NIC must be provisioned in the DNS as a zone cut using NS resource records). None of WWW, RDDS, WHOIS or NIC may be released or registered to any person (other than Registry Operator) or third party. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD all such withheld or allocated names shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement. Such domains shall be identified by Registrar ID 9999.

3.1.1 If Exhibit A to the Agreement specifically provides that Registry Operator may offer registration of IDNs, Registry Operator may also activate a language-specific translation or transliteration of the term "NIC" or an abbreviation for the translation of the term "Network Information Center" in the DNS in accordance with Registry Operator's IDN Tables and IDN Registration Rules. Such translation, transliteration or abbreviation may be reserved by Registry Operator and used in addition to the label NIC to provide any required registry functions. For the avoidance of doubt, Registry Operator is required to activate the ASCII label NIC pursuant to Section 3.1 of this Specification 3.

- 3.2. Registry Operator may activate in the DNS at All Levels up to one hundred (100) names (plus their IDN variants, where applicable) necessary for the operation or the promotion of the TLD. Registry Operator must act as the Registered Name Holder of such names as that term is defined in the then-current ICANN Registrar Accreditation Agreement (RAA). These activations will be considered Transactions for purposes of Section 6.1 of the Agreement. Registry Operator must either (i) register such names through an ICANN accredited registrar; or (ii) self-allocate such names and with respect to those names submit to and be responsible to ICANN for compliance with ICANN Consensus Policies and the obligations set forth in Subsections 3.7.7.1 through 3.7.7.12 of the then-current RAA (or any other replacement clause setting out the terms of the registration agreement between a registrar and a registered name holder). If Registry Operator chooses option (ii) above, it shall identify these transactions using Registrar ID 9998. At Registry Operator's discretion and in compliance with all other terms of this Agreement, including the RPMs set forth in Specification 7, such names may be released for registration to another person or entity.
- 3.3. Registry Operator may withhold from registration or allocate to Registry Operator names (including their IDN variants, where applicable) at All Levels in accordance with Section 2.6 of the Agreement. Such names may not be activated in the DNS, but may be released for registration to Registry

Operator or another person or entity at Registry Operator's discretion, subject to compliance with all the terms of this Agreement, including applicable RPMs set forth in Specification 7. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Upon ICANN's request, Registry Operator shall provide a listing of all names withheld or allocated to Registry Operator pursuant to Section 2.6 of the Agreement. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

- 3.4. Effective upon the conclusion of the No-Activation Period specified in Section 6.1 of Specification 6, Registry Operator shall allocate the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar (as such registrar is described in Section 8.2 of Specification 10). If such domain name is not available for registration in the TLD or is otherwise inconsistent with the registration policies of the TLD, Registry Operator may allocate a different domain name to the ICANN testing registrar in consultation with ICANN. The allocation of any such alternative domain name will be communicated to ICANN following such consultation. The allocation of the domain name "icann-sla-monitoring.<tld>" to the ICANN testing registrar will not (i) be considered a Transaction for purposes of Section 6.1 of the Agreement, (ii) count towards the one hundred domain names available to Registry Operator under Section 3.2 of this Specification 5, or (iii) adversely affect Registry Operator's qualification as a .BRAND TLD pursuant to Specification 13 (.BRAND TLD Provisions) hereto (as applicable).

4. **Country and Territory Names.** The country and territory names (including their IDN variants, where applicable) contained in the following internationally recognized lists shall be withheld from registration or allocated to Registry Operator at All Levels:

- 4.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm>;
- 4.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

- 4.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names (including their IDN variants according to the registry operator IDN registration policy, where applicable) may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry Operator must not activate such names in the DNS; provided, that Registry Operator may propose the release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

5. **International Olympic Committee; International Red Cross and Red Crescent**

Movement. As instructed from time to time by ICANN, the names (including their IDN variants, where applicable) relating to the International Olympic Committee, International Red Cross and Red Crescent Movement listed at <http://www.icann.org/en/resources/registries/reserved> shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Additional International Olympic Committee, International Red Cross and Red Crescent Movement names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Such names may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

6. **Intergovernmental Organizations**. As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. A list of reserved names for this Section 6 is available at <http://www.icann.org/en/resources/registries/reserved>. Additional names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Any such protected identifiers for Intergovernmental Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use

of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

- 1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF), including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1123, 1982, 2181, 2182, 3226, 3596, 3597, 4343, 5966 and 6891. DNS labels may only include hyphens in the third and fourth position if they represent valid IDNs (as specified above) in their ASCII encoding (e.g., “xn--ndk061n”).
- 1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732 (if using host objects), 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.
- 1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). For the absence of doubt, Registry Operator shall sign the zone file of <TLD> and zone files used for in-bailiwick glue for the TLD’s DNS servers. During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 6781 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in RFC 6841. DNSSEC validation must be active and use the IANA DNS Root Key Signing Key set (available at <https://www.iana.org/dnssec/files>) as a trust anchor for Registry Operator’s Registry Services making use of data obtained via DNS responses.

- 1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices.
- 1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six (6) months after receiving the first request in writing from agTLD accredited Registrar willing to operate with the SRS over IPv6.
- 1.6. **IANA Rootzone Database.** In order to ensure that authoritative information about the TLD remains publicly available, Registry Operator shall submit a change request to the IANA functions operator updating any outdated or inaccurate DNS or WHOIS records of the TLD. Registry Operator shall use commercially reasonable efforts to submit any such change request no later than seven (7) calendar days after the date any such DNS or WHOIS records becomes outdated or inaccurate. Registry Operator must submit all change requests in accordance with the procedures set forth at <<http://www.iana.org/domains/root>>.
- 1.7. **Network Ingress Filtering.** Registry Operator shall implement network ingress filtering checks for its Registry Services as described in BCP 38 and BCP 84, which ICANN will also implement.

2. **Registry Services**

- 2.1. **Registry Services.** “Registry Services” are, for purposes of the Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other

products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

- 2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. **Registry Continuity**

- 3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator. Registry Operator’s emergency operations department shall be available at all times to respond to extraordinary occurrences.
- 3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.
- 3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide

the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. **Abuse Mitigation**

- 4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.
- 4.2. **Malicious Use of Orphan Glue Records.** Registry Operator shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. **Supported Initial and Renewal Registration Periods**

- 5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.
- 5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

6. **Name Collision Occurrence Management**

- 6.1. **No-Activation Period.** Registry Operator shall not activate any names in the DNS zone for the Registry TLD (except for "NIC") until at least 120 calendar days after the effective date of this agreement. Registry Operator may allocate names (subject to subsection 6.2 below) during this period only if Registry Operator causes registrants to be clearly informed of the inability to activate names until the No-Activation Period ends.

6.2. **Name Collision Occurrence Assessment**

- 6.2.1 Registry Operator shall not activate any names in the DNS zone for the Registry TLD except in compliance with a Name Collision Occurrence Assessment provided by ICANN regarding the Registry TLD. Registry

Operator will either (A) implement the mitigation measures described in its Name Collision Occurrence Assessment before activating any second-level domain name, or (B) block those second-level domain names for which the mitigation measures as described in the Name Collision Occurrence Assessment have not been implemented and proceed with activating names that are not listed in the Assessment.

- 6.2.2 Notwithstanding subsection 6.2.1, Registry Operator may proceed with activation of names in the DNS zone without implementation of the measures set forth in Section 6.2.1 only if (A) ICANN determines that the Registry TLD is eligible for this alternative path to activation of names; and (B) Registry Operator blocks all second-level domain names identified by ICANN and set forth at <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-17nov13-en> as such list may be modified by ICANN from time to time. Registry Operator may activate names pursuant to this subsection and later activate names pursuant to subsection 6.2.1.
- 6.2.3 The sets of names subject to mitigation or blocking pursuant to Sections 6.2.1 and 6.2.2 will be based on ICANN analysis of DNS information including "Day in the Life of the Internet" data maintained by the DNS Operations, Analysis, and Research Center (DNS-OARC) <https://www.dns-oarc.net/oarc/data/ditl>.
- 6.2.4 Registry Operator may participate in the development by the ICANN community of a process for determining whether and how these blocked names may be released.
- 6.2.5 If ICANN determines that the TLD is ineligible for the alternative path to activation of names, ICANN may elect not to delegate the TLD pending completion of the final Name Collision Occurrence Assessment for the TLD, and Registry Operator's completion of all required mitigation measures. Registry Operator understands that the mitigation measures required by ICANN as a condition to activation of names in the DNS zone for the TLD may include, without limitation, mitigation measures such as those described in Section 3.2 of the New gTLD Name Collision Occurrence Management Plan approved by the ICANN Board New gTLD Program Committee (NGPC) on 7 October 2013 as found at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>.

6.3. Name Collision Report Handling

- 6.3.1 During the first two years after delegation of the TLD, Registry Operator's emergency operations department shall be available to

receive reports, relayed by ICANN, alleging demonstrably severe harm from collisions with overlapping use of the names outside of the authoritative DNS.

- 6.3.2 Registry Operator shall develop an internal process for handling in an expedited manner reports received pursuant to subsection 6.3.1 under which Registry Operator may, to the extent necessary and appropriate, remove a recently activated name from the TLD zone for a period of up to two years in order to allow the affected party to make changes to its systems.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to the rights protection mechanisms (“RPMs”) specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at <http://www.icann.org/en/resources/registries/tmch-requirements> (the “Trademark Clearinghouse Requirements”), which may be revised in immaterial respects by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse. If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control. Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar authorizing such registrar(s) to register domain names in the TLD as follows:
 - a. if Registry Operator conducts a Qualified Launch Program or is authorized by ICANN to conduct an Approved Launch Program (as those terms are defined in the Trademark Clearinghouse Requirements), Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to allocating any domain names pursuant to such Qualified Launch Program or Approved Launch Program, as applicable;
 - b. if Registry Operator does not conduct a Qualified Launch Program or is not authorized by ICANN to conduct an Approved Launch Program, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar at least thirty (30) calendar days prior to the expiration date of the Sunrise Period (as defined in the Trademark Clearinghouse Requirements) for the TLD; or
 - c. if this Agreement contains a Specification 13, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to the Claims Commencement Date (as defined in Specification 13).

Nothing in this Specification 7 shall limit or waive any other obligations or requirements of this Agreement applicable to Registry Operator, including Section 2.9(a) and Specification 9.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:
 - a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at <http://www.icann.org/en/resources/registries/pddrp> and <http://www.icann.org/en/resources/registries/rrdrp>, respectively). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
 - b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at <http://www.icann.org/en/resources/registries/urs>), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. If Registry Operator elects to obtain an irrevocable standby letter of credit but the term required above is unobtainable, Registry Operator may obtain a letter of credit with a one-year term and an “evergreen provision,” providing for annual extensions, without amendment, for an indefinite number of additional periods until the issuing bank informs ICANN of its final expiration or until ICANN releases the letter of credit as evidenced in writing, if the letter of credit otherwise meets the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof; provided, however, that if the issuing bank informs ICANN of the expiration of such letter of credit prior to the sixth (6th) anniversary of the Effective Date, such letter of credit must provide that ICANN is entitled to draw the funds secured by the letter of credit prior to such expiration. The letter of credit must require the issuing bank to give ICANN at least thirty (30) calendar days’ notice of any such expiration or non-renewal. If the letter of credit expires or is terminated at any time prior to the sixth (6th) anniversary of the Effective Date, Registry Operator will be required to obtain a replacement Continued Operations Instrument. ICANN may draw the funds under the original letter of credit, if the replacement Continued Operations Instrument is not in place prior to the expiration of the original letter of credit. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld).

2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an Alternative Instrument that (i) provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operator replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such Alternative Instrument(s), and such instrument shall thereafter be considered the Continued Operations Instrument for purposes of this Agreement.

SPECIFICATION 9

REGISTRY OPERATOR CODE OF CONDUCT

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, “front-running”);
or
 - d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to

Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification; provided, however, ICANN shall not disclose Confidential Information contained in such results except in accordance with Section 7.15 of the Agreement.

4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliates, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or RTT refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)

	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar periods of unavailable or slow service; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.

- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.
- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

- 4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based- WHOIS query RTT**”.
- 4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.
- 4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellitelinks.

5. **EPP**

- 5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.
- 5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.
- 5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

- 5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “IP address” of the EPP servers of the TLD being monitored and make an “EPP test”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “EPP test” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.
- 5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. Emergency Thresholds

The following matrix presents the emergency thresholds that, if reached by any of the services mentioned above for a TLD, would cause the emergency transition of the Registry for the TLD as specified in Section 2.13 of this Agreement.

Critical Function	Emergency Threshold
DNS Service	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS	24-hour total downtime / week
Data Escrow	Reaching any of the criteria for the release of deposits described in Specification 2, Part B, Section 6.2 through Section 6.6.

7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between

ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. Emergency Escalation initiated by ICANN

Upon reaching 10% of the Emergency thresholds as described in Section 6 of this Specification, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the registry for the TLD because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an emergency escalation to the emergency operations department of ICANN. ICANN then may initiate an emergency escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, it will provide notice to the ICANN emergency operations department, at least, twenty-four (24) hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per its contractual obligations with ICANN, on services under a service level agreement and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend emergency escalation services for the monitored services involved.

8. Covenants of Performance Measurement

8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement

tests described in this Specification as it would to any other request from an Internet user (for DNS and RDDS) or registrar (for EPP).

- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement. Registry Operator shall identify these transactions using Registrar ID9997.

SPECIFICATION 11

PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.
2. Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator's application to ICANN for the TLD, which commitments, statements of intent and business plans are hereby incorporated by reference into this Agreement. Registry Operator's obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at <http://www.icann.org/en/resources/registries/picdrp>), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination

[Registry Operator to insert specific application sections here, if applicable]

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at <http://www.icann.org/en/resources/registries/picdrp>), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.
 - a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive

practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

- b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.
- c. Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.
- d. Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

SPECIFICATION 12

COMMUNITY REGISTRATION POLICIES

Registry Operator shall implement and comply with all community registration policies described below and/or attached to this Specification 12. [Insert registration policies]

SPECIFICATION 13

.BRAND TLD PROVISIONS

The provisions of this Specification 13 shall apply as of the Effective Date of the Agreement, and shall continue to apply for so long as the TLD meets the requirements of the definition of a .Brand TLD (as defined below).

If at any time ICANN determines, in its reasonable discretion, that the TLD no longer qualifies as a .Brand TLD, then ICANN will provide Registry Operator with written notice of its determination, and Registry Operator will have 30 calendar days following the date of delivery of such notice to either (i) meet the requirements of the .Brand TLD definition to ICANN's reasonable satisfaction, in which case the provisions of this Specification 13 shall continue to apply, or (ii) comply with the provisions of the Agreement as no longer modified by this Specification 13, in which case the provisions of this Specification 13 shall thereafter be void, unless Registry Operator initiates the dispute resolution proceedings set forth in Article 5 of this Agreement during such 30 calendar day period disputing ICANN's determination. During the pendency of such dispute resolution proceedings, there will be no change in the status of the TLD as a .Brand TLD in accordance with this Specification 13 so long as Registry Operator otherwise continues to operate the TLD in compliance with the requirements of the definition of a .Brand TLD and this Specification 13, other than with respect to the disputed issue. Registry Operator must promptly notify ICANN in writing of any change to the TLD that could potentially disqualify it as a .Brand TLD.

In addition to the foregoing, the parties agree as follows:

1. Registry Operator is exempt from complying with the requirements of the Code of Conduct, notwithstanding the provisions of Section 6 of the Code of Conduct.
2. The second sentence of Section 2.9(a) of the Agreement is superseded by the following: Subject to the requirements of Specification 11, Registry Operator must either (i) provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD, or (ii) Registry Operator may in its discretion designate one or more ICANN accredited registrars as the exclusive registrar(s) for the TLD.
3. Section 4.5 of the Agreement is superseded by the following:
Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator will provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD

necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if the TLD qualifies as a .Brand TLD in accordance with Specification 13 on the date that the Agreement expires or terminates (the “Expiration Date”), ICANN may not delegate the TLD to a successor registry operator for a period of two years following the Expiration Date without Registry Operator’s consent (which shall not be unreasonably withheld, conditioned or delayed), unless ICANN reasonably determines that transitioning operation of the TLD is necessary to protect the public interest. If ICANN determines, in its reasonable discretion, that transitioning operation of the TLD is necessary to protect the public interest, then ICANN will provide Registry Operator with written notice and a reasonably detailed explanation for its public interest determination. If, within 30 calendar days of receipt of such notice, Registry Operator initiates the dispute resolution proceedings as set forth in Article 5 of this Agreement disputing ICANN’s determination, ICANN will not transition operation of the TLD to successor registry operator during the pendency of such proceedings. For the avoidance of doubt, an Emergency Operator will not be considered a successor registry operator for purposes of this Section 4.5, and this Section 4.5 shall not prohibit ICANN from accepting applications for or delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

4. Registry Operator agrees to conduct internal reviews at least once per calendar year to ensure that the TLD meets the requirements of the definition of a .Brand TLD. Within 20 calendar days following the end of each calendar year, Registry Operator will provide ICANN with the results of its internal review(s), along with a certification executed by one of its executive officers certifying that the TLD meets the requirements of the definition of a .Brand TLD. These materials will be submitted to ICANN by via email at [@icann.org]. Registry Operator agrees that ICANN may publicly post the results of Registry Operator’s review and certification, but ICANN will keep confidential and not publish any information that is, and Registry Operator has marked as, Confidential Information, other than in compliance with Section 7.15 of the Registry Agreement. ICANN may specify in the future the form and content of these reports or inform Registry Operator that the reports be delivered by other reasonable means.
5. For purposes of this Specification 13, the following terms shall have the following meanings:

5.1 “.Brand TLDs” are TLDs where:

- (i) the TLD string is identical to the textual elements protectable under applicable law, of a registered trademark valid under applicable law, which registered trademark:
 - a. is registered with the Trademark Clearinghouse, if such mark meets the eligibility requirements to be registered with the Trademark Clearinghouse;
 - b. is owned and used by the Registry Operator or its Affiliate in the ordinary course of Registry Operator’s or its Affiliates’ business in connection with the offering of the goods and/or services claimed in the trademark registration;
 - c. was issued to Registry Operator or its Affiliate prior to the filing of its TLD registry application with ICANN;
 - d. is used throughout the Term continuously in the ordinary course of business of Registry Operator in connection with the offering of the goods and/or services identified in the trademark registration;
 - e. does not begin with a dot; and
 - f. is used by Registry Operator in the conduct of one or more of its businesses that are unrelated to the provision of TLD Registry Services; and
- (ii) only Registry Operator, its Affiliates, or Trademark Licensees register domain names and control the DNS records associated with domain names at any level in the TLD; and
- (iii) Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.

5.2 “Trademark Licensee” means any corporation, partnership, limited liability company or similar legal entity (and not a person) that has a written trademark license agreement with a Registry Operator or its Affiliate, for use of the registered trademark owned by the Registry Operator or its Affiliate, the textual elements of which correspond exactly to the .Brand TLD operated by that Registry Operator, where such license is:

- (i) valid under applicable law;
- (ii) for use of such trademark in the regular course of that person or entity’s business outside of the provision of TLD Registry Services; and

(iii) used continuously in that person or entity's business throughout the Term.

EXHIBIT C-27

Economic Case for Auctions in New gTLDs

8 August 2008

Executive Summary

There are two lines of argument for auctions as the tie-breaking mechanism for resolving contention among competing applicants for new generic TLD strings. First, auctions accomplish the goal of allocative efficiency: putting scarce resources into the hands of those who value them the most. In particular:

- Applicants whose true intentions or abilities are to serve many users would be able to justify higher bids than applicants who will serve few users;
- Applicants capable of providing high-quality service at low cost would be able to justify higher bids than low-quality, high-cost applicants; and
- Applicants who intend to develop the gTLD immediately would be able to justify higher bids than applicants whose purpose is to hold the gTLD, unused, for speculative purposes.

Second, while auctions are not perfectly aligned with ICANN's objectives, alternative allocation mechanisms such as comparative evaluations and lotteries inherently have much more severe limitations and defects, as evidenced by the historical record and by the abandonment of these alternatives in other communications areas.

ICANN intends to use auctions in the new gTLD process as a tie-breaking mechanism, not the primary allocation mechanism, for the resolution of string contention among competing new gTLD applicants for identical or similar strings. Auction would be the final means of settling any contention cases that have not been resolved at any of the previous stages in the process.

1. Background

ICANN is preparing implementation plans for the new gTLD process. Staff is working from the GNSO New gTLD recommendations and input from Internet community to guide the implementation. This memo has been prepared with the assistance of Power Auctions LLC, which has been retained for assistance in auction design.

In 2004, the Organization for Economic Cooperation and Development (OECD) released a paper on "Generic Top Level Domain Names: Market Development and Allocation Issues" (see <http://www.oecd.org/dataoecd/56/34/32996948.pdf>). The OECD paper described allocation methods for gTLD strings, including auction and comparative evaluation. The OECD paper concluded: "On balance the economic arguments favour the use of auctions in some form, where scarcity exists, in relation to the goals set by ICANN for allocation procedures. They are particularly strong in relation to allocation decisions concerning to existing resources and where a 'tie-breaker' is needed during a comparative selection procedure for a new resource. In all cases, the best elements of comparative selection procedures could still be incorporated, at a prequalification stage for registries, using straightforward, transparent, and objective procedures that preserve the stability of the Internet" (pp. 51-52).

The paper acknowledged that comparative evaluation may have the advantage of providing equity for new gTLD applicants, and permits the inclusion of broader objectives in the new gTLD selection process. However, it also noted that comparative evaluation lacks transparency and relies on subjective judgment in the determination of a winner for a proposed gTLD string.

By contrast, auctions provide objectivity and transparency: “Auctions rely on relatively simple and transparent rules that apply to all participants. As such they are fair and transparent. Given that bids are observable and verifiable by a court or any third party, the final allocation is less likely to be legally contested relative to a comparative selection procedure” (see page 42).

The OECD paper highlighted both that auctions are effective for determining the market value and that auctions are advantageous even if revenue maximization is not a primary objective. “Economic theory and experience suggest that auctions are one of the best available mechanisms for realising the true market value of a resource, as the price is decided by those with the best knowledge of the market. In the context of the TLD market the benefits auctions can bring, in this respect, largely depend on the objectives that are set by ICANN.” It continued: “As a notfor-profit organisation, revenue maximisation may not, in fact, be an objective ICANN sets for itself. The value of any new gTLD may, for example, be impacted by the number of other gTLDs that ICANN chooses to make available. ICANN may decide that the increasing the number of new gTLDs can provide greater competition, choice and innovation and give higher priority to meeting those objectives than to revenue maximisation. This does not, however, negate the benefit an auction can yield in terms of determining the value of a resource or in being a tool for efficient allocation” (p. 44).

An additional resource available to ICANN is “An Economic Analysis of Domain Name Policy,” Hastings Communication and Entertainment Law Journal (2003) (by Karl M. Manheim and Lawrence B. Solum) (see <http://law.bepress.com/sandiegolwps/le/art1>). This paper argues that the root is an economically scarce resource, that ICANN should allow a market to develop in top-level domains, and that the market should serve the public interest. It should be noted that TLDs are not necessarily a scarce resource.

Manheim and Solum compare management of the Internet’s system of unique identifiers to telecommunications spectrum and licensing of spectrum in the United States by the Federal Communications Commission (FCC). “Compared to spectrum auctions, we believe gTLD auctions will be relatively simple, both in concept and operation. Nonetheless, we think actual auction design should be worked out by ICANN to assure compatibility with technical standards and to maximize economic efficiency” (pp. 416-417).

Manheim and Solum conclude: “When auctions were first proposed to the FCC, they were dismissed out of hand as “too academic” and ridiculed as “of the realm in which it is merely the fashion of economists to amuse themselves.” The same attitude can be found in many of the objections to gTLD auctions espoused by defenders of the status quo. Just as, over time, auctions have become accepted as means for allocating economically scarce spectrum and telephony resources, we believe they will become seen as the best means for expanding the TLD name space. Indeed, the case for auctioning new gTLDs is compelling” (p. 449).

2. Auctions accomplish the goal of allocative efficiency

Auctions are well suited to accomplishing the goal of *allocative efficiency*: putting scarce resources into the hands of those who value them the most. As such, the results of auctions tend to create greater social value than alternative allocation mechanisms. For example, suppose that one applicant for a gTLD has the true intention and capability of serving many users, while a second applicant has in mind a narrow application that would serve only a few limited interests. The first applicant would generally be able to justify a higher bid for the gTLD than the second applicant; consequently, the first applicant would be likely to win the gTLD in an auction. By contrast, in a comparative evaluation, the second applicant might be able to win the

gTLD if it were more persuasive (or hired the more effective consultant or lobbyist); and in a lottery, the two applicants are by definition equally likely to win. Similarly, an auction process would tend to favor a high-quality, low-cost applicant over a low-quality, high-cost applicant. And an applicant who intends to develop the gTLD immediately would be able to justify a higher bid than an applicant whose purpose is to hold the gTLD, unused, for speculative purposes.

Largely for similar reasons, governments began 15 years ago to allocate telecommunications licenses by auction. In 1993, the US Congress authorized the Federal Communications Commission (FCC) to allocate mobile telephone licenses by auction; and in 1997, it extended this authorization to use auctions for resolving competing applications for radio and TV licenses. Moreover, auctions for allocating radio spectrum have been a truly global phenomenon. They have been used in New Zealand since 1990 and in Australia since 1993; and they have been adopted subsequently in the UK, Germany, Austria, Netherlands, Switzerland, India, Hong Kong, Singapore, Nigeria, Canada, Mexico, Brazil, and Trinidad and Tobago (to provide only a partial list).

The key benefits of a well-designed auction mechanism include the following:

- Transparent and objective means for determining a winner
- Efficient allocation – puts gTLD strings in the hands of those who value them the most and will put them to use (Note - ICANN intends to use auctions as a tiebreaking mechanism, not as the primary allocation mechanism.)
- Efficient process – fully dynamic auction, concludes in one day to one week
- Revenue maximization (with possible options for ensuring that “deepest pockets” do not always win auction) *Note that revenue maximization is not one of ICANN’s goals with the new gTLD process.

Of course, no allocation mechanism will perfectly address needs for transparency, objectivity and scalability, and auctions have received severe criticism in some contexts. For example, the European Telecommunications Network Operators’ Association (ETNO) all but blamed the European UMTS/3G spectrum auctions of 2000 and the subsequent collapse of the telecommunications sector: “The auction process appears to be particularly inappropriate when considering innovative technologies and new markets ... the whole sector has been seriously destabilised and the launch of new services delayed.”¹ ETNO argues that beauty contests are preferable to auctions.²

The timing of the European spectrum auctions coincided with the NASDAQ stock market peak. Given that telecom firms operating outside of Europe or outside the wireless sector suffered similar drops in stock prices as European wireless operators and given the similarly-timed bursting of the “dot-com” bubble, it is more reasonable to view the high European spectrum auction prices as a symptom of the bubble rather than as a cause of its collapse. Oxford University Professor Paul Klemperer has noted: “In retrospect, of course, the licenses look expensive. But in retrospect, shares or houses sometimes look expensive. Like any other

¹ See ETNO Reflection Document Commenting on Auctions and Beauty Contests, Dec. 2004; available at <http://www.etno.eu/Portals/34/ETNO Documents/Information Society i2010/RD203 - FM Auctions and Beauty Contests.pdf> (p. 3).

² As described in the reflection document’s introduction, ETNO represents the voice of Europe’s largest telecom operators. Thus, ETNO has a vested interest in obtaining lower license fees for its member operators and insulating them from new entry. Note that the document also asserts: “The progress in technologies leads to significant evolutions of services and transformation of traditional markets. As a consequence, maintaining a distinction between incumbent operators and new entrants becomes more and more artificial.” (p. 2).

market, an auction simply matches willing buyers and willing sellers — it cannot protect them against their own mistakes.”³

While the spectrum auction experience offers some useful insights, there are major differences between spectrum licenses and gTLDs. Spectrum licenses are unique and are limited to a fixed supply — and specific spectrum licenses are needed to provide specific wireless services. Telecom firms in Europe in 2000 may have perceived that they needed to win specific licenses in order to remain in business. By contrast, gTLDs are unique only in their identifying string and the number of gTLDs can be expanded over time — and any of a large number of alternative gTLD strings can be used for a given purpose. If a bidder fails to win its first-choice gTLD, it can submit a new proposal and apply for an alternative string. In this respect, an auction for gTLDs is more likely to be comparable to an auction for houses⁴ than to an auction for spectrum. There are characteristics of a house that make it unique and more desirable than another home, but if an applicant is unsuccessful in a house auction, there is likely to be another suitable house available. Similarly, an applicant who finds .movie to be too expensive in a gTLD auction can instead apply for .film or .cinema. Participants in gTLD auctions will not generally find themselves in “must-win” situations; their second or third choices will be reasonable substitutes.

It is worth emphasizing that, similar to ICANN, most spectrum agencies have not placed revenue maximization at the top of their list of objectives. Rather, the efficient use of the spectrum, and the putting of spectrum into use in a timely fashion, has generally been uppermost. It has also been widely perceived that scarce spectrum is a valuable public resource that governments should not merely give away to self-interested individuals. Transferring TLD rights to third parties for little or no compensation would be equally as objectionable as spectrum giveaways.

At the same time, allocating these resources for free does not reduce the price to end-consumers.

It is a classic fallacy in economics (the “sunk cost fallacy”) that profit-maximizing firms will set their prices in relation to the level of past fixed costs. Rather, they will take account of the scarcity of the resources that they use, regardless of whether they pay for them or receive them for free. There may be a concern that auctions resolving contention among gTLD applications will result in passing on of costs to consumers. The available evidence after spectrum auctions has been that consumer prices do not depend on the price paid for the spectrum. A similar point has been seen recently in Europe, where utilities received grandfathered carbon emission allowances for free but nevertheless set higher consumer prices that reflected the opportunity cost of the allowances, not the (zero) price they paid.

Finally, various devices can be considered for favoring disadvantaged bidders in an auction. For example, a 25% bidding credit could be offered to community-based bidders whose community is located primarily in least-developed countries: a \$300,000 bid from such a bidder would be viewed as equivalent to a \$400,000 bid from a wealthy country. (Obviously, in such event, measures would need to be taken so that bidders in wealthy countries could not establish shell corporations for the primary purpose of “gaming” such bidding credits.) Such devices might make auctions more attractive to the Internet community.

³ Klemperer, P., “The Wrong Culprit for Telecom Trouble,” *Financial Times*, 26 Nov. 2002, p. 21.

⁴ Auctions for houses are commonplace and work well in various parts of the world, for example, in Sydney, Australia.

3. Alternative allocation mechanisms are deficient

Manheim and Solum (2003, p. 367) consider four possible allocation mechanisms:

- Rule of first occupancy⁵
- Lotteries
- Comparative evaluations
- Auctions

Meanwhile, the OECD paper does not even consider a rule of first occupancy and summarily dismisses lotteries: “These are little used by OECD governments where allocative choice is required” (p. 39). Both papers come down decisively in favor of auctions. While part of the reason to use auctions is the set of attractive properties outlined in the previous section, another reason to use auctions is that the alternatives are grossly deficient.

A rule of first occupancy does not seem worthy of any further attention, so we limit consideration to the two other alternatives: lotteries and comparative evaluations.

Lotteries

In the telecommunications area, the best known use of lotteries was in connection with the allocation of US mobile telephone licenses, beginning in 1981. The experience was summarized by Manheim and Solum (2003, pp. 396-397): “Applications came in by the hundreds of thousands. Winners would often ‘flip’ or resell their licenses to larger entities at substantial profit without ever delivering service to a single customer. Some licenses won at lottery were resold in short order for tens of millions of dollars. The windfalls continued, as per the Coase Theorem.⁶ But the transaction costs were high, including the cost of delay in getting licenses to firms that could actually use them. One estimation of social cost for the ten-year delay in licensing of cellular providers [by lottery] was 2 percent of Gross National Product (GNP). By 1985, the FCC indicated its desire to eliminate the lottery system.”

In addition, awarding rights to gTLDs by lottery or “coin flip” might be contrary to the laws in certain jurisdictions. We take no opinion on the legal argument, as conducting a lottery would otherwise appear antithetical to economic principles and to ICANN’s objectives.

Comparative evaluations

Before lotteries, radio spectrum licenses in the US were allocated by comparative evaluation. The process is summarized in Paul Milgrom’s book, “Putting Auction Theory to Work,” Cambridge University Press (2004, p. 3): “Spectrum rights (licenses) in the United States and many other countries had long been assigned in comparative hearings, in which regulators compared proposals to decide which applicant would put the spectrum to its best use. The process was hardly objective: it involved lawyers and lobbyists arguing that their plans and

⁵ A rule of “first occupancy” allocates an item to the first individual to gain possession of or make use of the item.

⁶ The Coase Theorem was introduced by University of Chicago Law & Economics Professor Ronald Coase, see <http://www.law.uchicago.edu/socrates/coase.html>. Coase won the 1991 Nobel Prize for his work. The theorem is summarized as “In a world where there are no transaction costs, an efficient outcome will occur regardless of the initial allocation of property rights.”

clients were most deserving of a valuable but free government license. With its formal procedures and appeals, a comparative hearing could take years to complete.” Milgrom adds in a footnote: “The process was once characterized by an FCC Commissioner as the ‘FCC’s equivalent of the Medieval trial by ordeal’ (as quoted by Kwerel and Felker (1985)).”

The International Olympic Committee uses a comparative evaluation process for determining the site of the Olympic Games. In one of the more notorious episodes, it was alleged that in connection with the selection of Salt Lake City for the 2002 Winter Games, IOC members accepted more than \$1 million in cash, gifts, trips and scholarships. As a result of this bribery scandal, 10 members of the IOC were expelled, another 10 members were sanctioned, and several criminal prosecutions ensued. While the IOC is unlikely to replace its comparative evaluation process with an explicit auction, the episode highlights that comparative evaluations without clear criteria for deciding an allocation are invitations to corruption. By contrast, since auctions are transparent and objective, it is much more difficult to influence the outcome in favor of a particular bidder.

The disadvantages of comparative evaluations can be summarized as follows:

- It is difficult to establish meaningful transparent and objective criteria that allow the evaluator to distinguish among and select one of multiple competing applications;
- As a consequence, the comparative evaluations take a long period of time and require the investment of exhaustive resources by both applicants and the evaluator;
- Also as a consequence, the comparative evaluation process is vulnerable to corruption;
- The awards, once made, are unlikely to withstand judicial review;
- If other than the highest-value applicant wins the comparative evaluation, the winner is likely to ‘flip’ the rights for speculative profits;
- Depending on how the comparative evaluation is structured, the process may favor well-connected applicants, and thus may not be any more protective of disadvantaged applicants than auctions; and
- In the language of the economics and political science literatures, the comparative evaluation process may thus be an ‘all-pay auction’ which dissipates revenues (through expenditures on consultants and lobbyists) instead of collecting revenues that can be channeled to the good of the internet community.

At the same time, as emphasized by the OECD paper and noted in Section 1 above, most of the advantages of comparative evaluations can be obtained through a pre-qualification process before the auction. The pre-qualification procedures could apply straightforward, transparent and objective standards that would deal with concerns that a stand-alone auction might otherwise engender among the Internet community. However, the pre-qualification process would often fail to eliminate multiple competing applications for new generic TLD strings, which would then be resolved by auction. Pre-qualification and evaluation will still be used as a primary allocation method, but auctions would serve as the tie-breaker for resolving contention among identical or similar string applications

EXHIBIT C-28



New Generic Top-Level Domains

C-28



Program Statistics

13 June 2012, ICANN posted all the applied-for strings to this site.

On this page you will find high-level statistics about the overall program as the applications work their way through the evaluation process.

PROGRAM STATISTICS

Current Statistics *(Updated monthly)*

Application Statistics: Overview (as of 31 August 2018)	
<u>Total Applications Submitted</u> https://qtldresult.icann.org/application-result/applicationstatus	1930
<u>Completed New gTLD Program</u> (/en/program-status/delegated-strings) (gTLD Delegated** - introduced into Internet)	1232
Application Withdrawn	618
Applications that Will Not Proceed/Not Approved	47
Currently Proceeding through New gTLD Program*	33
Contention Resolution	
<u>Total Contention Sets</u> https://qtldresult.icann.org/applicationstatus/stringcontentionstatus	234
Resolved Contention Sets	226
Contention Sets <u>Resolved via ICANN Auction</u> https://qtldresult.icann.org/applicationstatus/auctionresults	16
Unresolved Contention Sets	8
Applications Pending Contention Resolution	24
Contracting	
Executed Registry Agreements (completed contracting)	1246
Registry Agreements with Specification 13	490
Registry Agreements with Code of Conduct Exemption	79
In Contracting	7

Pre-Delegation Testing (PDT)	
Passed PDT	1244

**Breakdown: Delegation Statistics	
Delegated gTLDs (/en/program-status/delegated-strings) (Introduced into Internet)	1232
Select Subcategories of Delegated gTLDs (NOTE: gTLDs may fall into more than one subcategory)	
Community	52
Geographic	53
Internationalized Domain Names (IDNs)	95

gTLD Startup Statistics (as of 31 August 2018)	
Sunrise	
Completed	574
In Progress	4
Not Started	2
Claims	
Completed	670
In Progress	237
Not Started	11

Please note: Registry Agreement and Delegated gTLD totals are not adjusted for TLDs that subsequently terminated their Registry Agreements and/or were removed from the root zone. In addition, Specification 13 and Code of Conduct Exemption totals are not adjusted if subsequently removed.

[Get a status update on an individual application » \(https://gtldresult.icann.org/application-result/applicationstatus\)](https://gtldresult.icann.org/application-result/applicationstatus)

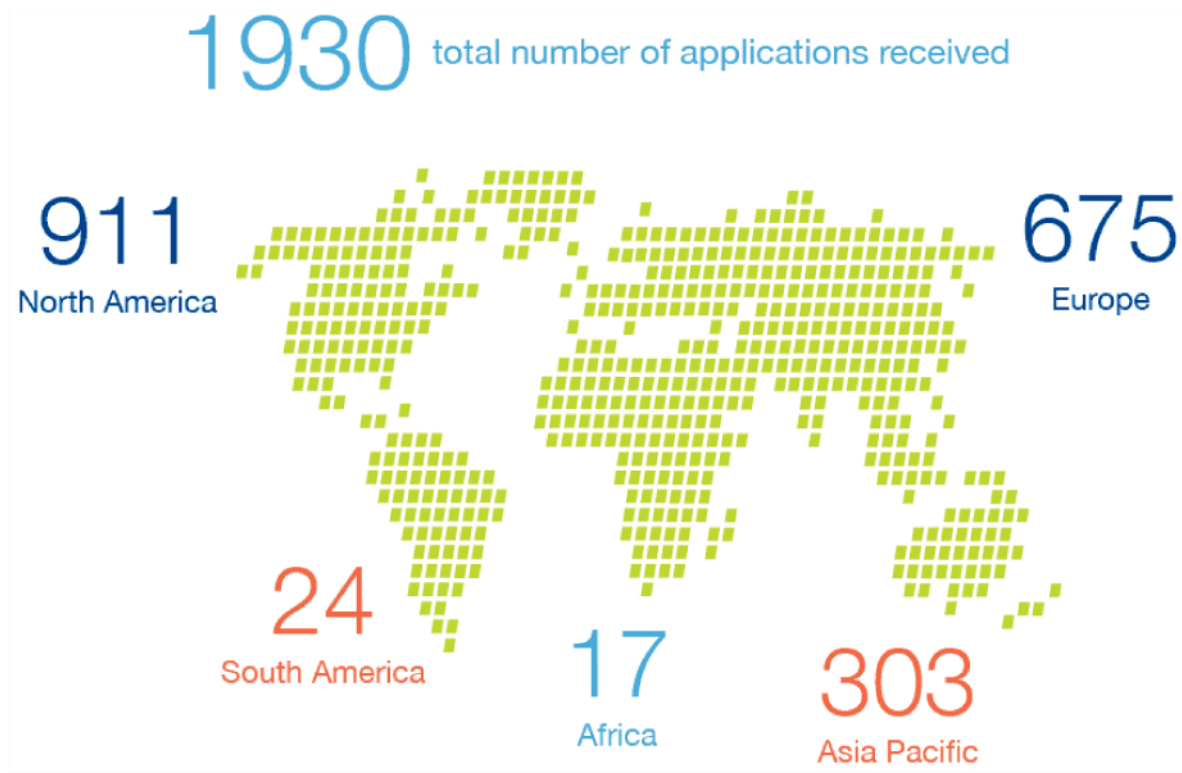
New gTLD Application Submission Statistics

The statistics in this section were calculated based on applications received by the 29 March 2012 deadline.

Application Breakdown by: [Region](#) | [Type](#) | [String Similarity](#)

Application Breakdown by Region

Statistics as of 13 June 2012



[images/application-stats-region-844x546-12mar14-en.png](#)

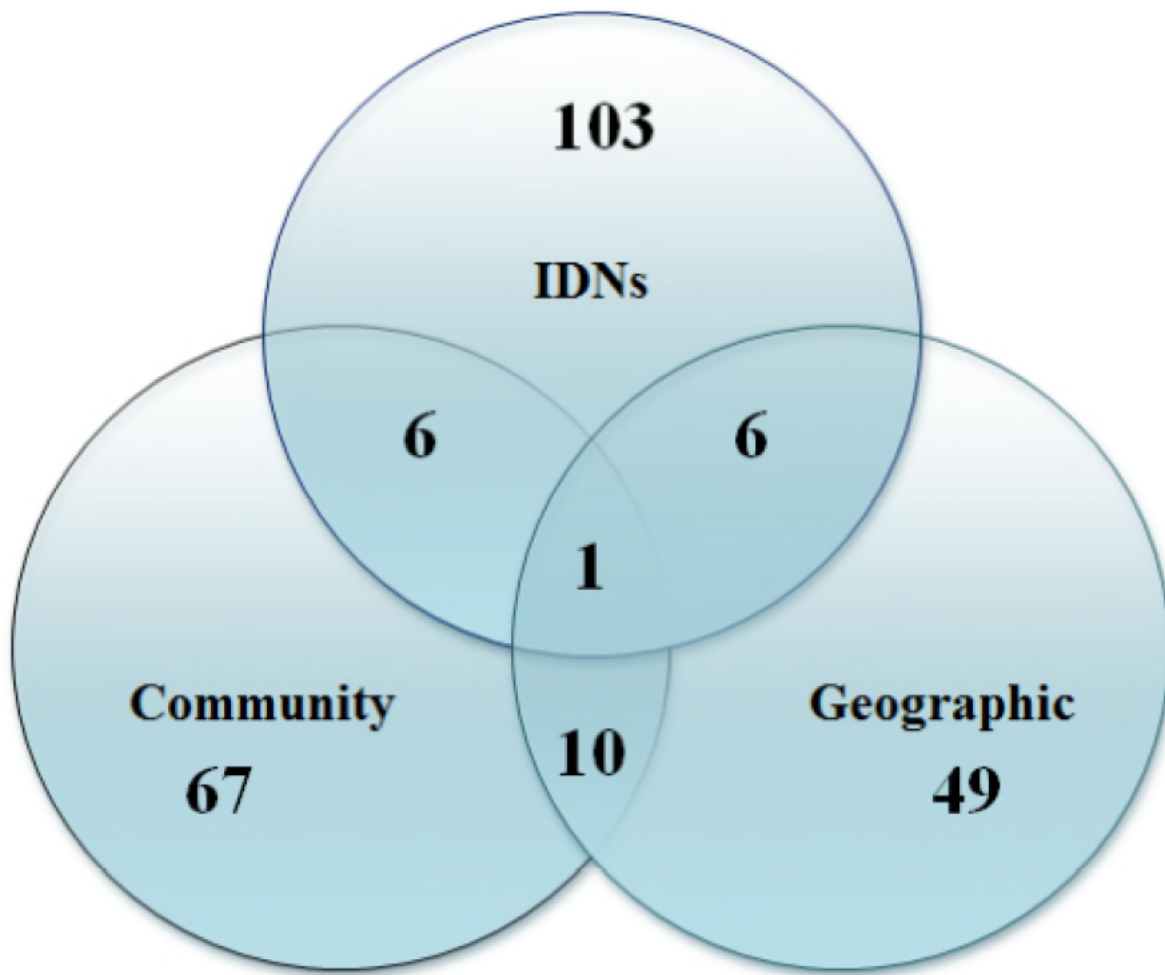
[\(/sites/default/files/main-](#)

Application Breakdown by Type

Statistics as of 13 June 2012

Application Totals

- Community: 84
- Geographic: 66
- Internationalized Domain Names: 116
 - Total Scripts Represented: 12
- Other: 1846



[\(/sites/default/files/main-]((/sites/default/files/main-)

<images/program-statistics-diagram-530x440-12jul12-en.png>

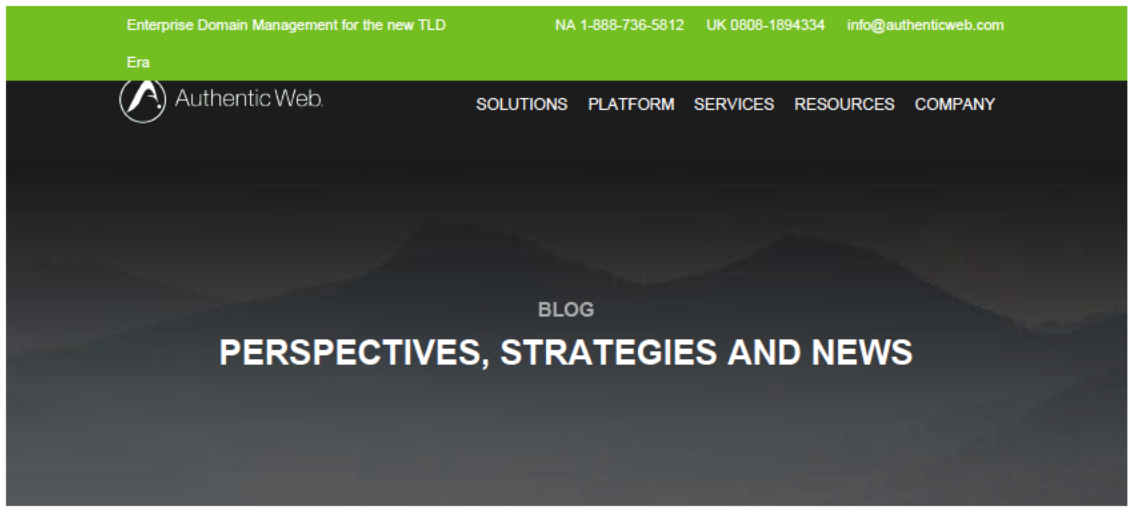
Application Breakdown by String Similarity

Statistics as of 26 February 2013

Approximate Number of Unique Applied-for Strings: 1,400

- Contention Sets
 - Exact Match: 230
(two or more applications for a string with same characters)
 - Confusingly Similar: 2
 - .hotels & .hoteis
 - .unicorn & .unicom
- Applications in a Contention Set: 751

EXHIBIT C-29



BRAND TLDS & DIGITAL STRATEGIES

.WEB Acquired for \$135 Million. Too much? How does it compare?



At \$135 million, .WEB is the highest valued first round new Top Level Domain registry sold at auction. It sets a new high bar on the value of TLDs. Nu Dot Co and its investors, prevailed in an ICANN auction and are now the proud owners of the .WEB Registry. Industry tea leaves point to Verisign as the backer but that has yet to be confirmed.

In the past two years, other TLD registries have sold for millions of dollars. Now that the big one (.WEB) is done, it is interesting to look at the relative value of these acquisitions and consider how these investments make sense for the buyers. The top 5 new TLD acquisition prices are listed below and a discussion follows.

TLD	VALUE (USD)	BUYER
.WEB	\$135,000,000	Nu Dot Co
.SHOP	\$41,500,000	GMO Registry, Inc.
.APP	\$25,000,000	Charleston Road Registry Inc. (Google)
.BLOG (1)	\$19,000,000	Automattic Inc. (Wordpress)
.TECH	\$6,760,000	Dot Tech LLC (Radix)

SOURCE: [HTTPS://GTDRESULT.ICANN.ORG/APPLICATION-RESULT/APPLICATIONSTATUS/AUCTIONRESULTS](https://gtdresult.icann.org/application-result/applicationstatus/auctionresults)
¹ REPORTED BUT UNVERIFIED

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In March 2015, I wrote an article; [Did Google Overpay for .APP?](#) The conclusion was, “no they did not overpay”. This was based on Google’s leading mobile app market position and .APP would allow them to own a new channel, introduce a new paradigm on app discoverability, and leverage Google’s Android market position in the application distribution market.

Then there was .SHOP, purchased for \$41.5 million by GMO Registry. This one, I find to be a head scratcher in terms of the valuation. It is a good TLD, no question. It has clear meaning as an ecommerce destination but \$41.5 million for a niche or single purpose TLD seems rich to me. .SHOP operators and investors will need to take a long view, dedicate significant marketing spend to develop a value proposition to deliver a new, better, and different offering to ecommerce merchants, and gain market traction. Did GMO overpay? Probably.

How about .BLOG, purchased for a reported \$19 million by Automattic Inc., parent of WordPress? Wordpress is a leading website building and blogging software company. By various reports 25 – 27% of all websites use WordPress and millions of bloggers use their tools. WordPress is a big deal. There are parallels with .APP and .BLOG. Both were purchased by industry leaders in their respective lines of business. Each can use the TLD as a differentiator to leverage and extend their market position to drive growth. They can offer services that are unique in the market, increasing the value of their entire business. Secondly, as a defensive position, they ensure competitors are not armed with a powerful digital asset to disrupt their respective positions. .BLOG gets a thumbs up and in my view a good buy for Automattic. Not only will they sell millions of .BLOG domains, they will dramatically increase the worldwide awareness of new TLDs. That’s a win for the industry as well.

Where .APP and .BLOG have explicit meanings and added power due to the market positions of the acquirers, .SHOP is seeking to carve a new extension as an ecommerce destination alternative. This all makes sense but \$41.5 million is a big number to dig out of, from a return on investment perspective.

.WEB is a different animal. This acquisition valuation is proof. .WEB is what we call a “super generic” and arguably the best new TLD alternative to .COM. It is a word that is commonly used with intuitive meaning. WEB could make a serious dent to .COM over the long run. With an initial investment of \$135 million you have to assume the owners will follow their acquisition capital with serious marketing spend. Domain speculation in the .WEB space will be furious at launch. Premium domain sales for .WEB are likely to be orders of magnitude larger than in any other TLD introduced and as the .WEB space matures, those premium values will rise. Of course, this assumes Nu Dot Co drives forward with the now familiar premium domain strategy.

\$135 million is a shocking number. It can be a winner assuming funds to support a major marketing and communication plan as the best alternative to .COM, or if Verisign, a cozy super-generic companion to .COM. .CO positioned as a viable alternative and currently have under 2 million registrations versus .COM at 126 million. Recall, Neustar acquired .CO for \$109 million on \$21 million in revenue with approximately 1.5 million domains under management.

Let’s assume Verisign is indeed the .WEB backer. Today, Verisign generates over \$1 billion in revenue and a +60% operating profit. Nice business. The challenge for Verisign is not EBITDA or cash flow, it is growth. In their recent quarterly financial release, Verisign grew by 9% in the quarter compared to the same quarter in 2015. Not bad but not enough to excite and drive up shareholder value, where a single digit CAGR

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and cash generation is already baked into their market cap. The company is trading at ± 9 times revenue and ± 15 times EBITDA. If they did indeed acquire .WEB, the company now owns a new growth engine and they are uniquely positioned to drive it. Some suggest they would bury it to protect .COM. That is not in the best interest of shareholders. .COM is still king, will be for some time and .WEB can immediately contribute healthy operating profits out of the gate. If well executed, .WEB can add significant shareholder value.

If the tea leaves are misleading and everybody is wrong about Verisign, then we will have to write another blog on those implications. If it is Neustar, for example, then the market dynamics are entirely different. We are also likely to see a gun fight on how this all materialized with the secret backer of Nu Dot Co.

THE ECONOMICS OF A TLD REGISTRY

Let's now assume it is not Verisign, the economics of a TLD registry are very good at scale from 1 million to 100 million Domains Under Management (DUM).

This chart models Domain Under Management (DUM), an assumed registry price of \$8, the annual revenue, (ignoring one-time premium domain revenues) and assumed EBITDA improving from 10% to 50% as economies of scale kick in for a well run registry. Then apply business valuations at 5 times revenue (conservative low bar) or 20 times EBITDA, whichever you prefer.

DUM	1,000,000	2,000,000	5,000,000	10,000,000	100,000,000
Registry Price	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00
Revenue	\$8,000,000	\$16,000,000	\$40,000,000	\$80,000,000	\$800,000,000
EBITDA	\$800,000	\$3,200,000	\$12,000,000	\$32,000,000	\$400,000,000
Operating Margins	10%	20%	30%	40%	50%
Value @ 5x Revenue	\$40,000,000	\$80,000,000	\$200,000,000	\$400,000,000	\$4,000,000,000
Value @ 20x Profit	\$16,000,000	\$64,000,000	\$240,000,000	\$640,000,000	\$8,000,000,000

For comparison, Verisign with 126 million DUM, \$1B in revenue, generates 60% in profit and a \$9B Market Cap and .CO was acquired by Neustar for \$109 with revenue at \$21 million and 1.6 million DUM.

The trick of course is getting to scale, how much additional investment will be required to get to scale and will the market demand exist for .WEB. For the investors at Nu Dot Co, you now own a valuable asset that will take time and skilled execution to monetize. We will need a few years to determine if \$135 million was too much, just right or a home run investment. The potential to create a highly valuable business that generates tremendous profit and cash is there if they drive to scale.

If it is Verisign, it is a brilliant move, not unlike .BLOG and .APP, it extends Verisign's .COM position and is the growth engine they need.

The new TLD market continues to be increasingly dynamic and interesting with each passing day.

Thanks for checking in – Peter

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EXHIBIT C-30

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Verisign likely \$135 million winner of .web gTLD

Kevin Murphy, August 1, 2016, 08 51 12 (UTC), [Domain Registries](#)

Verisign has emerged as the likely winner of the .web gTLD auction, which closed on Thursday with a staggering \$135 million winning bid.

The shell company Nu Dot Co LLC was the prevailing applicant in the auction, which ran for 23 rounds over two days.

Just hours after the auction closed, Domain Name Wire [scooped](#) that Verisign had quietly informed investors that it has committed to pay \$130 million for undisclosed “contractual rights”.

In its [Securities and Exchange Commission quarterly report](#), filed after the markets closed on Thursday, Verisign said:

Subsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016.

There seems to be little doubt that the payment is to be made to NDC (or one of its shell company parents) in exchange for control of the .web Registry Agreement.

The “third-party consent” is likely a reference to ICANN, which must approve RA reassignments.

We speculated on July 14 that Verisign would turn out to be [NDC's secret sugar daddy](#), which seems to have been correct.

Rival .web applicant Donuts had sued ICANN for an emergency temporary restraining order, claiming it had not done enough to uncover the identity of NDC's true backers, but was [rebuffed on multiple grounds](#) by a California judge.

Donuts, and other applicants, had wanted the contention set settled privately, but NDC was the only hold-out.

Had it been settled with a private auction, and the \$135 million price tag had been reached, each of the seven losing applicants

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Emojis coming o ano her ccTLD

Donu s releases free TLD-neu ral name-spinner

New gTLD revenue cu by HALF in CANN budge

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would have walked away with somewhere in the region of \$18.5 million in their pockets.

This draws the battle lines for some potentially interesting legal fallout.

It remains to be seen if Donuts will drop its suit against ICANN or instead add Verisign in as a defendant with new allegations.

There's also the possibility of action from Neustar, which is currently NDC's named back-end provider.

Assuming Verisign plans to switch .web to its own back-end, Neustar may be able to make similar claims to [those leveled by Verisign against XYZ.com](#).

Overall, Verisign controlling .web is sad news for the new gTLD industry, in my view.

.web has been seen, over the years, as the string that is both most sufficiently generic, sufficiently catchy, sufficiently short and of sufficient semantic value to provide a real challenge to .com.

I've cooled on .web since I launched DI six years ago. Knowing what we now know about how many new gTLD domains actually sell, and how they have to be priced to achieve volume, I was unable to see how even a valuation of \$50 million was anything other than a long-term (five years or more) ROI play.

Evidently, most of the applicants agreed. According to ICANN's log of the auction ([pdf](#)) only two applicants — NDC and another (Google?) — submitted bids in excess of \$57.5 million.

But for Verisign, .web would have been a risk in somebody else's hands.

I don't think the company cares about making .web a profitable TLD, it instead is chiefly concerned with being able to control the impact it has on .com's mind-share monopoly.

Verisign makes about a billion dollars a year in revenue, with analyst-baffling operating margins around 60%, and that's largely because it runs .com.

In 2015, its cash flow was \$651 million.

So Verisign has dropped a couple of months' cash to secure .web — chickenfeed if the real goal is .com's continued hegemony.

In the hands of a rival new gTLD company's marketing machine, in six months we might have been seeing (naive) headlines along the lines of "Forget .com, .web is here!".

[A new gTLD kills i self off for he second ime](#)

[CANN blocks 1 5 million domains including some hree-le er names](#)

[Three ways CANN could gu Whois](#)

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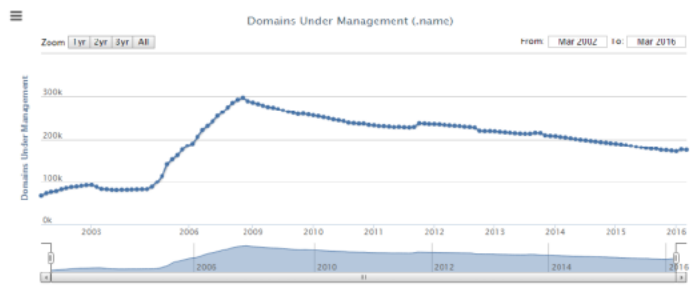
[mail home corp hopefuls could ge exi plan in January](#)

[club is he bes es new gTLD club survey finds](#)

That won't happen now.

I'm not privy to Verisign's plans for .web, but its track record supporting the other TLDs it owns is not fantastic.

Did you know, or do you remember, that Verisign runs .name? I sometimes forget that too. It bought it from Global Name Registry in late 2008, at the high point of its domains under management in this chart.



I don't think I expect Verisign to completely bury .web, but I don't think we're going to see it aggressively promoted either.

It will never be positioned as a competitor to .com.

If .web never makes \$135 million, that would be fine. Just as long as it doesn't challenge the perception that you need a .com to be successful, Verisign's purchase was worth the money.

Related posts (automatically generated)

[Google buys .app for over \\$25 million](#)

[Donuts files \\$10 million lawsuit to stop .web auction](#)

[Donuts spends \\$50 million on new gTLD auctions](#)

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Tagged .web, auction, donuts, google, CANN, new gTLDs, nu dot co, verisign

Anyone can just come in and buy a successful application making the whole technical legal and financial evaluation moot. Apply, pass, and sell to someone else outside of the evaluation process entirely.

So why even have it?

The only winner here is CANNONS in application fees, tons of power, and \$135MM in the bank.

All over what would prefer to consider stolen property.

Sausage and politics.

[Reply](#)

Greg

August 2, 2016 at 6:19 pm

Your thought process is good. Had forgotten that they already owned the name and were leasing it. Perhaps they will do the same with web. That is until they are about to lose their government contracts and at that point it will suddenly be promoted as a viable alternative (which it is). By that time, however, it will cost significantly more and any business that means business will already have a competitor in place. Think it was very smart of them and effectively puts most of the other silly new gTLDs out of business.

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EXHIBIT C-31



Technology

How a \$135 million auction affects the domain name industry and your business

The cost of protecting assets and creating a new revenue stream

By Cybele Negriz | August 10, 2016, 11:24am



niroworld/Shutterstock

On July 27, the Internet Corporation for Assigned Names and Numbers (ICANN) ran an auction for the generic top-level domain (gTLD) .web that culminated in a winning bid of \$135 million. Nu Dot Co LLC produced the winning bid and on August 1, Verisign, a global leader in domain names and internet security, confirmed in a [press release](#)

that they provided the necessary funds for Nu Dot Co's successful bid. But wait one second, let's back this up - \$135 million for .web?

The previous highest public price for a gTLD happened just over seven months ago when GMO Registry of Japan acquired the .shop gTLD for \$41.5 million. While not a number to sneeze at, Verisign blew away the previous record high. And while we're making comparisons, remember that \$100 million venture capital investment in Shopify back in 2013? Shopify is now a public company and an absolute force in the e-commerce game while its value is soaring past a billion dollars.

So that brings us back to Verisign and their brand new \$135-million baby. What exactly are Verisign's plans for .web? To turn the new investment into a billion-dollar web sensation? According to their press release, "as the most experienced and reliable registry operator, Verisign is well-positioned to widely distribute .web." They plan on utilizing their "expertise, infrastructure, and partner relationships to quickly grow .web and establish it as an additional option for registrants worldwide." This can certainly hold true as .web is widely considered the gTLD with the most potential out of 1,930 applications for new domain extensions ICANN received to battle .com and .net for widespread adoption.

In the past 30 years, Verisign has registered over 127 million .com domain names and nearly 16 million .net domain names. These are two of the most popular top-level domains available while the most adopted new gTLD, .xyz, has garnered over six million registrations since entering the market a little over two years ago. If Verisign is able to average three million .web registrations year-over-year, like .xyz, at a guesstimated price of \$10 USD, with an annual renewal rate of 50%, they would break even on their investment in about 3 years (\$30,000,000 in year one, \$45,000,000 in year two and \$52,500,000 in year three). Of course, if renewal rates are lower or Verisign cannot achieve three million domains a year, it will take longer to reach break-even.

The runner-up in the .web auction, potentially a giant with immense resources such as Google, could eat into Verisign's top-level domain market share, taking aim at its .com and .net properties. Let's say

Verisign bowed out of the auction early and allowed another registry to directly compete against .net with a synonymous .web domain name. With a stagnating stock price, Verisign would not be in a fantastic position to improve on that with a strong competitor nipping at its heels. From this perspective, the cost of doing business for Verisign is more than worthwhile, even if they happen to not generate a single dollar of revenue from .web for years to come.

What does this all mean for your business and web presence?

.Web will not be publicly available for some time; and while Verisign may or may not have acquired the gTLD mainly to keep competitors away, most pundits believe that they will make it publicly available. Once released, it would be prudent for all businesses that already own a .com and/or .net to register the .web variation for their business to avoid resellers from scooping them up and charging a premium.

Be sure to [pre-register for .web](#) domain names as soon as you can so that you are alerted as soon as .web launches and becomes publicly available.

If you are a trademark owner, be sure to register with the [Trademark Clearinghouse](#) in advance to ensure that yourtrademark.web can be secured during the "[sunrise period](#)." This stretch of time is designed specifically for trademark holders to reserve their domain names before anyone else has access.

Perhaps you missed out on the .com or .net variation of your business; now you have an excellent opportunity to grab the .web version of your domain name and once you register the domain, a simple 301 redirect from your existing domain to the .web variation will provide a seamless transition to your ideal domain name.

Put your thinking cap on and begin generating lists of relevant generic domain names for your industry that will not infringe on another businesses' trademarks. Once .web launches, consider registering these domain names under the .web gTLD. These could be incredibly useful as landing pages for search engine marketing tactics or as a new revenue stream for your business as others may start knocking on your door looking to take these domain names off your hands for a price.

If you have a .com or .net domain name, keep a close eye on the costs of these as Verisign might be looking to boost their margins on these assets. While [Verisign cannot increase their price for .com](#) under their current contract with ICANN which ends in 2018, they are able to increase the price of .net by 10% every year until the end of that agreement in 2017.

Cybele Negris (cybele@webnames.ca) is president, CEO and co-founder of Webnames.ca, Canada's original .CA registrar. She serves on the boards of Small Business BC, Small Business Roundtable of BC, Capilano University and the Capilano University Foundation.

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EXHIBIT C-32

THIS WEEK IN SEO 60

BRANDS, DOMAINS, AND YOUTUBE

THE DEATH OF GENERICS AND THE DOMINANCE OF BRANDS

<http://www.seobook.com/brands-beat-generics>

Aaron Wall, the Cormac McCarthy of SEO (google it), published a great post looking at how generic domains like cooking.com and drugstore.com have failed to thrive, but the big brands behind them (Target and Walgreens, respectively) are doing just fine.

If you invest in zero-sum markets there needs to be some point of differentiation to drive switching. There might be opportunity for a cooking.com or a drugstore.com targeting emerging and frontier markets where brands are under-represented online (much like launching Drugstore.com in the US back in 1999), but it is unlikely pure-play ecommerce sites will be able to win in established markets if they use generically descriptive domains which make building brand awareness and perceived differentiation next to impossible.

Digging in to how brands succeed/fail in SEO (and business in general) is one of the topics that hasn't yet been beaten to death by the SEO conference-circuit (R.I.P., my interest in reading about content marketing).

I enjoyed this article, definitely give it a read.

THE NEXT BIG DOMAIN EXTENSION

<http://domainnamewire.com/2016/07/29/verisign-paid-135-million-web-top-level-domain/>
com

Speaking of domain names...

Verisign, the juggernaut of a company behind .com/.net (a.k.a.the big 3) just paid \$135,000,000 to acquire the .web extension.

You've seen these new extensions over the last few years—.ninja, .rent, .guru (side note: still waiting for <http://seo.guru> to be developed...).

Some of these new extensions are kind of garbage, like .FYI, but .web makes sense to a lot of people, and is poised to be one of the most popular new extensions.

Here's why Verisign paid 3x as much as any other new gTLD for .web:

It views it as competitive to .com – a handful of industry watchers and top level domain name companies have said that .web is the one domain that could unseat .com. While that's open to debate, Verisign might have viewed this as an opportunity to take the greatest threat from the new TLD program off the table.

It views it as competitive of .net – this might sound odd, but keep in mind .net is a 9-figure-a-year business for Verisign. You can argue that .web has a similar connotation to .net. It could be a viable alternative for people who traditionally buy a .net when the .com is taken.

So start coming up with those domain names now, so hit the ground running when this domain hits the registrars (no date on that yet).

EXHIBIT C-33

From: John Kane [Contact Information Redacted](#)
To: Bob Wiegand [Contact Information Redacted](#)
Sent: 7/8/2016 6:41:52 PM
Subject: Re: .WEB Applicants

C-33

Bob
Donuts is trying to see if they can get a delay based on a possible sale of an app. Guess we will see if it works.
Doubtful IMO
JLK

On Jul 8, 2016, at 6:13 PM, Bob Wiegand [Contact Information Redacted](#) wrote:

Depends on the grounds. Is there a chance that the private auction is still an option? We are prepped for the July 27th date...and I didn't know anyone was pushing for postponement. Let's touch base next week/when you have more details that you can share.

Bob

From: Jon Nevett [\[mailto:Contact Information Redacted\]](mailto:)
Sent: Friday, July 8, 2016 5:19 PM
To: Bob Wiegand
Cc: John Kane [Contact Information Redacted](#)
Subject: Re: .WEB Applicants

Depends on the grounds. Are you supportive?

Jon

On Jul 8, 2016, at 11:11 PM, Bob Wiegand [Contact Information Redacted](#) wrote:

Don't all of the parties have to agree to a postponement?

From: Jon Nevett [\[mailto:Contact Information Redacted\]](mailto:)
Sent: Thursday, July 7, 2016 3:21 AM
To: John Kane
Cc: Conrad Goldstein; Sandeep Ramchandani; Thomas Morz; Sandeep Ramchandani; Bob Wiegand
Subject: Re: .WEB Applicants

Hi guys. Just so you are not surprised, we are seeking a postponement of the .web ICANN auction. I don't want to get into the details yet, but I didn't want you guys to be surprised either if a postponement was announced.

Best,

Jon

On May 11, 2016, at 10:30 AM, John Kane [Contact Information Redacted](#) wrote:

Good news! I have spoken directly with most members of the contention set and/or saw confirmation in email that everyone is willing to participate in a .WEB only auction. If for any reason anyone's position has changed please let the group or the auction house know ASAP.

If we are to keep it on track I suggest to do an auction the week of June 13th.

I will now drop the mic and hand it over to Sheel and Lindsay to make it happen. I know we are all busy but please

respond promptly to their calls or emails.
Sorry I will miss seeing you all in Amsterdam.
Best
John

C-33

On May 9, 2016, at 1:55 PM, Conrad Goldstein Contact Information Redacted wrote:

Hi Sandeep, thanks for the follow-up. My sense is that it will be more efficient and easier for Applicant Auctions to coordinate the logistics with applicants (confirm willingness to participate in private auctions, dates, etc.). Makes sense?

Thanks again,
Conrad.

On Mon, May 9, 2016 at 8:40 AM, Sandeep Ramchandani Contact Information Redacted wrote:
Ok John? Conrad?

On Mon, May 9, 2016 at 8:48 PM, Jose Ignacio Rasco Contact Information Redacted wrote:
Sandeep,
I am available for a call tomorrow if needed.
Regards,
Jose

On May 6, 2016, at 9:56 AM, Jon Nevett Contact Information Redacted wrote:

I'm free for a call at that time, but it shouldn't be that hard to schedule the auction and decide what to do about .webs.

On May 6, 2016, at 7:32 AM, Sandeep Ramchandani Contact Information Redacted wrote:

That would be an awful waste. Can we schedule a call next week? How about noon est Tuesday?
Jon, Jose, Brad, John, Conrad, Bob?

On 6 May 2016 15:45, "John Kane" Contact Information Redacted wrote:
Sandeep

I will not be attending GDD but we will have people from AfiliAS in Amsterdam. Unfortunately it will be too late at that point to arrange a private auction and will head to an ICANN auction.

Best
JLK

On May 5, 2016, at 11:44 PM, Sandeep Ramchandani Contact Information Redacted wrote:

The GDD is just around the corner. If most of us are going to be there, would be a good opportunity to catch-up face to face.

Jon and I are planning to be there. Who else from this group is planning to go?

On Mon, May 2, 2016 at 12:49 PM, Sandeep Ramchandani Contact Information Redacted wrote:

Happy to discuss further over a call (prefer AM US time). In addition, wanted to make the point that given the relatively tight time-lines, it would be helpful if all applicants filed for a postponement of the ICANN auction. Just gives us all a contingency buffer. Something that might just come into use given the more complex situation we have here with the indirect contention set.

On Thu, Apr 28, 2016 at 6:58 PM, John Kane [Contact Information Redacted](#) wrote:

Jon

Thanks for laying out options for including VistaPrint in an auction. I agree a call would be helpful to discuss that component. We could also meet on a resort island for 2-3 days to discuss as well:).

JLK

On Apr 28, 2016, at 9:22 AM, Jon Nevett [Contact Information Redacted](#) wrote:

Thanks John. We are good with private auction as well. We agree that we need to get it done before ICANN Helsinki starts (week of June 27) and we need to do it in earlier than late June due to the Google-required 30 day notice to ICANN. Our first choice would be the week of June 6, but could do the week of June 13 or even early the week of June 20 if necessary.

As for Vistaprint, it seems like there are three options: 1) we include them and do an indirect contention set auction mirroring the ICANN auction, but with all sellers splitting the proceeds (there might be one buyer or two depending on the outcome); 2) we include them in a direct contention set auction and guarantee that there only would be one winner with all sellers splitting the proceeds; or 3) we exclude them and do a direct contention set auction of just the .WEB applicants (if [web.com](#) wins, they still are in contention with Vistaprint).

Happy to hop on a call to discuss.

Best,

Jon

Jonathon Nevett
Co-Founder & EVP, Donuts Inc.
[Contact Information Redacted](#)

On Apr 28, 2016, at 7:12 AM, John Kane [Contact Information Redacted](#) wrote:

Guys

Most of you most likely have seen that ICANN just scheduled the .WEB/WEBS auction for July 27. If we are still in agreement for a private auction we can likely get one in done in late June before ICANN. That would allow the winner to announce it and discuss plans at the meeting with attendees.

Might make sense to take a straw poll to see if everyone is on the same page. Happy to arrange a call to discuss as a group as well.

Afilias would participate in a private auction for .Web. Open to including VistaPrint WEBS if others want to as well.

FYI-Vistaprint dropped their community Webs application and only have generic one left.

Auction schedule link:

<https://newgtlds.icann.org/en/applicants/auctions/schedule-27apr16-en.pdf>

Best

John

On Oct 18, 2015, at 9:43 PM, Jose Ignacio Rasco ^{Contact Information Redacted} wrote:

C-33

All,
I won't be joining you in Dublin, but I'll support however I can. Just let me know. Have a great meeting.
Jose

On Oct 12, 2015, at 4:20 PM, John Kane ^{Contact Information Redacted} wrote:

Jon,
I agree it makes sense to wrap up this auction between the .WEB applicants and get it launched by one of us.
I arrive Sunday AM and depart on Friday AM and would do my best to join a discussion in Dublin.
Best
JLK

From: Jon Nevett [mailto:^{Contact Information Redacted}]
Sent: Monday, October 12, 2015 3:51 PM
To: Jose I. Rasco ^{Contact Information Redacted}; Sandeep Ramchandani ^{Contact Information Redacted}; John Kane ^{Contact Information Redacted}; Brad Layous ^{Contact Information Redacted}; Conrad Goldstein ^{Contact Information Redacted}; Thomas Mörz ^{Contact Information Redacted}; Bob Wiegand ^{Contact Information Redacted}
Subject: .WEB Applicants

Folks:

In light of the recent VistaPrint decision (<https://www.icann.org/resources/files/1194117-2015-10-09-en>), I thought it would be a good idea to get the .WEB applicants together to figure out if we can get this one resolved in the not-too-distant future. It's a string that we would love to see out there regardless of who operates it. I know that we all have discussed various options on how to get this resolved without it getting caught up in another round of ICANN policy hurdles -- CPE, indirect contention sets, string similarity appeals, etc.

Do you all think it makes sense to get together for a bit in Dublin to discuss next steps? If so, let's figure out a time that works with everyone. I arrive on Friday and leave the following Saturday.

Look forward to seeing folks over there.

Best,

Jon

Jonathon Nevett
Co-Founder & EVP, Donuts Inc.
^{Contact Information Redacted}

--
Sandeep Ramchandani
Business Head
^{Contact Information Redacted}

--

Sandeep Ramchandani
Business Head
Contact Information Redacted

C-33

--
Sandeep Ramchandani
Business Head
Contact Information Redacted

EXHIBIT C-34

From: John Kane Contact Information Redacted
Sent: Thursday, July 7, 2016 4:52 PM
To: Hal Lubsen
Subject: WEB

Bidders:

1. Afilias Domains No. 3 (Afilias plc)
2. WEB.com
3. Schlund Technologies (United Internet)
4. Ruby Glen (Donuts)
5. Charleston Road Registry (Google)
6. DotWeb (Radix)
7. Nu Dot Co (Juan Diego's company)

5/11/16, I sent all .WEB applicants an email saying that we all generally agreed on participating in a Private Auction and Innovative Auctions would send a schedule and agreements to everyone

5/17/16, Applicant Auctions sent the Auction schedule dates:

- May 25th - Draft Board Resolutions Due
- June 1st - Signed Agreements Due
- June 10th - Deposits due
- June 15th/16th – Auction

5/31/16 I sent an email to Applicant Auction asking for confirmation that everyone had completed the first two tasks. They replied that Nu Dot Co had not replied and/or sent in the required information

6/1/16 I sent a text to Jose (Nu Dot Co) and asked if they were participating in the private auction. He replied, "that's right. My board instructed me to skip it and proceed to ICANN"

Since we have had limited contact with Applicant Auction or Nu Dot co.

ICANN auction is scheduled for 7/27/16

Let me know if you need anything else.

JLK

EXHIBIT C-35

From: Jose Ignacio Rasco Contact Information Redacted
Subject: Re: .web
Date: June 7, 2016 at 11:32:17 AM EDT
To: Jon Nevett Contact Information Redacted
Cc: Juan Diego Calle Contact Information Redacted

Jon,
Thanks for the message, sorry for the delay. The three of us are still technically the managers of the LLC, but the decision goes beyond just us. Nicolai is at NSR full time and no longer involved with our TLD applications. I'm still running our program and Juan sits on the board with me and several others. Based on your request, I went back to check with all the powers that be and there was no change in the response and will not be seeking an extension. It pains me personally to stroke a check to ICANN like this, but that's what we're going to have to do just like others did on .app and .shop.
Best,
Jose

On Jun 6, 2016, at 1:08 PM, Jon Nevett Contact Information Redacted wrote:

Hi guys. Jose and I corresponded last week, but I wanted to take another run at the three of you. Not sure if you three are still the Board members of your applicant, but I wanted to reach out to discuss a couple of ideas. Until Monday, I believe that we have a right to ask for a 2 month delay of the ICANN auction with the agreement of all applicants. Would you be ok with an extension while we try to work this out cooperatively?

Please let me know.

Thanks.

jon

Jonathon Nevett
Co-Founder & EVP, Donuts Inc.

Contact Information Redacted

EXHIBIT C-36

1 Jeffrey A. LeVee (State Bar No. 125863)
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 2 Eric Enson (State Bar No. 204447)
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8 Attorneys for Defendant
 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND NUMBERS
 9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13 RUBY GLEN, LLC,
 14 Plaintiff,
 15 v.
 16 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND
 17 NUMBERS,
 18 Defendant.
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Case No. 2:16-cv-5505 PA (ASx)
 Assigned for all purposes to the
 Honorable Percy Anderson

**DECLARATION OF CHRISTINE
 WILLETT IN SUPPORT OF
 ICANN'S OPPOSITION TO
 PLAINTIFF'S *EX PARTE*
 APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER**

EXHIBIT A

Case Detail

[Edit](#) [Clone](#) [SPAM](#)

▼ **Case Information**

Case Number	00225003 [View Hierarchy]	Internal Status	Closed
Account Name	Ruby Glen, LLC	Status	Closed
Contact Name	Daniel Schindler	Case Close Reason	Response Provided
Contact Type		Urgency	Moderate
Application ID	1-1527-54849	Severity	Sev 3
Registry		Case Record Type	General Case [Change]
Case Origin	Web	Category	Application Processing
Multiple Contacts Found	<input type="checkbox"/>	Sub Category	Initial Evaluation Process
Visible in Self-Service Portal	<input checked="" type="checkbox"/>	Case Owner	Jared Erwin [Change]
Suppress Notification	<input type="checkbox"/>	Assigned to	Jared Erwin
Updates On Case	<input type="checkbox"/>	Parent Case	
SLA Resolution status	SLA Exceeded		
Phone			

▼ **Additional Information**

Subject	.WEB Auction Postponement – Required Applicant Update
Description	<p>ICANN,</p> <p>It has come to our attention that one of the applicants for .WEB has failed to properly update its application. Upon information and belief, there have been changes to the Board of Directors and potential control of Nu Dot Co LLC ("NDC") that has materially changed its application. To our knowledge, however, NDC has not filed the required application change request.</p> <p>As you know, Section 1.2.7 of the Applicant Guidebook specifically states, "[i]f at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in the financial position and changes in ownership or control of the applicant... Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application." As you also know, ICANN has been clear that such requirements are in full force and effect until the registry agreement is executed with the successful applicant.</p> <p>Failure by No Dot Co LLC to maintain the accuracy of its application is detrimental to the other competing applicants, especially in light of the pending ICANN auction, creating an unfair competitive advantage for NDC.</p> <p>We request that ICANN investigate the change in NDC's Board and potential control and that the ICANN auction scheduled for July 27 be immediately postponed. The auction should be rescheduled after the final investigation is complete and NDC's requisite change request is resolved.</p> <p>We do not make this request lightly and haven't done so in well over 100 other scheduled ICANN auctions.</p> <p>Thank you and best regards, Jonathon Nevett</p>

Case Comments

[New](#)

[Case Comments Help](#) [?](#)

Action	Public	Comment
		<p>Created By: Jared Erwin (6/27/2016 3:42 PM) Dear Daniel Schindler,</p> <p>Thank you for bringing this to our attention. We are reviewing the information provided, and we will work with the applicant directly should action be required. We note your request to postpone the auction for the .WEB/.WEBS contention set currently scheduled for 27 July 2016. Please continue to follow the standard auction process and monitor the Customer Portal for updates. If there are any changes to the auction date, we will notify you and all auction participants.</p>
Make Private	<input checked="" type="checkbox"/>	<p>Thank you for your attention. I will now resolve this case, but please do not hesitate to reopen it should you have any questions.</p> <p>Best regards,</p> <p>Jared Erwin New gTLD Operations</p>
		<p>Created By: Susan Yao (6/23/2016 10:17 AM) Dear Daniel Schindler,</p> <p>Thank you for your contacting ICANN Global Support on your request.</p>
Make Private	<input checked="" type="checkbox"/>	<p>Your request has been forwarded to our gTLD Team for processing. Someone from the team will be contacting you.</p> <p>Please do not hesitate to contact us if you have any other questions or concerns.</p> <p>Best regards, Susan Yao Global Support Analyst II ICANN Global Support</p>

EXHIBIT C-37

1 Jeffrey A. LeVee (State Bar No. 125863)
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 2 Eric Enson (State Bar No. 204447)
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 3 Charlotte Wasserstein (State Bar No. 279442)
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EXHIBIT C

From: Chris LaHatte <chris.lahatte@icann.org>

Date: Wednesday, July 6, 2016 at 2:17 PM

To: [REDACTED]

Subject: Application for Dot Web

Dear Mr Rasco

I have received a complaint from one of the applicants for dot web as follows:-

One or more applicants for dot web made a complaint to the Ombudsman about changes to the dot web application by one of the applicants, being NU DOT CO LLC.

There is evidence from them (which I have seen) which reveals that there have been changes to the composition of NU DOT CO LLC's Board that require it to go through an ICANN change process.

The complaint is that because there has been a failure to disclose material changes, that it is unfair to the other applicants until the disclosure has been made and that accordingly, the auction ought to be postponed until disclosure has been made. So I have opened an ombudsman complaint file about this matter. It may be an issue where the enquiry ought to be directed to this applicant or they could contact this office if they wish to discuss the matter. I am not sure of their appropriate contact details, and it may be useful to pass this on to them. When I have this information, I can investigate the facts of this matter and be able to make a recommendation.

Regards

Chris LaHatte

Ombudsman

Blog <https://omblog.icann.org/>

Webpage <http://www.icann.org/en/help/ombudsman>

Please leave feedback on how I am doing <http://www.icannombudsman.feedback/>

Pronouns used: he, his, him

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint.

EXHIBIT C-38

1 Jeffrey A. LeVee (State Bar No. 125863)
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**DECLARATION OF CHRISTINE
 WILLETT IN SUPPORT OF
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EXHIBIT B

Case
00220793

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Case Detail

Edit

▼ Case Information

Case Number	00220793 [View Hierarchy]	Internal Status	Closed
Account Name	NU DOT CO LLC	Status	Closed
Contact Name	Jose Ignacio Rasco	Case Close Reason	Response Provided
Contact Type		Urgency	Moderate
Contention Set Member	CSM-0746	Severity	Sev 3
Application ID	1-1296-36138	Case Record Type	Contention Set Case
Case Origin	Internal	Category	Auction Eligibility Notification
Visible in Self-Service Portal	<input checked="" type="checkbox"/>	Sub Category	
Suppress Notification	<input type="checkbox"/>	Case Owner	Jared Erwin [Change]
Updates On Case	<input type="checkbox"/>	Assigned to	Jared Erwin
Phone		Parent Case	

► Additional Information

► System Information

► Attachment Upload

Case Comments

New

Case Comments Help

Action	Public	Comment
		<p>Created By: Jared Erwin (6/27/2016 3:18 PM) Dear Jose Ignacio Rasco,</p>
Make Private	<input checked="" type="checkbox"/>	<p>Thank you for confirming. No further action is required of you at this time.</p> <p>Best regards,</p> <p>Jared Erwin New gTLD Operations</p>
		<p>Created By: Jose Ignacio Rasco (6/27/2016 12:48 PM) I can confirm that there have been no changes to the NU DOTCO LLC organization that would need to be reported to ICANN.</p>
Make Private	<input checked="" type="checkbox"/>	<p>Regards, Jose I. Rasco</p>
		<p>Created By: Jared Erwin (6/27/2016 12:02 PM) Dear Jose Ignacio Rasco,</p> <p>We would like to confirm that there have not been changes to your application or the NU DOT CO LLC organization that need to be reported to ICANN. This may include any information that is no longer true and accurate in the application, including changes that occur as part of regular business operations (e.g., changes to officers and directors, application contacts). If there have been any such changes, please submit a new case via the Customer Portal (myicann.secure.force.com) with the requested changes so that we may begin processing.</p>
Make Private	<input checked="" type="checkbox"/>	<p>If a change request is required, please note Rule 8 of the Auction Rules for Indirect Contention (https://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf): "ICANN intends to initiate the Auction process once the composition of the contention set has stabilized. ICANN reserves the right not to send Intent to Auction notices and/or to postpone a scheduled Auction if a change request by one or more applicants in the Contention Set is pending, but believes that in most instances the Auction should be able to proceed without further delay."</p> <p>Let me know if you have any questions.</p> <p>Thank you and best regards,</p> <p>Jared Erwin New gTLD Operations</p>

EXHIBIT C-39

1 Jeffrey A. LeVee (State Bar No. 125863)
 jlevee@Jonesday.com
 2 Eric Enson (State Bar No. 204447)
 eenson@jonesday.com
 3 Charlotte Wasserstein (State Bar No. 279442)
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8 Attorneys for Defendant
 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND NUMBERS
 9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13 RUBY GLEN, LLC,

14 Plaintiff,

15 v.

16 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND
 17 NUMBERS,

18 Defendant.
 19
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Case No. 2:16-cv-5505 PA (ASx)

Assigned for all purposes to the
 Honorable Percy Anderson

**DECLARATION OF JOSE
 IGNACIO RASCO III IN
 SUPPORT OF DEFENDANT
 ICANN'S OPPOSITION TO
 PLAINTIFF'S *EX PARTE*
 APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER**

DECLARATION OF JOSE IGNACIO RASCO III

I, Jose Ignacio Rasco III, declare as follows:

1. I am the Chief Financial Officer and a manager of NU DOTCO, LLC (“Nu Dotco”). I have personal knowledge of the facts set forth below and if called upon as a witness, I could and would testify competently thereto.

2. On March 19, 2012, Nu Dotcoco was formed as an LLC pursuant to the laws of the State of Delaware.

3. Nu Dotco was formed for the specific purpose of submitting applications to ICANN to acquire rights to operate certain generic top-level domains (“gTLDs”).

4. In June 2012, Nu Dotco applied for the .WEB gTLD, among others.

5. Nu Dotco’s application to ICANN designated me as a manager and the Chief Financial Officer of Nu Dotco, Juan Diego Calle as a manager and the Chief Executive Officer of Nu Dotco, and Nicolai Bezsonoff as a manager and the Chief Operating Officer of Nu Dotco. As officers and managers, Mr. Calle, Mr. Bezsonoff and I have been, and are, responsible for the overall affairs of Nu Dotco. Nu Dotco’s .WEB application also listed me as “Primary Contact” at Nu Dotco and, as a backup, Mr. Bezsonoff as “Secondary Contact.”

6. There have been no changes or amendments made to Nu Dotco’s management since the time that Nu Dotco submitted its .WEB application to ICANN. Mr. Calle, Mr. Bezsonoff, and I remain the only managers and officers of Nu Dotco.

7. Nu Dotco’s application to ICANN designated those “shareholders” (i.e. members) holding at least 15% of the “shares” (i.e. membership interests) of Nu Dotco to be Domain Marketing Holdings, LLC and NUCO LP, LLC. Those entities were also the only members of Nu Dotco.

8. There have been no changes or amendments made to Nu Dotco’s membership, nor has any transfer of membership otherwise occurred, since the time

1 that Nu Dotco submitted its application to ICANN. Domain Marketing Holdings,
2 LLC and NUCO LP, LLC remain the only members of Nu Dotco.

3 9. Because there have been no changes in management, control or
4 ownership of Nu Dotco since Nu Dotco submitted its application to ICANN there
5 are no documents that memorialize any such changes.

6 10. By February 2014, Nu Dotco's .WEB application was placed by
7 ICANN in a contention set with seven other applications, including the .WEB
8 application submitted by Ruby Glen LLC. In April 2016, ICANN scheduled an
9 auction to resolve the contention set for July 27, 2016.

10 11. On June 7, 2016, I replied to an e-mail from Jon Nevett of Ruby Glen
11 LLC, which I understand was attached as Exhibit A to a declaration submitted by
12 Mr. Nevett in connection with these proceedings ("June 7 Response"). In my June
13 7 Response, I stated that "Nicolai [Bezsonoff] is at NSR full time and no longer
14 involved with our TLD applications. I'm still running our program and Juan
15 [Calle] sits on the board with me and several others. Based on your request, I went
16 back to check with all the powers that be and there was no change in response and
17 will not be seeking an extension."

18 12. What I meant in my June 7 Response with respect to "Nicolai" was
19 that, in addition to his duties as an officer and manager of Nu Dotco, which are
20 limited at this point because Nu Dotco has not been awarded the .WEB gTLD, Mr.
21 Bezsonoff is employed by Neustar, Inc. (stock ticker symbol: NSR), a registry
22 services provider that acquired Mr. Bezsonoff's previous employer, .CO Internet,
23 the operator of the .co top-level domain (country code TLD for Colombia), in April
24 2014. Nu Dotco selected Neustar as its registry services provider to assist Nu
25 Dotco with operation of .WEB if Nu Dotco is awarded the TLD. I did not intend to
26 convey that there had been any change in Mr. Bezsonoff's duties or responsibilities
27 as an officer and manager of Nu Dotco because there has been no such change since
28 Nu Dotco submitted its .WEB application to ICANN. He, Mr. Calle, and I continue

1 to serve jointly as managers of Nu Dotco; Mr. Bezsonoff also continues as backup
2 to my role as Primary Contact on the Nu Dotco application.

3 13. What I meant in my June 7 response with respect to “several others”
4 was in reference to there being others involved in the Nu Dotco managers’ decision
5 making process regarding management of our TLD investments, namely, other
6 beneficial owners, whose opinions I often seek and respect. I did not intend to
7 convey that there had been any change to Nu Dotco’s officers, owners or members
8 because there has been no such change since Nu Dotco submitted its .WEB
9 application to ICANN.

10 14. What I meant in my June 7 response with respect to “the powers that
11 be” was another reference to the beneficial owners of Nu Dotco described in the
12 paragraph above. As a manager, I naturally seek to ensure that the owners are
13 satisfied with how the company is being managed. I did not intend to convey that
14 there had been any change to Nu Dotco’s officers, owners or members because
15 there has been no such change since Nu Dotco submitted its .WEB application to
16 ICANN.

17 15. Finally, I believe that the context of my private, informal statements to
18 Mr. Nevett in my June 7 Response is relevant to the words I used. At that time, Mr.
19 Nevett had contacted me on several occasions to try to persuade me to have Nu
20 Dotco participate in a private resolution of the .WEB contention set. My intent in
21 this private email was to politely dissuade Mr. Nevett from continuing to pursue the
22 issue, but, at the same time, not to create any ill will between us. This was merely
23 what I viewed as a polite response to a competitor with whom neither I nor Nu
24 Dotco had any duty to provide information.

25 16. I confirmed the fact that Nu Dotco has not undergone any change in
26 management, control or ownership in a July 8, 2016 note to ICANN’s Ombudsman,
27 Chris LaHatte, wherein I stated: “Neither the governance, management nor the
28 ownership in Nu Dotcoco has changed.” I also stated: “There are no new

1 'directors,' nor have any left the company, and while the managers are ultimately
2 responsible for the LLC, as a Manager, I take my duties very seriously and for
3 major decisions, I confer with the Members (i.e. shareholders), which again for
4 clarification, have never changed. I hope this clarification puts this matter to rest."

5 17. I also confirmed the fact that Nu Dotco has not undergone any change
6 in management, control or ownership by telephone to Christine Willett of ICANN
7 on July 8, 2016, and confirmed the same via email to Ms. Willett on July 11, 2016.

8 I swear under penalty of perjury under the laws of the United States that the
9 foregoing is true and correct. Executed this 25th day of July, 2016.


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11 By: 
12 _____
13 Jose Ignacio Rasco III
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EXHIBIT C-40

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8 Attorneys for Defendant
 9 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND NUMBERS

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12
 13 RUBY GLEN, LLC,
 14 Plaintiff,
 15 v.
 16 INTERNET CORPORATION FOR
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 17 NUMBERS,
 18 Defendant.

Case No. 2:16-cv-5505 PA (ASx)
 Assigned for all purposes to the
 Honorable Percy Anderson

**DECLARATION OF CHRISTINE
 WILLETT IN SUPPORT OF
 ICANN'S OPPOSITION TO
 PLAINTIFF'S *EX PARTE*
 APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER**

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DECLARATION OF CHRISTINE WILLETT

I, Christine Willett, declare as follows:

1. I am the Vice President, gTLD Operations, Global Domains Division of the Internet Corporation for Assigned Names and Numbers (“ICANN”), the defendant in this action. I have personal knowledge of the matters set forth herein and am competent to testify as to those matters. I make this declaration in support of ICANN’s Opposition to Plaintiff Ruby Glen LLC’s (“Ruby Glen’s”) *Ex Parte* Application For A Temporary Restraining Order.

2. ICANN is a California non-profit public benefit corporation that oversees the technical coordination of the Internet’s domain name system (“DNS”) on behalf of the Internet community, ensuring the DNS’s continued security, stability and integrity. The DNS’s essential function is to convert easily-remembered domain names, such as “uscourts.gov” or “icann.org,” into numeric IP addresses understood by computers. The portion of a domain name to the right of the last dot (such as, “.gov” and “.org”) is known as a generic top-level domain (“gTLD”).

3. Throughout its history, ICANN has sought to expand the number of gTLDs to promote consumer choice and competition. In 2012, ICANN launched a “New gTLD Program” application round, in which it invited any interested party to apply for the creation of a new gTLD and for the opportunity to be designated as the operator of that gTLD. As the operator, the applicant would be responsible for managing the assignment of names within the gTLD and maintaining the gTLD’s database of names and IP addresses.

4. In connection with the New gTLD Program, ICANN published an Applicant Guidebook (“Guidebook”), which prescribes the requirements for new gTLD applications to be approved, and the criteria by which they are evaluated. The Guidebook was developed in a years-long public consultation process in which numerous versions were published for public comment and revised based on

1 comments received from the public. A true and correct copy of the Guidebook is
2 attached to the declaration of Paula Zecchini (“Zecchini Decl.”) as Exhibit C.

3 5. In my role as Vice President, gTLD Operations, I have been
4 responsible for overseeing the evaluation of the 1,930 new gTLD applications that
5 ICANN received in 2012 as part of ICANN’s New gTLD Program.

6 6. In June 2012, Ruby Glen, Nu Dotco, and five other applicants applied
7 for .WEB. Another applicant applied for .WEBS. The seven applications for
8 .WEB and the remaining application for .WEBS passed all applicable evaluations
9 and were placed in a contention set (“Contention Set”), pursuant to the procedures
10 set forth in the Guidebook.

11 7. Upon the resolution of several accountability mechanisms relating to
12 the composition of the Contention Set, ICANN notified all active members of the
13 Contention Set on April 27, 2016 that the auction of last resort was scheduled for a
14 July 27, 2016 auction date (“Auction”). ICANN also provided them with
15 instructions and deadlines to participate in the Auction.

16 8. The auction rules governing indirect contention sets (“Auction Rules”)
17 set forth a prescribed and limited period of time within which members of a
18 contention set may request a postponement of an auction: “an applicant may
19 request an advancement/postponement request via submission of the Auction Date
20 Advancement/Postponement Request Form. The form must be submitted at least 45
21 days prior to the scheduled Auction Date and ICANN must receive a request from
22 each member of the contention set.” (Zecchini Decl., Ex. J [Auction Rules] ¶ 10.)
23 The last day to file any such requests for this Contention Set was June 12, 2016,
24 namely 45 days before July 27, 2016. ICANN did not receive any such request by
25 that date. After the deadline had passed, ICANN received requests, via email and
26 correspondence, to postpone the Auction from three of the seven applicants for
27 .WEB in the Contention Set (Ruby Glen, Radiz FZC, and Schlund Technologies
28 GmbH) on July 11, 2016. This correspondence did not comply with the Auction

1 Rules' requirements regarding postponement requests because they were sent
2 nearly a month after the deadline to do so passed, and requests were not submitted
3 by all of the members of the Contention Set, which is required for ICANN to
4 consider whether to postpone the Auction pursuant to such requests.

5 9. The application for new gTLDs requires applicants to provide the
6 names and positions of "directors," "officers and partners" and "shareholders
7 holding at least 15% of shares." (*See* Zecchini Decl., Ex. E [Nu Dot's application].)
8 This information is required so that ICANN can conduct a thorough background
9 check into the persons or entities that, on a practical level, control or own the
10 applicant entity. The precise title or position of each listed person or entity is not of
11 the utmost importance, so long as the persons or entities who control or own the
12 applicant are listed. Indeed, the terminology of the application form is tailored
13 towards a corporation, as opposed to an LLC such as Nu Dotco. Understandably,
14 Nu Dotco (like many other LLC applicants) sought to provide information about its
15 management and ownership that was analogous to the corporate information
16 requested. Nu Dotco listed its CEO, COO, and CFO by title and also as its
17 Directors (referring to them as its "managers"). Like many other applications
18 submitted by LLCs, this showed that those were the persons in control of the
19 company for all practical purposes (as a director would be at a corporation).

20 10. As for the background check, ICANN contracts with
21 PricewaterhouseCoopers to conduct a background check of each applicant. ICANN
22 also ensures that no person or entity that owns or controls an applicant for a new
23 gTLD is on the list of persons and entities with which the U.S. Office of Foreign
24 Assets Control restricts the ability to do business absent a license. Both checks
25 were conducted with respect to the names listed in Nu Dotco's application, as was
26 done with the same information listed in all other new gTLD applications.

27 11. Even if Nu Dotco had submitted a change request indicating that it had
28 undergone a change of control and/or ownership, Nu Dotco would not have been

1 disqualified from the auction set to take place on July 27, 2016. In fact, ICANN
2 has received over 2,700 application change requests. Nearly 800 of those requests
3 made changes to the responses provided to questions pertaining to ownership or
4 control of the applicant. No application has been disqualified to date in connection
5 with a change to responses to those questions.

6 12. ICANN was first notified that Ruby Glen had concerns that Nu Dotco
7 had undergone a change of control or ownership on June 23, 2016 by way of an
8 email from Donuts Inc.'s CEO, Jon Nevett, sent to ICANN's customer portal.
9 Donuts is the ultimate parent company of Ruby Glen. (ECF 4.) ICANN responded
10 that it was "reviewing the information provided" and would follow up with Nu
11 Dotco as needed. ICANN also informed Mr. Nevett that Ruby Glen should
12 continue to follow the "standard auction process" and that ICANN would inform
13 Mr. Nevett if any postponement of the Auction was going to take place. A true and
14 correct copy of that email exchange is attached hereto as **Exhibit A**.

15 13. In view of Ruby Glen's concerns, ICANN immediately investigated.
16 Upon receipt of Mr. Nevett's June 23, 2016 email, I instructed my staff to
17 investigate the claims raised therein. On June 27, 2016, a member of my staff sent
18 an email to Nu Dotco, asking it to confirm that "there have not been changes to
19 your application or the NU DOT CO LLC organization that need to be reported to
20 ICANN." Mr. Jose Ignacio Rasco III, Nu Dotco's Chief Financial Officer,
21 responded: "I can confirm that there have been no changes to the NU DOT CO
22 LLC organization that would need to be reported to ICANN." A true and correct
23 copy of this email exchange is attached hereto as **Exhibit B**.

24 14. One purpose of this investigation was to determine whether Nu Dotco
25 had any previously undisclosed owners or managers that should be subject to
26 background checks. I also instructed my staff that, if appropriate in view of the
27 investigation, they should request that Nu Dotco update its application with respect
28 to any change in ownership and/or control.

1 15. On June 29, 2016, during the ICANN56 Public Meeting in Helsinki, I
2 met with Mr. Nevett to discuss a number of business matters, including his claims
3 regarding Nu Dotco's management. During that meeting, Mr. Nevett requested that
4 the Auction be postponed because of his concerns that Nu Dotco had undergone a
5 change in ownership or management. During this meeting, I informed Mr. Nevett
6 that my team had already investigated the alleged management changes with Nu
7 Dotco's representative, and that Nu Dotco asserted that no such changes had
8 occurred. I further informed Mr. Nevett that, based on the fact that ICANN had
9 found no evidence of such a management change, ICANN was continuing to
10 proceed with the Auction as scheduled.

11 16. During my meeting with Mr. Nevett at the ICANN56 Public Meeting
12 in Helsinki, I suggested to Mr. Nevett that if he was not satisfied with ICANN's
13 course of action he had the option to invoke one of ICANN's accountability
14 mechanisms. Mr. Nevett indicated that he intended to contact ICANN's
15 Ombudsman, Mr. Chris LaHatte ("Ombudsman") while in Helsinki. He did so, and
16 the Ombudsman then asked me for the contact information for Nu Dotco's
17 application contact, Mr. Jose Ignacio Rasco III, which I provided. On July 6, 2016,
18 the Ombudsman sent an email to Nu Dotco on which I was blind-copied, inquiring
19 as to whether any change in ownership/control had taken place and noting that he
20 had "opened an ombudsman complaint file about this matter." A true and correct
21 copy of that email is attached hereto as **Exhibit C**, and a true and correct copy of
22 the email exchange that followed between the Ombudsman and Mr. Nevett is
23 attached hereto as **Exhibit D**.

24 17. On July 7, 2016, the Ombudsman sent another email to Mr Rasco
25 about this issue, and Mr. Rasco's response stated: "There have been no changes to
26 the Nu Dotco, LLC application. Neither the governance, management nor the
27 ownership in Nu Dotco has changed." A true and correct copy of that email
28 exchange is attached hereto as **Exhibit E**. At the time, on July 7, 2016, I was not

1 aware that Mr. Rasco had responded to the Ombudsman's email.

2 18. On July 8, 2016, I emailed Mr. Rasco to again inquire as to whether
3 Nu Dotco had undergone any change in ownership or control. A true and correct
4 copy of that email is attached hereto as **Exhibit F**. Mr. Rasco called me within a
5 few hours, and stated that neither the managers nor the members of the Nu Dotco
6 organization had changed since the application's submission. He further explained
7 that his June 27, 2016 email through the applicant portal confirming the same had
8 been rather brief because he had been under the impression that ICANN was simply
9 conducting a routine and automatic check of all applicants within the Contention
10 Set prior to the Auction; it was not until the Ombudsman reached out to Mr. Rasco
11 that he realized there had been a complaint made to ICANN about a possible
12 change in Nu Dotco's control or ownership. He also explained that his email to "a
13 competing applicant," which ultimately gave rise to this controversy, was not
14 intended to suggest that any change in ownership or control had taken place,
15 because none had, as further discussed in Mr. Rasco's declaration, filed
16 concurrently herewith.

17 19. On July 8, 2016 (received by the Ombudsman on July 9, 2016), I
18 emailed the Ombudsman to again provide information as to ICANN's investigation
19 of the matter, including a summary of my July 8, 2016 phone call with Mr. Rasco.
20 That email stated, among other things, "As you know, my team had reached out to
21 NU DOT CO LLC previously, and we received confirmation that NU DOT's
22 application materials were still true and accurate. In an effort to be extremely
23 cautious, I reached out to Mr. Jose Ignacio Rasco (the application primary contact
24 for NU DOT's .WEB application) again today to ensure that our understanding of
25 his previous response was accurate." A true and correct copy of that email is
26 attached hereto as **Exhibit D**.

27 20. On July 11, 2016, Mr. Rasco emailed me and again confirmed that
28 "[n]either the ownership nor the control of [Nu Dotco] has changed since we filed

1 our application.” Mr. Rasco further explained that: “The Managers designated
2 pursuant to the company’s LLC operating agreement (the LLC equivalent of a
3 corporate Board) have not changed. And there have been no changes to the
4 membership of the LLC either.” A true and correct copy of that email is attached
5 hereto as **Exhibit F**.

6 21. It is not accurate to say that Ruby Glen’s inquiry to the Ombudsman
7 remains pending. In fact, the Ombudsman informed me on July 12, 2016 that he
8 had determined there was no reason to postpone the Auction because he found no
9 evidence of a change to the ownership or control of Nu Dotco. A true and correct
10 copy of the Ombudsman’s email in this regard is attached hereto as **Exhibit G**.

11 22. On July 13, 2016, ICANN informed Ruby Glen and all applicants in
12 the Contention Set that it had “investigated the matter” and “found no basis to
13 initiate the application change request process or postpone the auction.” A true and
14 correct copy of that letter is attached to the Declaration of Paula Zecchini as Exhibit
15 G.

16 23. The Ombudsman re-confirmed that he has concluded his investigation
17 on July 23, 2016. A true and correct copy of the Ombudsman’s email in this regard
18 is attached hereto as **Exhibit H**.

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I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of July, 2016 at Los Angeles, California.

By: 
Christine Willett

EXHIBIT C-41

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8 Attorneys for Defendant
 INTERNET CORPORATION FOR
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10 UNITED STATES DISTRICT COURT
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13 RUBY GLEN, LLC,
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Case No. 2:16-cv-5505 PA (ASx)
 Assigned for all purposes to the
 Honorable Percy Anderson

**DECLARATION OF CHRISTINE
 WILLETT IN SUPPORT OF
 ICANN'S OPPOSITION TO
 PLAINTIFF'S *EX PARTE*
 APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER**

EXHIBIT F

Case **00226316**

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Case Detail

▼ **Case Information**

Case Number	00226316 [View Hierarchy]	Internal Status	Resolved
Account Name	NU DOT CO LLC	Status	Resolved
Contact Name	Jose Ignacio Rasco	Case Close Reason	Response Provided
Contact Type		Urgency	Moderate
Application ID	1-1296-36138	Severity	Sev 3
Registry		Case Record Type	General Case [Change]
Case Origin	Email	Category	String Contention
Web Name	Jose Ignacio Rasco	Sub Category	Auction Process
Web Email	[REDACTED]	Case Owner	Jared Erwin [Change]
Multiple Contacts Found	<input checked="" type="checkbox"/>	Assigned to	Jared Erwin
Visible in Self-Service Portal	<input checked="" type="checkbox"/>	Parent Case	
Suppress Notification	<input type="checkbox"/>		
Updates On Case	<input type="checkbox"/>		
SLA Resolution status	SLA at Risk		
Phone			

Subject Re: ICANN Question regarding your .WEB New gTLD Application

Description Dear Christine:

Thank you for taking the time to speak with me last Friday, July 8, concerning the complaint that another applicant for the .web TLD made to the ICANN Ombudsman (Chris La Hatto) relating to an alleged change in the composition of Nu Dotco, LLC's "Board". I'm writing to reiterate the information I provided you on our call so the facts are clear.

Neither the ownership nor the control of Nu Dotco, LLC has changed since we filed our application. The Managers designated pursuant to the company's LLC operating agreement (the LLC equivalent of a corporate Board) have not changed. And there have been no changes to the membership of the LLC either. As you know, I provided this same information to Mr. La Hatto via email on July 7. Attached is a copy of that email for your records.

My understanding from our discussion is that ICANN is satisfied with the information I provided and has concluded there is no basis for any complaint, re-evaluation, or other process relating to our application, nor for any delay in the ICANN auction. Please let me know if that is not the case.

As you know, Rule 10 of the Auction Rules for New gTLDs (2014-11-03) requires (i) that "each and every member of the contention set" join in a request for postponement of the auction and (ii) that they do so by specified dates. The applicable date for any request to postpone the .web auction has come and gone. As we discussed, I share your understanding that the complaint was raised in order to get more time to convince us to resolve the contention set via a private auction, even though we have made it very clear to them (and all other applicants) that we will not participate in a private auction and that we are committed to participating in ICANN's auction as scheduled.

I appreciate your time and attention in getting this resolved. Please let me know immediately if ICANN has any other questions or concerns regarding this matter.

Regards,

Jose I. Rasco
Nu Dotco, LLC

> On Jul 8, 2016, at 6:22 PM, Christine Willett <christine.willett@icann.org> wrote:
>
> Dear Mr. Rasco,
>
> I'm not sure if you remember me or not. We spoke about 2 years ago regarding your company's .HEALTH application under the New gTLD Program.
>
> I'm contacting you regarding a question pertaining to your NU DOT CO LLC application for .WEB. I know that the New gTLD Program Team has already contacted you directly, via Case #220793. If you would please contact me at your earliest convenience, I would greatly appreciate it.
>
> I can be reached on my cell at [REDACTED]
>
>
> Best,
> Christine
>
>
>
> Christine A. Willett
> Vice President, GDD Operations
> Global Domains Division

EXHIBIT C-42

DI PRO

TLD HEALTH CHECK

ABOUT

ADVERTISE



RSS Feed



Twitter Feed

Is Verisign .web applicant's secret sugar daddy?

Kevin Murphy, July 14, 2016, 18:24:37 (UTC), Domain Registries

C-42

The fiercely contested .web gTLD is being forced into a last-resort auction and some people seem to think a major registry player is behind it.

Two .web applicants — Radix ([pdf](#)) and Schlund ([pdf](#)) — this week wrote to ICANN to demand that the .web auction, currently planned for July 27, be postponed.

They said the sale should be delayed to give applicants time “to investigate whether there has been a change of leadership and/or control” at rival applicant Nu Dot Co LLC.

Nu Dot Co is a new gTLD investment vehicle headed up by Juan Diego Calle, who launched and ran .CO Internet until it was sold to Neustar a couple of years ago.

I gather that some applicants believe that Nu Dot Co's .web application is now being bankrolled by a larger company with deeper pockets.

The two names I've heard bandied around, talking to industry sources this week, are Verisign and Neustar.

Nobody I've talked to has a shred of direct evidence either company is involved and Calle declined to comment.

So is this paranoia or not?

There are a few reasons these suspicions may have come about.

First, the recent revelation that successful .blog applicant Primer Nivel, a no-name Panama entity with a Colombian connection, was actually [secretly being bankrolled by WordPress](#), has opened eyes to the possibility of proxy bidders.

It was only after the .blog contention set was irreversibly settled that the .blog contract changed hands and the truth became known.

Some applicants may have pushed the price up beyond the \$19 million winning bid — making the rewards of losing the private auction that much higher — had they known they were bidding against a richer, more motivated opponent.

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Second, sources say the .web contention set had been heading to a private auction — in which all losing applicants get a share of the winning bid — but Nu Dot Co decided to back out at the last minute.

Under ICANN rules, if competing applicants are not able to privately resolve their contention set, an ICANN last-resort auction must ensue.

Third, this effective vetoing of the private auction does not appear to fit in with Nu Dot Co's strategy to date.

It applied for 13 gTLDs in total. Nine of those have already gone to auctions that Nu Dot Co ultimately lost (usually reaping the rewards of losing).

The other four are either still awaiting auction or, in the case of .corp, have been essentially rejected for technical reasons.

It usually only makes sense to go to an ICANN last-resort auction — where the proceeds all go to ICANN — if you plan on winning or if you want to make sure your competitors do not get a financial windfall from a private auction.

Nu Dot Co isn't actually an operational registry, so it doesn't strictly have competitors.

That suggests to some that its backer is an operational registry with a disdain for new gTLD rivals. Verisign, in other words.

Others think Neustar, given the fact that its non-domains business is [on the verge of imploding](#) and its previous acquisition of .CO Internet from Calle.

I have no evidence either company is involved. I'm just explaining the thought process here.

According to its application, two entities own more than 15% of Nu Dot Co. Both — Domain Marketing Holdings, LLC and NUCO LP, LLC — are Delaware shell corporations set up via an agent in March 2012, shortly before the new gTLD application filing deadline.

Many in the industry are expecting .web to go for more than the [\\$41.5 million GMO paid for .shop](#). Others talk down the price, saying “web” lacks the cultural impact it once had.

But it seems we will all find out later this month.

Responding to the letters from Schlund and Radix, ICANN yesterday said that it had no plans to postpone the July 27 last-resort auction.

[Afilias scraps plan to scrap Whois](#)

[auDA role "could have killed me" says resigning domainer](#)

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[Marby ponders emergency powers to avoid fragmented Whois](#)

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[Australia's top publishing firms Whois data](#)

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All seven applicants had to submit a postponement form by June 12 if they wanted a delay, ICANN informed them in a letter ([pdf](#)), and they missed that deadline.

They now have until July 20 to either resolve the contention privately or put down their deposits, ICANN said.

The applicants for .web, aside from Nu Dot Co, are Google, Donuts, Radix, Schlund, Web.com and Afilias.

Due to a [string confusion ruling](#), .webs applicant Vistaprint will also be in the auction.

Related posts (automatically generated)


[Last resort gTLD auction loser wants share of \\$5m winning bid](#)

[.web auction to go ahead after ICANN denies Donuts/Radix appeal](#)

[Verisign likely \\$135 million winner of .web gTLD](#)

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COMMENTS (8)

Donnym

July 14, 2016 at 8:58 pm

believe when .web finally comes out it will put the nail in the coffin for future extensions
MO

[Reply](#)

Chris Rice

July 16, 2016 at 12:37 am

Donnym

I still believe nGTLDS will ultimately succeed but I think I was a mistake on Frank Schilling's part to put so much weight behind WEB

means almost the exact same thing as NET but is launching after NET is already established

COM is seen as a generic extension and is not limited to people and businesses focused on WEB sites or the Internet

unders and has every company with an online presence probably has a WEB site hosted on the Internet but again if it didn't work for net don't think it will work for web

Chris

[Reply](#)

Rubens Kuhl

July 18, 2016 at 4:45 am

The trend was Google to accept going to private auction only when they open to the TLD... Radix and Schlund already made clear they were more willing to get some money for losing than fighting for it. Donuts and Afilias are usually more of sharpshooters than willing to make a bet so this is likely to be a contention between the sugar daddy whoever that might be and Web.com

[Reply](#)

YamadaMedia

July 19, 2016 at 5 02 pm

d be surprised if Google didn't pu up a large amount of money bidding for WEB when i comes down o i They are rying o gain a foo hold in o he regis rar marke wi h Google Domains Con rolling he backend for WEB would make sense for gaining domain marke share and appealing o small businesses

Perhaps Google is he secre sugar daddy? 😊

[Reply](#)

Joseph Peterson

July 20, 2016 at 6 24 am

2 years ago during a one-off paid consul ing session advised 1 clien o go af er WEB as vigorously as possible Haven spoken o ha clien a all in he 2 years since nor do expec o advise hem in he fu ure

have no idea whe her hey ll follow my advice or whe her hey d win in any case And have no financial in eres in he ou come Bu do know hey re in he running and m curious o wha ex en hey were lis ening

My clien was nei her Neus ar nor Verisign and have no knowledge of whe her hose 2 companies are pursuing WEB

[Reply](#)

Rainmaker
 July 24, 2016 at 9 28 am

f were your clien would like you o keep comple ely quie about me and wha we discussed Bu maybe ha wasn included in your fee?

[Reply](#)

Joseph Peterson
 July 26, 2016 at 2 38 pm

@Rainmaker

This clien asked for my opinion on public opics where ve expressed he same opinion publicly before and since And m cer ainly under no obliga ion o suppress my own opinion

Exac ly no hing is being disclosed about he clien s circums ances or plans n fac know scarcely any hing about hose They paid o lis en and said precious li le f were divulging priva e secre s hen d be abusing a clien s rus As m no m no

[Reply](#)

Rubens Kuhl

July 20, 2016 at 4 19 pm

We have jus passed he auc ion deposi deadline Besides one already wi hdrawn app from Vis aprin (hey have ano her) all o hers seem o be s ill in game

Bu since here is a cap for deposi s a \$2m which allows no only bids of \$20m bu any bid applican s ha made a \$2m deposi now have a week o consider if i s wor h \$20m \$50m \$200m...

[Reply](#)

ADD YOUR COMMENT

Name (required)

Mai (wi not be pub ished)
(required)

Web site (optiona)

Submit Comment

Notify me of followup comments via e-mail. You can also [subscribe](#) without commenting.

EXHIBIT C-43



Data Centre ▶ **Networks**

Someone (cough, cough VeriSign) just gave ICANN \$135m for the rights to .web

DNS overlord literally doubled its annual revenue in one day

By Kieren McCarthy in San Francisco 28 Jul 2016 at 23:13

17

SHARE ▼



Fast! Informative! Completely secure! ... The real worldwide web looks nothing like this

An unnamed organization just paid \$135m for the rights to sell ".web" domain names. This is three times the previous record of \$45m for .shop, and seven times the average auction price for top-level domains.

The massive price tag has raised eyebrows in the domain name industry, not least because one of the companies taking part in the bidding last week sued the non-profit running it, ICANN, in an effort to prevent the auction from going ahead.

Under the auction rules, all \$135m will now go into ICANN's coffers, to be added to the \$105m it has made from the auction of 15 other top-level domains. ICANN's total budget for 2016 stands at \$113m.

Although we know the identities of the seven bidders in the auction, the results have yet to be made public and industry insiders suspect that a company called Nu Dot Co, which has been accused of being a shell company, paid the extraordinary fee for control of .web.

The other bidders included Google and several large internet registry companies: Afilias, Donuts and Radix, as well as Schlund and Web.com.

Notably, Nu Dot Co was the only one of the seven to refuse to agree to a private auction where the proceeds would have been split between all the bidders, rather than go to an ICANN auction where the non-profit company receives all the money.

Peculiar

Donuts suspects something untoward is going on and used ICANN's appeal procedures in an effort to postpone the auction, without luck. Even more unusually, the ICANN board's governance committee [took just four days](#) to reject Donuts' request, when normally it takes over a month to make a decision.

When ICANN decided to push ahead with the auction, Donuts then [sued the organization](#), asking for a temporary restraining order on the grounds that it wasn't clear who owned Nu Dot Co and ICANN had failed in its duty to identify who was in control of the company.

Just three days later, Nu Dot Co's CFO and COO filed affidavits alongside two from ICANN senior executives claiming that nothing had changed since the company first made its application.

Verisign

Industry speculation is that the owner of the dot-com registry, Verisign, is secretly behind Nu Dot Co and plans to purchase .web in order to

remove what could be a serious competitor to its dot-com crown.

Earlier this week, in [paperwork](#) submitted to US financial watchdogs, VeriSign declared it will "pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016."

That suggests VeriSign coughed up \$130m for .web, and Nu Dot Co added \$5m to retain a stake.

Another slated possibility is that publicly listed company Neustar – which previously bought the .co top-level registry from the Nu Dot Co executive team – is behind the company.

Whoever bought .web will be listed [on this ICANN page](#), when the DNS overseer gets round to updating it.

Whatever is going on behind the scenes, few in the industry can make sense of the \$135m price tag. With domain names averaging between \$10 and \$50, the company would have to become one of the largest registries on the internet, selling millions of domains under .web, in order to make a profit.

Across the 1,000 top-level domains that have been added to the internet in the past year, the average registration figure is just 21,000 names. Whichever way you look at it, paying \$135m for .web does not make obvious financial sense – so there has to be a significant element of corporate strategy and very deep pockets for the auction price to make sense. ®

Tips and corrections

17 Comments



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EXHIBIT C-44



The Internet Corporation for Assigned Names and Numbers

13 July 2016

Mr. Jose Ignacio Rasco, NU DOT CO LLC
 Ms. Sarah Falvey, Charleston Road Registry Inc.
 Mr. Robert Wiegand, Web.com Group, Inc
 Mr. Brijesh Joshi, DotWeb Inc.
 Mr. Daniel Schindler, Ruby Glen, LLC
 Mr. John Kane, Afilias Domains No. 3 Limited
 Mr. David Barron, Vistaprint Ltd
 Mr. Thomas Moerz, Schlund Technologies GmbH
 Mr. Jonathon Nevett, Ruby Glen, LLC

Re: .WEB/.WEBS Auction on 27 July 2016

Dear Members of the .WEB/.WEBS Contention Set,

We are writing in regards to inquiries we have received concerning potential changes of control of NU DOT CO LLC, an applicant in the .WEB/.WEBS contention set, and requests to postpone the auction to investigate the matter. We would like to provide some clarification regarding this issue and how it may or may not impact the .WEB/.WEBS auction scheduled for 27 July 2016.

Firstly, as a reminder, in regards to a request for postponement, Rule 10 of the Auction Rules for Indirect Contention states:

“...Postponement requests must be submitted by all members of the Contention Set by the due date specified within the ICANN Customer Portal, generally twenty eight (28) days after receipt of Intent to Auction notice from ICANN. If a postponement request is not submitted by the due date specified within the ICANN Customer Portal or is not accommodated by ICANN, an applicant may request an advancement/postponement request via submission of the Auction Date Advancement/Postponement Request Form. The form must be submitted at least 45 days prior to the scheduled Auction Date and ICANN must receive a request from each member of the contention set...” (<https://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf>)

The date to submit the postponement form passed on 12 June 2016, and we did not receive consensus from the contention set. As such, no postponement was granted.

Secondly, in regards to potential changes of control of NU DOT CO LLC, we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction.



The Internet Corporation for Assigned Names and Numbers

Finally, as you are aware, ICANN provided confirmation to all members of the .WEB/.WEBS contention set on 6 July 2016 that the auction will be proceeding as scheduled on 27 July 2016. Please follow all instructions provided to you by Power Auctions, the Auction Manager, regarding next steps, including mini and mock auctions as well as the deposit deadline.

Regarding the deposit deadline, Rule 28 of the Auction Rules for Indirect Contention states:

“All wires and all instructions associated with Deposits, including instructions regarding the allocation of funds among Contention Sets from wires and funds rolled over from previous Auctions, must be received no later than 16:00 UTC on the day that is seven (7) calendar days prior to the Commencement Date of the relevant Auction (the “Deposit Deadline”), unless this deadline is waived, at the Auction Manager’s sole discretion.”

As per Rule 28, the Deposit Deadline for the upcoming auction is 16:00 UTC on 20 July 2016.

While the auction is currently set to proceed as scheduled, applicants may continue to work toward self-resolution of the contention set. Applicants may withdraw their application up until the Deposit Deadline noted above. Once the Deposit Deadline is reached, there is a quiet period in which applicants are no longer allowed to withdraw their application until after conclusion of the auction.

I hope this information has been helpful to you. Please do not hesitate to respond with any additional questions or concerns. Should you have specific questions regarding next steps for the auction, you may submit a case to globalsupport@icann.org, and someone from my team will contact you promptly.

Sincerely,

Christine A. Willett
Vice President, GDD Operations
ICANN

EXHIBIT C-45

VERISIGN INC/CA

FORM 10-Q (Quarterly Report)

Filed 07/28/16 for the Period Ending 06/30/16

Address 12061 BLUEMONT WAY
ATTN: GENERAL COUNSEL
RESTON, VA 20190

Telephone 7039483200

CIK 0001014473

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SIC Code 7371 - Computer Programming Services

Industry Software & Programming

Sector Technology

Fiscal Year 12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2016

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 000-23593

VERISIGN, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

12061 Bluemont Way, Reston, Virginia

(Address of principal executive offices)

94-3221585

(I.R.S. Employer
Identification No.)

20190

(Zip Code)

Registrant's telephone number, including area code: (703) 948-3200

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.): YES NO

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class
Common stock, \$.001 par value

Shares Outstanding as of July 22, 2016
106,766,527

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PART I—FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

As required under Item 1—Financial Statements included in this section are as follows:

Financial Statement Description	Page
Condensed Consolidated Balance Sheets as of June 30, 2016 and December 31, 2015	4
Condensed Consolidated Statements of Comprehensive Income for the Three and Six Months Ended June 30, 2016 and 2015	5
Condensed Consolidated Statements of Cash Flows for the Six Months Ended June 30, 2016 and 2015	6
Notes to Condensed Consolidated Financial Statements	7

VERISIGN, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except par value)
(Unaudited)

	June 30, 2016	December 31, 2015
<u>ASSETS</u>		
Current assets:		
Cash and cash equivalents	\$ 170,966	\$ 228,659
Marketable securities	1,736,030	1,686,771
Accounts receivable, net	15,086	12,638
Other current assets	22,573	39,856
Total current assets	<u>1,944,655</u>	<u>1,967,924</u>
Property and equipment, net	277,942	295,570
Goodwill	52,527	52,527
Deferred tax assets	13,205	17,361
Other long-term assets	25,844	24,355
Total long-term assets	<u>369,518</u>	<u>389,813</u>
Total assets	<u>\$ 2,314,173</u>	<u>\$ 2,357,737</u>
<u>LIABILITIES AND STOCKHOLDERS' DEFICIT</u>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 144,361	\$ 188,171
Deferred revenues	699,456	680,483
Subordinated convertible debentures, including contingent interest derivative	632,308	634,326
Total current liabilities	<u>1,476,125</u>	<u>1,502,980</u>
Long-term deferred revenues	288,232	280,859
Senior notes	1,236,272	1,235,354
Deferred tax liabilities	326,112	294,194
Other long-term tax liabilities	114,762	114,797
Total long-term liabilities	<u>1,965,378</u>	<u>1,925,204</u>
Total liabilities	<u>3,441,503</u>	<u>3,428,184</u>
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock—par value \$.001 per share; Authorized shares: 5,000; Issued and outstanding shares: none	—	—
Common stock—par value \$.001 per share; Authorized shares: 1,000,000; Issued shares: 323,941 at June 30, 2016 and 322,990 at December 31, 2015; Outstanding shares: 107,180 at June 30, 2016 and 110,072 at December 31, 2015	324	323
Additional paid-in capital	17,279,468	17,558,822
Accumulated deficit	(18,404,933)	(18,625,599)
Accumulated other comprehensive loss	(2,189)	(3,993)
Total stockholders' deficit	<u>(1,127,330)</u>	<u>(1,070,447)</u>
Total liabilities and stockholders' deficit	<u>\$ 2,314,173</u>	<u>\$ 2,357,737</u>

See accompanying Notes to Condensed Consolidated Financial Statements.

VERISIGN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands, except per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Revenues	\$ 286,466	\$ 262,539	\$ 568,342	\$ 520,961
Costs and expenses:				
Cost of revenues	48,753	48,221	99,335	96,574
Sales and marketing	19,757	24,329	39,784	46,711
Research and development	14,288	16,347	31,031	33,499
General and administrative	27,401	24,677	55,158	50,975
Total costs and expenses	110,199	113,574	225,308	227,759
Operating income	176,267	148,965	343,034	293,202
Interest expense	(28,859)	(28,503)	(57,663)	(50,520)
Non-operating income (loss), net	1,709	3,201	4,830	(2,354)
Income before income taxes	149,117	123,663	290,201	240,328
Income tax expense	(35,907)	(30,652)	(69,535)	(59,079)
Net income	113,210	93,011	220,666	181,249
Realized foreign currency translation adjustments, included in net income	85	(291)	85	(291)
Unrealized gain on investments	851	147	1,786	234
Realized gain on investments, included in net income	(1)	(69)	(67)	(73)
Other comprehensive income (loss)	935	(213)	1,804	(130)
Comprehensive income	\$ 114,145	\$ 92,798	\$ 222,470	\$ 181,119
Earnings per share:				
Basic	\$ 1.05	\$ 0.80	\$ 2.03	\$ 1.56
Diluted	\$ 0.87	\$ 0.70	\$ 1.68	\$ 1.36
Shares used to compute earnings per share				
Basic	108,067	115,656	108,829	116,394
Diluted	130,588	133,251	131,084	133,546

See accompanying Notes to Condensed Consolidated Financial Statements.

VERISIGN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2016	2015
Cash flows from operating activities:		
Net income	\$ 220,666	\$ 181,249
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation of property and equipment	29,417	31,620
Stock-based compensation	22,891	22,129
Excess tax benefit associated with stock-based compensation	(12,708)	(11,366)
Unrealized (gain) loss on contingent interest derivative on Subordinated Convertible Debentures	(971)	4,311
Payment of contingent interest	(6,544)	(5,225)
Amortization of debt discount and issuance costs	6,590	5,941
Other, net	(1,414)	(1,099)
Changes in operating assets and liabilities		
Accounts receivable	(2,798)	(1,018)
Prepaid expenses and other assets	15,430	7,369
Accounts payable and accrued liabilities	(28,653)	(4,778)
Deferred revenues	26,346	41,247
Net deferred income taxes and other long-term tax liabilities	36,039	37,245
Net cash provided by operating activities	304,291	307,625
Cash flows from investing activities:		
Proceeds from maturities and sales of marketable securities	2,056,607	1,283,367
Purchases of marketable securities	(2,101,863)	(1,747,025)
Purchases of property and equipment	(13,458)	(21,891)
Other investing activities	206	(3,736)
Net cash used in investing activities	(58,508)	(489,285)
Cash flows from financing activities:		
Proceeds from issuance of common stock from option exercises and employee stock purchase plans	8,084	9,014
Repurchases of common stock	(324,235)	(335,885)
Proceeds from borrowings, net of issuance costs	—	492,237
Excess tax benefit associated with stock-based compensation	12,708	11,366
Net cash (used in) provided by financing activities	(303,443)	176,732
Effect of exchange rate changes on cash and cash equivalents	(33)	606
Net decrease in cash and cash equivalents	(57,693)	(4,322)
Cash and cash equivalents at beginning of period	228,659	191,608
Cash and cash equivalents at end of period	\$ 170,966	\$ 187,286
Supplemental cash flow disclosures:		
Cash paid for interest	\$ 57,636	\$ 42,839
Cash paid for income taxes, net of refunds received	\$ 13,994	\$ 14,342

See accompanying Notes to Condensed Consolidated Financial Statements.

VERISIGN, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. Basis of Presentation

Interim Financial Statements

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared by VeriSign, Inc. (“Verisign” or the “Company”) in accordance with the instructions to Form 10-Q pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and, therefore, do not include all information and notes normally provided in audited financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals and other adjustments) considered necessary for a fair presentation have been included. The results of operations for any interim period are not necessarily indicative of, nor comparable to, the results of operations for any other interim period or for a full fiscal year. These unaudited Condensed Consolidated Financial Statements should be read in conjunction with the Consolidated Financial Statements and related notes contained in Verisign’s fiscal 2015 Annual Report on Form 10-K (the “2015 Form 10-K”) filed with the SEC on February 19, 2016.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, *Revenue from Contracts with Customers*, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. The new standard will become effective for the Company on January 1, 2018. The standard permits the use of either the retrospective or cumulative effect transition method. The Company is evaluating the effect that ASU 2014-09 will have on its consolidated financial statements and related disclosures. The Company has not yet selected a transition method nor has it determined the effect of the standard on its ongoing financial reporting.

In February 2016, the FASB issued ASU No. 2016-02, *Leases*. The guidance introduces a lessee model that requires most leases to be reported on the balance sheet. This ASU will become effective for the Company on January 1, 2019 and requires the modified retrospective transition method. The Company is currently evaluating the impact of this ASU on its consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU No. 2016-09, *Improvements to Employee Share-Based Payment Accounting*, which simplifies several aspects of the accounting for share-based payment award transactions, including income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The ASU requires that excess tax benefits and tax deficiencies (the difference between the deduction for tax purposes and the compensation cost recognized for financial reporting purposes) be recognized as income tax expense or benefit in the Consolidated Statement of Comprehensive Income. This change may lead to increased volatility in the provision for income taxes. There are different transition methods for different aspects of the standard. The new standard will be effective for the Company on January 1, 2017 with early adoption permitted. The Company is evaluating the timing of adoption, transition methods and the effect that this ASU will have on its consolidated financial statements and related disclosures.

Note 2. Cash, Cash Equivalents, and Marketable Securities

The following table summarizes the Company's cash, cash equivalents, and marketable securities:

	June 30, 2016	December 31, 2015
	(In thousands)	
Cash	\$ 37,588	\$ 99,027
Money market funds	141,209	137,593
Time deposits	3,932	4,007
Debt securities issued by the U.S. Treasury	1,733,258	1,685,882
Equity securities of public companies	2,772	890
Total	<u>\$ 1,918,759</u>	<u>\$ 1,927,399</u>
Included in Cash and cash equivalents	\$ 170,966	\$ 228,659
Included in Marketable securities	\$ 1,736,030	\$ 1,686,771
Included in Other long-term assets (Restricted cash)	\$ 11,763	\$ 11,969

The fair value of the debt securities held as of June 30, 2016 was \$1.7 billion, including less than \$0.6 million of gross and net unrealized gains. All of the debt securities held as of June 30, 2016 are scheduled to mature in less than one year.

Note 3. Fair Value of Financial Instruments
Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following table summarizes the Company's financial assets and liabilities measured at fair value on a recurring basis as of June 30, 2016 and December 31, 2015 :

	Total Fair Value	Fair Value Measurement Using		
		(Level 1)	(Level 2)	(Level 3)
(In thousands)				
As of June 30, 2016:				
Assets:				
Investments in money market funds	\$ 141,209	\$ 141,209	\$ —	\$ —
Debt securities issued by the U.S. Treasury	1,733,258	1,733,258	—	—
Equity securities of public companies	\$ 2,772	\$ 2,772	\$ —	\$ —
Foreign currency forward contracts (1)	563	—	563	—
Total	\$ 1,877,802	\$ 1,877,239	\$ 563	\$ —
Liabilities:				
Contingent interest derivative on the Subordinated Convertible Debentures	\$ 22,611	\$ —	\$ —	\$ 22,611
Foreign currency forward contracts (2)	65	—	65	—
Total	\$ 22,676	\$ —	\$ 65	\$ 22,611
As of December 31, 2015:				
Assets:				
Investments in money market funds	\$ 137,593	\$ 137,593	\$ —	\$ —
Debt securities issued by the U.S. Treasury	1,685,882	1,685,882	—	—
Equity securities of public companies	890	890	—	—
Foreign currency forward contracts (1)	230	—	230	—
Total	\$ 1,824,595	\$ 1,824,365	\$ 230	\$ —
Liabilities:				
Contingent interest derivative on the Subordinated Convertible Debentures	\$ 30,126	\$ —	\$ —	\$ 30,126
Foreign currency forward contracts (2)	164	—	164	—
Total	\$ 30,290	\$ —	\$ 164	\$ 30,126

(1) Included in Other current assets

(2) Included in Accounts payable and accrued liabilities

The fair value of the Company's investments in money market funds approximates their face value. Such instruments are classified as Level 1 and are included in Cash and cash equivalents. The fair value of the debt securities consisting of U.S. Treasury bills is based on their quoted market prices and are classified as Level 1. Debt securities purchased with original maturities in excess of three months are included in Marketable securities. The fair value of the equity securities of public companies is based on quoted market prices and are classified as Level 1. Investments in equity securities of public companies are included in Marketable securities. The fair value of the Company's foreign currency forward contracts is based on foreign currency rates quoted by banks or foreign currency dealers and other public data sources.

The Company utilizes a valuation model to estimate the fair value of the contingent interest derivative on the subordinated convertible debentures due 2037 ("the Subordinated Convertible Debentures"). The inputs to the model include stock price, bond price, risk free interest rates, volatility, and credit spread observations. As several significant inputs are not observable, the overall fair value measurement of the derivative is classified as Level 3. The volatility and credit spread assumptions used in the calculation are the most significant unobservable inputs. As of June 30, 2016, the valuation of the contingent interest derivative assumed a volatility rate of approximately 26% and a credit spread of approximately 6%. The fair value of the contingent interest derivative would not have significantly changed using a volatility rate of either 21% or 31%, or a credit spread of either 5% or 7%.

The following table summarizes the change in the fair value of the Company's contingent interest derivative on the Subordinated Convertible Debentures during the three and six months ended June 30, 2016 and 2015:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
(In thousands)				
Beginning balance	\$ 22,517	\$ 28,549	\$ 30,126	\$ 26,755
Payment of contingent interest	—	—	(6,544)	(5,225)
Unrealized loss (gain)	94	(2,708)	(971)	4,311
Ending balance	\$ 22,611	\$ 25,841	\$ 22,611	\$ 25,841

On February 15, 2016, the Company paid contingent interest of \$6.5 million in addition to the normal coupon interest to holders of record of the Subordinated Convertible Debentures as of February 1, 2016. In February 2016, the upside trigger on the Subordinated Convertible Debentures was met for the six month interest period ending in August 2016. On August 15, 2016, the Company will pay contingent interest of \$6.8 million in addition to the normal coupon interest to holders of record of the Subordinated Convertible Debentures as of August 1, 2016. The \$ 6.8 million contingent interest payable in August 2016 is included in the balance of the contingent interest derivative on the Subordinated Convertible Debentures as of June 30, 2016 .

The Company's other financial instruments include cash, accounts receivable, restricted cash, and accounts payable. As of June 30, 2016 , the carrying value of these financial instruments approximated their fair value. The fair value of the Company's Subordinated Convertible Debentures was \$ 3.1 billion as of June 30, 2016 . The fair values of the senior notes due 2023 (the "2023 Senior Notes") and the senior notes due 2025 (the "2025 Senior Notes") were \$ 761.3 million and \$512.8 million , respectively, as of June 30, 2016 . The fair values of these debt instruments are based on available market information from public data sources and are classified as Level 2.

Note 4. Other Balance Sheet Items

Other Current Assets

Other current assets consist of the following:

	June 30,	December 31,
	2016	2015
(In thousands)		
Prepaid expenses	\$ 18,194	\$ 14,823
Income tax receivables	2,104	23,098
Other	2,275	1,935
Total other current assets	\$ 22,573	\$ 39,856

The Income tax receivables as of December 31, 2015 primarily consists of the remaining U.S. federal income tax overpayment from prior years. As of June 30, 2016, substantially all of the remaining overpayment has been used to offset current year income taxes.

Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following:

	June 30,	December 31,
	2016	2015
(In thousands)		
Accounts payable	\$ 17,661	\$ 23,298
Accrued employee compensation	40,118	51,851
Customer deposits, net	39,558	48,307
Interest Payable	27,701	27,701
Income taxes payable and other tax liabilities	4,485	16,943
Other accrued liabilities	14,838	20,071
Total accounts payable and accrued liabilities	\$ 144,361	\$ 188,171

Accrued employee compensation primarily consists of liabilities for employee leave, salaries, payroll taxes, employee contributions to the employee stock purchase plan, and incentive compensation. Accrued employee incentive compensation as of December 31, 2015, was paid during the six months ended June 30, 2016. Income taxes payable and other tax liabilities decreased in the six months ended June 30, 2016 as a result of payments made for income taxes in certain non-U.S. jurisdictions. Interest payable includes coupon interest on the Subordinated Convertible Debentures, the 2023 Senior Notes and the 2025 Senior Notes.

Note 5. Stockholders' Deficit

On February 11, 2016, the Company's Board of Directors authorized the repurchase of approximately \$ 611.2 million of its common stock, in addition to the \$ 388.8 million remaining available for repurchase under the previous share repurchase program for a total repurchase authorization of up to \$1.0 billion of its common stock. The share repurchase program has no expiration date. Purchases made under the program could be effected through open market transactions, block purchases, accelerated share repurchase agreements or other negotiated transactions. During the three and six months ended June 30, 2016 the Company repurchased 1.7 million and 3.5 million shares of its common stock, respectively, at an average stock price of \$86.46 and \$84.63, respectively. The aggregate cost of the repurchases in the three and six months ended June 30, 2016 was \$149.9 million and \$299.8 million, respectively. As of June 30, 2016, \$765.9 million remained available for further repurchases under the share repurchase program.

During the six months ended June 30, 2016, the Company placed 0.3 million shares, at an average stock price of \$80.92, and for an aggregate cost of \$24.4 million, into treasury stock for purposes related to tax withholding upon vesting of Restricted Stock Units ("RSUs").

Since inception the Company has repurchased 216.8 million shares of its common stock for an aggregate cost of \$7.8 billion, which is presented as a reduction of Additional paid-in capital.

Note 6. Calculation of Earnings per Share

The following table presents the computation of weighted-average shares used in the calculation of basic and diluted earnings per share:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Weighted-average shares of common stock outstanding	108,067	115,656	108,829	116,394
Weighted-average potential shares of common stock outstanding:				
Conversion spread related to Convertible Debentures	21,872	16,973	21,472	16,392
Unvested RSUs, stock options, and ESPP	649	622	783	760
Shares used to compute diluted earnings per share	130,588	133,251	131,084	133,546

The calculation of diluted weighted average shares outstanding, excludes potentially dilutive securities, the effect of which would have been anti-dilutive, as well as performance based RSUs granted by the Company for which the relevant performance criteria have not been achieved. The number of potential shares excluded from the calculation was not significant in any period presented.

Note 7. Stock-based Compensation

Stock-based compensation is classified in the Condensed Consolidated Statements of Comprehensive Income in the same expense line items as cash compensation. The following table presents the classification of stock-based compensation:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Cost of revenues	\$ 1,747	\$ 1,741	\$ 3,588	\$ 3,480
Sales and marketing	1,457	1,818	3,090	3,117
Research and development	1,587	1,691	3,290	3,412
General and administrative	6,341	6,751	12,923	12,120
Total stock-based compensation expense	\$ 11,132	\$ 12,001	\$ 22,891	\$ 22,129

The following table presents the nature of the Company's total stock-based compensation:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
RSUs	\$ 8,625	\$ 9,210	\$ 17,758	\$ 17,504
Performance-based RSUs	2,285	2,385	4,662	3,838
ESPP	822	1,113	1,670	2,194
Capitalization (Included in Property and equipment, net)	(600)	(707)	(1,199)	(1,407)
Total stock-based compensation expense	\$ 11,132	\$ 12,001	\$ 22,891	\$ 22,129

Note 8. Debt and Interest Expense

The following table presents the components of the Company's interest expense:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Contractual interest on Subordinated Convertible Debentures	\$ 10,156	\$ 10,156	\$ 20,312	\$ 20,312
Contractual interest on Senior Notes	15,234	15,234	30,469	24,271
Amortization of debt discount on the Subordinated Convertible Debentures	2,744	2,527	5,433	5,004
Credit facility fees and other interest expense	725	586	1,449	933
Total interest expense	\$ 28,859	\$ 28,503	\$ 57,663	\$ 50,520

Note 9. Non-operating Income (Loss), Net

The following table presents the components of Non-operating income (loss), net:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Unrealized (loss) gain on contingent interest derivative on Subordinated Convertible Debentures	\$ (94)	\$ 2,708	\$ 971	\$ (4,311)
Interest income	1,522	373	2,564	632
Other, net	281	120	1,295	1,325
Total non-operating income (loss), net	\$ 1,709	\$ 3,201	\$ 4,830	\$ (2,354)

Unrealized gains and losses on the contingent interest derivative on the Subordinated Convertible Debentures reflect the change in value of the derivative that results primarily from changes in the Company's stock price.

Note 10. Income Taxes

The following table presents income tax expense and the effective tax rate:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(Dollars in thousands)			
Income tax expense	\$ 35,907	\$ 30,652	\$ 69,535	\$ 59,079
Effective tax rate	24%	25%	24%	25%

The effective tax rate for the three and six months ended June 30, 2016 and 2015 is lower than the statutory federal rate of 35% primarily due to tax benefits from foreign income taxed at lower rates, partially offset by state income taxes.

Deferred tax liabilities as of June 30, 2016 reflect the use of a portion of U.S. foreign tax credits during the six months ended June 30, 2016, and an increase in the deferred tax liability related to the Subordinated Convertible Debentures.

Note 11. Subsequent Event

Subsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion in conjunction with the interim unaudited Condensed Consolidated Financial Statements and related notes.

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements involve risks and uncertainties, including, among other things, statements regarding our anticipated costs and expenses and revenue mix. Forward-looking statements include, among others, those statements including the words "expects," "anticipates," "intends," "believes" and similar language. Our actual results may differ significantly from those projected in the forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q. You should also carefully review the risks described in other documents we file from time to time with the Securities and Exchange Commission, including the Quarterly Reports on Form 10-Q or Current Reports on Form 8-K that we file in 2016 and our 2015 Form 10-K, which was filed on February 19, 2016, which discuss our business in greater detail. You are cautioned not to place undue reliance on the forward-looking statements, which speak only as of the date of this Quarterly Report on Form 10-Q. We undertake no obligation to publicly release any revisions to the forward-looking statements or reflect events or circumstances after the date of this document.

Overview

We are a global provider of domain name registry services and internet security, enabling internet navigation for many of the world's most recognized domain names and providing protection for websites and enterprises around the world. Our Registry Services ensure the security, stability and resiliency of key internet infrastructure and services, including the .com and .net domains, two of the internet's root servers, and the operation of the root zone maintainer function for the core of the internet's DNS. Our product suite also includes Security Services, consisting of DDoS Protection Services, iDefense Services, and Managed DNS Services. Revenues from Security Services are not significant in relation to our consolidated revenues.

As of June 30, 2016, we had approximately 143.2 million names in the domain name base for .com and .net, our principal registries. The number of domain names registered is largely driven by continued growth in online advertising, e-commerce, and the number of internet users, which is partially driven by greater availability of internet access, as well as marketing activities carried out by us and third-party registrars. Growth in the number of domain names under our management may be hindered by certain factors, including overall economic conditions, competition from ccTLDs, the introduction of new gTLDs, and ongoing changes in the internet practices and behaviors of consumers and businesses. Factors such as the evolving practices and preferences of internet users, and how they navigate the internet, as well as the motivation of domain name registrants and how they will manage their investment in domain names, can negatively impact our business and the demand for new domain name registrations and renewals.

Business Highlights and Trends

- We recorded revenues of \$286.5 million and \$568.3 million during the three and six months ended June 30, 2016. This represents an increase of 9%, as compared to the same periods in 2015.
- We recorded operating income of \$176.3 million and \$343.0 million during the three and six months ended June 30, 2016. This represents an increase of 18% and 17%, respectively, as compared to the same periods in 2015.
- We added 0.8 million net new names during the second quarter, ending with 143.2 million names in the domain name base for .com and .net, which represents a 7% increase over the base at the end of the second quarter in 2015.
- During the three months ended June 30, 2016, we processed 8.6 million new domain name registrations for .com and .net as compared to 8.7 million for the same period in 2015.
- The final .com and .net renewal rate for the first quarter of 2016 was 74.4% compared with 73.4% for the same quarter in 2015. Renewal rates are not fully measurable until 45 days after the end of the quarter.
- During the three months ended June 30, 2016, we repurchased 1.7 million shares of our common stock under the share repurchase program for \$149.9 million. As of June 30, 2016, \$765.9 million remained available for further repurchases under our share repurchase program.

- Through July 27, 2016, we repurchased an additional 0.5 million shares for \$42.3 million under our share repurchase program.
- We generated cash flows from operating activities of \$304.3 million during the six months ended June 30, 2016, compared to \$307.6 million in the same period last year.
- On July 28, 2016, we announced an increase in the annual fee for the .net domain name registration from \$7.46 to \$8.20, effective February 1, 2017, per our agreement with ICANN.

Pursuant to our agreements with ICANN, we make available on our website (at www.Verisign.com/zone) files containing all active domain names registered in the .com and .net registries. At the same website address, we make available a summary of the active zone count registered in the .com and .net registries and the number of .com and .net domain names in the domain name base. The domain name base is the active zone plus the number of domain names that are registered but not configured for use in the respective top level domain zone file plus the number of domain names that are in a client or server hold status. These files and the related summary data are updated at least once per day. The update times may vary each day. The number of domain names provided in this Form 10-Q are as of midnight of the date reported. Information available on, or accessible through, our website is not incorporated herein by reference.

Results of Operations

The following table presents information regarding our results of operations as a percentage of revenues:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Revenues	100.0 %	100.0 %	100.0 %	100.0 %
Costs and expenses:				
Cost of revenues	17.0	18.4	17.5	18.5
Sales and marketing	6.9	9.3	7.0	9.0
Research and development	5.0	6.2	5.5	6.4
General and administrative	9.6	9.4	9.7	9.8
Total costs and expenses	38.5	43.3	39.7	43.7
Operating income	61.5	56.7	60.3	56.3
Interest expense	(10.1)	(10.9)	(10.1)	(9.7)
Non-operating income (loss), net	0.6	1.2	0.8	(0.5)
Income before income taxes	52.0	47.0	51.0	46.1
Income tax expense	(12.5)	(11.7)	(12.2)	(11.3)
Net income	39.5 %	35.3 %	38.8 %	34.8 %

Revenues

Revenues related to our Registry Services are primarily derived from registrations for domain names in the .com and .net domain name registries. We also derive revenues from operating domain name registries for several other TLDs and from providing back-end registry services to a number of TLD registry operators, all of which are not significant in relation to our consolidated revenues. For domain names registered with the .com and .net registries we receive a fee from third-party registrars per annual registration that is fixed pursuant to our agreements with ICANN. Individual customers, called registrants, contract directly with third-party registrars or their resellers, and the third-party registrars in turn register the domain names with Verisign. Changes in revenues are driven largely by changes in the number of new domain name registrations and the renewal rate for existing registrations as well as the impact of new and prior price increases, to the extent permitted by ICANN and the DOC. New registrations and the renewal rate for existing registrations are impacted by continued growth in online advertising, e-commerce, and the number of internet users, as well as marketing activities carried out by us and third-party registrars. We increased the annual fee for a .net domain name registration from \$6.18 to \$6.79 on February 1, 2015, and from \$6.79 to \$7.46 on February 1, 2016. On July 28, 2016, we announced an increase in the annual fee for the .net domain name registration from \$7.46 to \$8.20, effective February 1, 2017. The annual fee for a .com domain name registration is fixed at \$7.85 for the duration of the current .com Registry Agreement through November 30, 2018, except that prices may be raised by up to 7% each year due to the imposition of any new Consensus Policy or documented extraordinary expense resulting from an attack or threat of attack on the Security and Stability (each as defined in the .com Registry Agreement) of the DNS, subject to approval of the DOC. We offer promotional marketing programs for our registrars based upon market conditions and the business environment in which the registrars operate. All fees paid to us for .com and .net registrations are in U.S. dollars.

Revenues from Security Services are not significant in relation to our total consolidated revenues.

A comparison of revenues is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
(Dollars in thousands)						
Revenues	\$ 286,466	9%	\$ 262,539	\$ 568,342	9%	\$ 520,961

The following table compares domain name base for *.com* and *.net* managed by our Registry Services business:

	June 30, 2016	% Change	June 30, 2015
Domain name base for <i>.com</i> and <i>.net</i>	143.2 million	7%	133.5 million

Revenues increased by \$ 23.9 million and \$47.4 million during the three and six months ended June 30, 2016, respectively, as compared to the same periods last year, primarily due to an increase in revenues from the operation of the registries for the *.com* and *.net* TLDs. The increase in revenues from the operation of the registries for the *.com* and *.net* TLDs was driven by a 7% increase in the domain name base for *.com* and *.net* and an increase in the *.net* domain name registration fees in February 2015 and 2016.

Growth in the domain name base has been primarily driven by continued internet growth and marketing activities carried out by us and third-party registrars. During the second half of 2015 and the first quarter of 2016 we experienced an increased volume of new domain name registrations primarily from our registrars in China. The volume of these new registrations has been inconsistent and periodic compared to prior periods, and by the end of the first quarter of 2016, reverted back to a more normalized registration pace. However, ongoing economic uncertainty, competitive pressure from ccTLDs, the introduction of new gTLDs, ongoing changes in internet practices and behaviors of consumers and business, as well as the motivation of existing domain name registrants and how they will manage their investment in domain names, has limited the rate of growth of the domain name base in recent years and may continue to do so in the remainder of 2016 and beyond.

We expect revenues to remain consistent in the second half of 2016, as compared to the six months ended June 30, 2016.

Geographic revenues

We generate revenues in the U.S.; Europe, the Middle East and Africa (“EMEA”); China; and certain other countries including Canada, Australia and Japan.

The following table presents a comparison of our geographic revenues:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
(Dollars in thousands)						
U.S.	\$ 165,756	4 %	\$ 159,208	\$ 329,799	4 %	\$ 316,716
EMEA	52,710	9 %	48,233	103,665	9 %	95,239
China	32,727	71 %	19,092	63,926	73 %	36,969
Other	35,273	(2)%	36,006	70,952	(2)%	72,037
Total revenues	\$ 286,466		\$ 262,539	\$ 568,342		\$ 520,961

Revenues for our Registry Services business are attributed to the country of domicile and the respective regions in which our registrars are located, however, this may differ from the regions where the registrars operate or where registrants are located. Revenue growth for each region may be impacted by registrars reincorporating, relocating, or from acquisitions or changes in affiliations of resellers. Revenue growth for each region may also be impacted by registrars domiciled in one region, registering domain names in another region. Although revenues continued to grow in the more mature markets of the U.S. and EMEA, China saw the highest growth rate for both the three and six months ended June 30, 2016 due to the increased volume of new registrations during the second half of 2015 and the first quarter of 2016.

Cost of revenues

Cost of revenues consist primarily of salaries and employee benefits expenses for our personnel who manage the operational systems, depreciation expenses, operational costs associated with the delivery of our services, fees paid to ICANN, customer support and training, consulting and development services, costs of facilities and computer equipment used in these activities, telecommunications expense and allocations of indirect costs such as corporate overhead.

A comparison of cost of revenues is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
	(Dollars in thousands)					
Cost of revenues	\$ 48,753	1%	\$ 48,221	\$ 99,335	3%	\$ 96,574

Cost of revenues expenses remained consistent during the three months ended June 30, 2016, as compared to the same period last year.

Cost of revenues increased by \$2.8 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a \$3.4 million increase in salary and employee benefits expenses. Salary and employee benefits expenses increased primarily due to an increase in average headcount and an increase in bonus expenses.

We expect cost of revenues as a percentage of revenues to remain consistent during the remainder of 2016 compared to the six months ended June 30, 2016.

Sales and marketing

Sales and marketing expenses consist primarily of salaries, sales commissions, sales operations and other personnel-related expenses, travel and related expenses, trade shows, costs of lead generation, costs of computer and communications equipment and support services, facilities costs, consulting fees, costs of marketing programs, such as online, television, radio, print and direct mail advertising costs, and allocations of indirect costs such as corporate overhead.

A comparison of sales and marketing expenses is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
	(Dollars in thousands)					
Sales and marketing	\$ 19,757	(19)%	\$ 24,329	\$ 39,784	(15)%	\$ 46,711

Sales and marketing expenses decreased by \$ 4.6 million during the three months ended June 30, 2016, as compared to the same period last year, primarily due to a \$3.3 million decrease in advertising and consulting expenses. Advertising and consulting expenses decreased primarily due to the timing of marketing programs for our Registry Services business and a decrease in expenses related to our Security Services business.

Sales and marketing expenses decreased by \$6.9 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a \$5.5 million decrease in advertising and consulting expenses. Advertising and consulting expenses decreased primarily due to the timing of marketing programs for our Registry Services business and a decrease in expenses related to our Security Services business.

We expect sales and marketing expenses as a percentage of revenues to increase during the remainder of 2016 compared to the six months ended June 30, 2016 as the volume of marketing initiatives increases. We expect sales and marketing expenses as a percent of revenues for full year 2016 to be at comparable levels to 2015.

Research and development

Research and development expenses consist primarily of costs related to research and development personnel, including salaries and other personnel-related expenses, consulting fees, facilities costs, computer and communications equipment, support services used in our service and technology development, and allocations of indirect costs such as corporate overhead.

A comparison of research and development expenses is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
	(Dollars in thousands)					
Research and development	\$ 14,288	(13)%	\$ 16,347	\$ 31,031	(7)%	\$ 33,499

Research and development expenses decreased by \$2.1 million during the three months ended June 30, 2016, as compared to the same period last year, primarily due to a decrease in salary and employee benefits expenses and allocated overhead expenses resulting from a reduction in headcount.

Research and development expenses decreased by \$2.5 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a decrease in salary and employee benefits expenses and allocated overhead expenses resulting from a reduction in headcount.

We expect research and development expenses as a percentage of revenues to remain consistent during the remainder of 2016 compared to the six months ended June 30, 2016.

General and administrative

General and administrative expenses consist primarily of salaries and other personnel-related expenses for our executive, administrative, legal, finance, information technology and human resources personnel, costs of facilities, computer and communications equipment, management information systems, support services, professional services fees, certain tax and license fees, and bad debt expense, offset by allocations of indirect costs such as facilities and shared services expenses to other cost types.

A comparison of general and administrative expenses is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
(Dollars in thousands)						
General and administrative	\$ 27,401	11%	\$ 24,677	\$ 55,158	8%	\$ 50,975

General and administrative expenses increased by \$2.7 million during the three months ended June 30, 2016, as compared to the same period last year, primarily due to a \$1.6 million increase in legal expenses and a \$1.4 million increase in salary and employee benefits expenses. Legal expenses increased primarily due to an increase in services performed by external legal counsel. Salary and employee benefits expenses increased primarily due to increases in bonus expenses and average headcount.

General and administrative expenses increased by \$4.2 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a \$3.4 million increase in salary and employee benefits expenses, and a \$2.3 million increase in legal expenses, partially offset by a \$1.4 million decrease in depreciation expenses. Salary and employee benefits expenses increased primarily due to increases in bonus expenses and headcount. Legal expenses increased due to an increase in services performed by external legal counsel. Depreciation expense decreased due to a decrease in capital expenditures in recent years.

We expect general and administrative expenses as a percentage of revenues to remain consistent during the remainder of 2016 compared to the six months ended June 30, 2016.

Interest expense

The following table presents the components of Interest expense:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
(In thousands)				
Contractual interest on Subordinated Convertible Debentures	\$ 10,156	\$ 10,156	\$ 20,312	\$ 20,312
Contractual interest on Senior Notes	15,234	15,234	30,469	24,271
Amortization of debt discount on the Subordinated Convertible Debentures	2,744	2,527	5,433	5,004
Credit facility fees and other interest expense	725	586	1,449	933
Total interest expense	\$ 28,859	\$ 28,503	\$ 57,663	\$ 50,520

Contractual interest on Senior Notes increased during the six months ended June 30, 2016 due to a \$6.2 million increase in interest expense related to the 2025 Senior Notes which were issued in March 2015. We expect interest expense to remain consistent during the remainder of 2016 as compared to the six months ended June 30, 2016.

Non-operating income (loss), net

The following table presents the components of Non-operating income (loss), net:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
(In thousands)				
Unrealized (loss) gain on contingent interest derivative on Subordinated Convertible Debentures	\$ (94)	\$ 2,708	\$ 971	\$ (4,311)
Interest income	1,522	373	2,564	632
Other, net	281	120	1,295	1,325
Total non-operating income (loss), net	<u>\$ 1,709</u>	<u>\$ 3,201</u>	<u>\$ 4,830</u>	<u>\$ (2,354)</u>

Unrealized gains and losses on the contingent interest derivative on the Subordinated Convertible Debentures reflect the change in value of the derivative that results primarily from changes in our stock price. Interest income increased during both the three and six months ended June 30, 2016 primarily due to an increase in interest rates and a higher average invested balance.

Income tax expense

The following table presents income tax expense and the effective tax rate:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
(Dollars in thousands)				
Income tax expense	\$ 35,907	\$ 30,652	\$ 69,535	\$ 59,079
Effective tax rate	24%	25%	24%	25%

The effective tax rate for the three and six months ended June 30, 2016 and 2015 was lower than the statutory federal rate of 35% primarily due to tax benefits from foreign income taxed at lower rates, partially offset by state income taxes.

Liquidity and Capital Resources

	June 30, 2016	December 31, 2015
	(In thousands)	
Cash and cash equivalents	\$ 170,966	\$ 228,659
Marketable securities	1,736,030	1,686,771
Total	\$ 1,906,996	\$ 1,915,430

As of June 30, 2016, our principal source of liquidity was \$171.0 million of cash and cash equivalents and \$1.7 billion of marketable securities. The marketable securities primarily consist of debt securities issued by the U.S. Treasury meeting the criteria of our investment policy, which is focused on the preservation of our capital through investment in investment grade securities. The cash equivalents consist of amounts invested in money market funds and U.S. Treasury bills purchased with original maturities of less than 90 days. As of June 30, 2016, all of our debt securities have contractual maturities of less than one year. Our cash and cash equivalents are readily accessible. For additional information on our investment portfolio, see Note 2, "Cash, Cash Equivalents, and Marketable Securities," of our Notes to Condensed Consolidated Financial Statements in Part I, Item I of this Quarterly Report on Form 10-Q.

As of June 30, 2016, the amount of cash and cash equivalents and marketable securities held by foreign subsidiaries was \$1.3 billion. Our intent remains to indefinitely reinvest these funds outside of the U.S. and accordingly, we have not provided deferred U.S. taxes for these funds. In the event funds from foreign operations are needed to fund operations in the U.S. and if U.S. tax has not already been provided, we would be required to accrue and pay additional U.S. taxes in order to repatriate these funds.

As of June 30, 2016, we had \$500.0 million principal amount outstanding of the 5.25% senior unsecured notes due 2025 and \$750.0 million principal amount outstanding of the 4.625% senior unsecured notes due 2023.

As of June 30, 2016, there were no borrowings outstanding under the \$200.0 million unsecured revolving credit facility that will expire in 2020.

As of June 30, 2016, we had \$1.25 billion principal amount outstanding of 3.25% subordinated convertible debentures due 2037. The price of our common stock exceeded the conversion price threshold trigger during the second quarter of 2016. Accordingly, the Subordinated Convertible Debentures are convertible at the option of each holder through September 30, 2016. We do not expect a material amount of the Subordinated Convertible Debentures to be converted in the near term as the trading price of the debentures exceeds the value that is likely to be received upon conversion. However, we cannot provide any assurance that the trading price of the debentures will continue to exceed the value that would be derived upon conversion or that the holders will not elect to convert the Subordinated Convertible Debentures. If a holder elects to convert its Subordinated Convertible Debentures, we are permitted under the Indenture to pursue an exchange in lieu of conversion or to settle the conversion value (as defined in the Indenture) in cash, stock, or a combination thereof. If we choose not to pursue or cannot complete an exchange in lieu of conversion, we currently have the intent and the ability (based on current facts and circumstances) to settle the principal amount of the Subordinated Convertible Debentures in cash. However, if the principal amount of the Subordinated Convertible Debentures that holders actually elect to convert exceeds our cash on hand and cash from operations, we will need to draw cash from existing financing or pursue additional sources of financing to settle the Subordinated Convertible Debentures in cash. We cannot provide any assurances that we will be able to obtain new sources of financing on terms acceptable to us or at all, nor can we assure that we will be able to obtain such financing in time to settle the Subordinated Convertible Debentures that holders elect to convert.

On February 15, 2016, we paid contingent interest of \$6.5 million in addition to the normal coupon interest on our Subordinated Convertible Debentures. In February 2016, the upside trigger on the Subordinated Convertible Debentures was met for the six month interest period ending in August 2016. On August 15, 2016, we will pay contingent interest of \$6.8 million in addition to the normal coupon interest to holders of record of the Subordinated Convertible Debentures as of August 1, 2016. The upside trigger is met if the Subordinated Convertible Debentures' average trading price is at least 150% of par during the 10 trading days before each semi-annual interest period. The upside trigger is tested semi-annually for the following six months. The semi-annual upside contingent interest payment, for a given period, can be approximated by applying the annual rate of 0.5% to the aggregate market value of all outstanding Subordinated Convertible Debentures and dividing by two for that semi-annual period payment amount.

We derive significant tax savings from the Subordinated Convertible Debentures. During the first half of 2016 and 2015, the interest deduction, for income tax purposes, related to our Subordinated Convertible Debentures, excluding contingent interest, was \$87.7 million and \$82.4 million, respectively, compared to coupon interest expense of \$20.3 million for each of the same periods. For income tax purposes, we deduct interest expense on the Subordinated Convertible Debentures calculated at 8.5% of the adjusted issue price, subject to adjustment for actual versus projected contingent interest. The adjusted issue price, and consequently the interest deduction for income tax purposes, grows over the term due to the difference between the

interest deduction taken using a comparable yield of 8.5% on the adjusted issue price, and the coupon rate of 3.25% on the principal amount, compounded annually. The interest deduction taken is subject to recapture upon settlement to the extent that the amount paid (in cash or stock) to settle the Subordinated Convertible Debentures is less than the adjusted issue price. Interest recognized in accordance with GAAP, which is calculated at 8.39% of the liability component of the Subordinated Convertible Debentures, will also grow over the term, but at a slower rate. This difference will result in a continuing increase in the deferred tax liability on our Condensed Consolidated Balance Sheet.

Subsequent to June 30, 2016, we incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016.

We believe existing cash, cash equivalents and marketable securities, and funds generated from operations, together with our borrowing capacity under the unsecured revolving credit facility should be sufficient to meet our working capital, capital expenditure requirements, and to service our debt for at least the next 12 months. We regularly assess our cash management approach and activities in view of our current and potential future needs.

In summary, our cash flows for the six months ended June 30, 2016 and 2015 are as follows:

	Six Months Ended June 30,	
	2016	2015
	(In thousands)	
Net cash provided by operating activities	\$ 304,291	\$ 307,625
Net cash used in investing activities	(58,508)	(489,285)
Net cash (used in) provided by financing activities	(303,443)	176,732
Effect of exchange rate changes on cash and cash equivalents	(33)	606
Net decrease in cash and cash equivalents	<u>\$ (57,693)</u>	<u>\$ (4,322)</u>

Cash flows from operating activities

Our largest source of operating cash flows is cash collections from our customers. Our primary uses of cash from operating activities are for personnel related expenditures, and other general operating expenses, as well as payments related to taxes, interest and facilities.

Net cash provided by operating activities decreased during the six months ended June 30, 2016, primarily due to an increase in cash paid for interest and cash paid to employees and vendors, partially offset by an increase in cash collected from customers. Cash paid for interest increased due to the interest paid on the 2025 Senior Notes and higher contingent interest related to the Subordinated Convertible Debentures. Payments to employees and vendors increased primarily due to the timing of payments. Cash received from customers increased primarily due to an increase in the number of new and renewal domain name registrations during the six months ended June 30, 2016, and the increases in the .net domain name registration fees in February 2016.

Cash flows from investing activities

The changes in cash flows from investing activities primarily relate to purchases, maturities and sales of marketable securities, and purchases of property and equipment.

The decrease in cash flows used in investing activities was primarily due to a decrease in purchases of marketable securities, net of proceeds from sales and maturities, during the first half of 2016, compared to the same period in 2015, and a decrease in purchases of property and equipment and other investing activities.

Cash flows from financing activities

The changes in cash flows from financing activities primarily relate to share repurchases, proceeds from and repayments of borrowings, our employee stock purchase plan, and excess tax benefits from stock-based compensation.

The change in cash (used in) provided by financing activities during the six months ended June 30, 2016 was primarily due to a decrease in proceeds from borrowings as we issued the 2025 Senior Notes in March 2015, partially offset by a decrease in share repurchases.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no significant changes in our market risk exposures since December 31, 2015.

ITEM 4. CONTROLS AND PROCEDURES

Based on our management's evaluation, with the participation of our Chief Executive Officer (our principal executive officer) and our Chief Financial Officer (our principal financial officer), as of June 30, 2016, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three months ended June 30, 2016 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Inherent Limitations of Disclosure Controls and Internal Control over Financial Reporting

Because of their inherent limitations, our disclosure controls and procedures and our internal control over financial reporting may not prevent material errors or fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. The effectiveness of our disclosure controls and procedures and our internal control over financial reporting is subject to risks, including that the control may become inadequate because of changes in conditions or that the degree of compliance with our policies or procedures may deteriorate.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Verisign is involved in various investigations, claims and lawsuits arising in the normal conduct of its business, none of which, in its opinion, will have a material adverse effect on its financial condition, results of operations, or cash flows. The Company cannot assure you that it will prevail in any litigation. Regardless of the outcome, any litigation may require the Company to incur significant litigation expense and may result in significant diversion of management attention.

ITEM 1A. RISK FACTORS

In addition to other information in this Form 10-Q, the following risk factors should be carefully considered in evaluating us and our business because these factors currently have a significant impact or may have a significant impact on our business, operating results or financial condition. Actual results could differ materially from those projected in the forward-looking statements contained in this Form 10-Q as a result of the risk factors discussed below and elsewhere in this Form 10-Q and in other filings we make with the SEC.

Risks arising from our agreements governing our Registry Services business could limit our ability to maintain or grow our business.

We are parties to (i) a Cooperative Agreement (as amended) with the DOC with respect to the .com gTLD and certain other aspects of the DNS and (ii) Registry Agreements with ICANN for .com, .net, .name and other gTLDs including our IDN gTLDs. As substantially all of our revenues are derived from our Registry Services business, limitations in these agreements could have a material impact on our business.

Pricing. Under the terms of the Cooperative Agreement with the DOC and the .com Registry Agreement with ICANN, we are generally restricted from increasing the price of registrations or renewals of .com domain names except that we are entitled to increase the price up to 7%, with the prior approval of the DOC, due to the imposition of any new Consensus Policies or documented extraordinary expense resulting from an attack or threat of attack on the security and stability of the DNS. However, it is uncertain that such circumstances will arise, or if they do, that the DOC will approve our request to increase the price for .com domain name registrations. We also have the right under the Cooperative Agreement to seek the removal of these pricing restrictions if we demonstrate that market conditions no longer warrant such restrictions. However, it is uncertain that such circumstances will arise, or if they do, that the DOC will agree to the removal of these pricing restrictions. In connection with a renewal of the .com Registry Agreement, we can seek an increase of the price for .com domain name registrations. Regardless of whether we seek such an increase, there can be no assurance of the price that DOC will approve in connection with a renewal of the .com Registry Agreement. Under the terms of the .net and .name Registry Agreements with ICANN, we are permitted to increase the price of registrations and renewals in these TLDs up to 10% per year. Additionally, ICANN's registry agreements for the new gTLDs do not contain such pricing restrictions.

Vertical integration. Under the .com, .net and .name Registry Agreements with ICANN, as well as the Cooperative Agreement with the DOC, we are not permitted to acquire, directly or indirectly, control of, or a greater than 15% ownership interest in, any ICANN-accredited registrar. Historically, all gTLD registry operators were subject to this vertical integration prohibition; however, ICANN has established a process whereby registry operators may seek ICANN's approval to remove this restriction, and ICANN has approved such removal in some instances. If we were to seek removal of the vertical integration restrictions contained in our agreements, it is uncertain whether ICANN and/or DOC approval would be obtained. Additionally, ICANN's registry agreement for new gTLDs generally permits such vertical integration, with certain limitations including ICANN's right, but not the obligation, to refer such vertical integration activities to competition authorities. Furthermore, unless prohibited by ICANN as noted above, such vertical integration restrictions do not generally apply to ccTLD registry operators. If registry operators of new or existing gTLDs, or ccTLDs, are able to obtain competitive advantages through such vertical integration, it could materially harm our business.

Termination or non-renewal. Under the Cooperative Agreement (as amended) the DOC must approve any renewal or extension of the .com Registry Agreement. The DOC, under certain circumstances, could refuse to grant its approval to the renewal of the .com Registry Agreement on similar terms, or at all. Any failure of the DOC to approve the renewal of the .com Registry Agreement prior to the expiration of its current term on November 30, 2018 would have a material adverse effect on our business. Under certain circumstances, ICANN could terminate or refuse to renew one or more of our Registry Agreements including those for .com, .net, and our other gTLDs. The Company and ICANN completed the drafting of the Root Zone Maintainer Service Agreement ("RZMA") and the .com Registry Agreement extension amendment (".com Extension"), which extends the expiration date of the .com Registry Agreement to November 30, 2024 and is intended to coincide with the eight year term of the RZMA. In June 2016, ICANN posted on its website the RZMA for public review and the .com Extension for

public comment. We can provide no assurance that the .com Extension or the RZMA will be approved or, if approved, will be in the form described. See the “Industry Regulation” section in Part I, Item 1 of the Company’s Annual Report on Form 10-K for the year ended December 31, 2015, which was filed on February 19, 2016, for further information on the Cooperative Agreement and the RZMA.

Modification or amendment . Our Registry Agreements for new gTLDs, including the Registry Agreements for our IDN gTLDs, include ICANN’s right to amend the agreement without our consent, which could impose unfavorable contract obligations on us that could impact our plans and competitive positions with respect to new gTLDs. At the time of renewal of our .com or .net Registry Agreements, ICANN might also attempt to impose this same unilateral right to amend these registry agreements under certain conditions. ICANN has also included new mandatory obligations on new gTLD registry operators, including us, that may increase the risks and potential liabilities associated with operating new gTLDs. ICANN might seek to impose these new mandatory obligations in our other Registry Agreements under certain conditions.

Legal challenges . Our Registry Agreements have faced, and could continue to face, challenges, including possible legal challenges resulting from our activities or the activities of ICANN, registrars, registrants and others, and any adverse outcome from such challenges could have a material adverse effect on our business.

Consensus Policies . Our Registry Agreements with ICANN require us to implement Consensus Policies. ICANN could adopt Consensus Policies that are unfavorable to us as the registry operator of .com , .net and our other gTLDs, that are inconsistent with our current or future plans, that impose substantial costs on our business, or that affect our competitive position. Such Consensus Policies could have a material adverse effect on our business.

Governmental regulation and the application of new and existing laws in the U.S. and overseas may slow business growth, increase our costs of doing business, create potential liability and have an adverse effect on our business.

Application of new and existing laws and regulations in the U.S. or overseas to the internet and communications industry can be unclear. The costs of complying or failing to comply with these laws and regulations could limit our ability to operate in our current markets, expose us to compliance costs and substantial liability and result in costly and time-consuming litigation. For example, the government of the People’s Republic of China (“PRC”) has indicated that it will issue new regulations, and has begun to enforce existing regulations, that could impose additional costs on our provision of Registry Services in the PRC and could impact the growth or renewal rates of domain name registrations in the PRC. In addition to registry operators, the regulations will require registrars to obtain a government-issued license for each TLD whose domain name registrations they intend to sell directly to registrants. Their failure to obtain the required licenses could also impact the growth of our business in the PRC.

Foreign, federal or state laws could have an adverse impact on our business, financial condition, results of operations and cash flows, and our ability to conduct business in certain foreign countries. For example, laws designed to restrict who can register and who can distribute domain names, the online distribution of certain materials deemed harmful to children, online gambling, counterfeit goods, and cybersquatting; laws designed to require registrants to provide additional documentation or information in connection with domain name registrations; and laws designed to promote cyber security may impose significant additional costs on our business or subject us to additional liabilities. We have contracts pursuant to which we provide services to the U.S. government and they impose compliance costs, including compliance with the Federal Acquisition Regulation, which could be significant to the Company.

Due to the nature of the internet, it is possible that state or foreign governments might attempt to regulate internet transmissions or prosecute us for violations of their laws. We might unintentionally violate such laws, such laws may be modified and new laws may be enacted in the future. In addition, as we launch our IDN gTLDs, we may raise our profile in certain foreign countries thereby increasing the regulatory and other scrutiny of our operations. Any such developments could increase the costs of regulatory compliance for us, affect our reputation, force us to change our business practices or otherwise materially harm our business. In addition, any such new laws could impede growth of or result in a decline in domain name registrations, as well as impact the demand for our services.

Undetected or unknown defects in our service, security breaches, and DDoS attacks could expose us to liability and harm our business and reputation.

Services as complex as those we offer or develop could contain undetected defects or errors. Despite testing, defects or errors may occur in our existing or new services, which could result in compromised customer data, including DNS data, diversion of development resources, injury to our reputation, tort or contract claims, increased insurance costs or increased service costs, any of which could harm our business. Performance of our services could have unforeseen or unknown adverse effects on the networks over which they are delivered as well as, more broadly, on internet users and consumers, and third-party applications and services that utilize our services, which could result in legal claims against us, harming our business. Our failure to identify, remediate and mitigate security breaches or our inability to meet customer expectations in a timely manner

could also result in loss of or delay in revenues, loss of market share, failure to achieve market acceptance, injury to our reputation and increased costs.

In addition to undetected defects or errors, we are also subject to cyber-attacks and attempted security breaches. We retain certain customer and employee information in our data centers and various domain name registration systems. It is critical to our business strategy that our facilities and infrastructure remain secure and are perceived by the marketplace to be secure. The Company, as an operator of critical internet infrastructure, is frequently targeted and experiences a high rate of attacks. These include the most sophisticated forms of attacks, such as advanced persistent threat attacks and zero-hour threats, which means that the threat is not compiled or has been previously unobserved within our observation and threat indicators space until the moment it is launched, and may well target specific unidentified or unresolved vulnerabilities that exist only within the target's operating environment, making these attacks virtually impossible to anticipate and difficult to defend against. The Shared Registration System, the root zone servers, the Root Zone Management System, the TLD name servers and the TLD zone files that we operate are critical to our Registry Services operations. Despite the significant time and money expended on our security measures, we have been subject to a security breach, as disclosed in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, and our infrastructure may in the future be vulnerable to physical break-ins, outages resulting from destructive malware, computer viruses, attacks by hackers or nefarious actors or similar disruptive problems, including hacktivism. It is possible that we may have to expend additional financial and other resources to address such problems. Any physical or electronic break-in or other security breach or compromise of the information stored at our data centers or domain name registration systems may cause an outage of or jeopardize the security of information stored on our premises or in the computer systems and networks of our customers. In such an event, we could face significant liability, customers could be reluctant to use our services and we could be at risk for loss of various security and standards-based compliance certifications needed for operation of our businesses, all or any of which could adversely affect our reputation and harm our business. Such an occurrence could also result in adverse publicity and therefore adversely affect the market's perception of the security of e-commerce and communications over the internet as well as of the security or reliability of our services.

Additionally, our networks have been, and likely will continue to be, subject to DDoS attacks. While we have adopted mitigation techniques, procedures and strategies to defend against such attacks, there can be no assurance that we will be able to defend against every attack, especially as the attacks increase in size and sophistication. Any attack, even if only partially successful, could disrupt our networks, increase response time, negatively impact our ability to meet our contracted service level obligations, and generally hamper our ability to provide reliable service to our Registry Services customers and the broader internet community. Further, we sell DDoS protection services to our Security Services customers. Although we increase our knowledge of and develop new techniques in the identification and mitigation of attacks through the protection of our Security Services customers, the DDoS protection services share some of the infrastructure used in our Registry Services business. Therefore the provision of such services might expose our critical Registry Services infrastructure to temporary degradations or outages caused by DDoS attacks against those customers, in addition to any directed specifically against us and our networks.

Changes to the present multi-stakeholder model of internet governance could materially and adversely impact our business.

The internet is governed under a multi-stakeholder model comprising civil society, the private sector including for-profit and not-for-profit organizations such as ICANN, governments including the U.S. government, academia, non-governmental organizations and international organizations. Changes to the present multi-stakeholder model of internet governance could materially and adversely impact our business.

Role of ICANN . ICANN plays a central coordination role in the multi-stakeholder system. ICANN is mandated by the non-binding Affirmation of Commitments ("AOC") between the DOC and ICANN to uphold a private sector-led multi-stakeholder approach to internet governance for the public benefit. If ICANN fails to uphold or significantly redefines the multi-stakeholder model, it could harm our business and our relationship with ICANN. Additionally, the AOC could be terminated or replaced with a different agreement between ICANN and some other authority which may establish new or different procedures for internet governance that may be unfavorable to us. Also, legal, regulatory or other challenges could be brought challenging the legal authority underlying the roles and actions of ICANN.

Role of foreign governments . Some governments and members of the multi-stakeholder community have questioned ICANN's role with respect to internet governance and, as a result, could seek a multilateral oversight body as a replacement. Additionally, the role of ICANN's Governmental Advisory Committee, which is comprised of representatives of national governments, could change, giving governments more control of internet governance. For example, the AOC has established several multi-party review panels and contemplates a greater involvement by foreign governments and governmental authorities in the oversight and review of ICANN. These periodic review panels may take positions that are unfavorable to us. Some governments and governmental authorities outside the U.S. have in the past disagreed, and may in the future disagree, with the actions, policies or programs of ICANN, the U.S. Government and us relating to the DNS.

Role of the U.S. Government . The U.S. Government through the NTIA coordinates the management of important aspects of the DNS including the IANA functions and the root zone. On March 14, 2014, NTIA announced its intent to transition its oversight of the IANA function to the global multi-stakeholder community. NTIA asked ICANN to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the DNS. The NTIA is also coordinating a related and parallel transition of related root zone management functions. These related root zone management functions involve our role as Root Zone Maintainer under the Cooperative Agreement. At NTIA's request, we submitted a proposal with ICANN to NTIA as to how best to remove NTIA's administrative role associated with root zone maintenance in a manner that maintains the security, stability and resiliency of the DNS. We have performed the Root Zone Maintainer function as a community service spanning three decades without compensation at the request of the DOC under the Cooperative Agreement. While it is uncertain how the transition of oversight of the IANA functions and related root zone management functions will affect our role as Root Zone Maintainer, it is anticipated that performance of the root zone maintainer function would be conducted by us under a new Root Zone Maintainer Service Agreement with ICANN once our root zone maintainer function obligations under the Cooperative Agreement are completed. Although our Root Zone Maintainer function is separate from our Registry Agreements, there can be no assurance that the transition of the IANA functions, the transition of the related root zone management functions, and associated transition processes will not negatively impact our business.

As a result of these and other risks, internet governance may change in ways that could materially harm our Registry Services business. For example, after the transition, if we perform the root zone maintainer function under a new agreement, we may be subject to claims challenging the agreement and we may not have immunity from or sufficient indemnification for such claims. If another party is designated to perform the Root Zone Maintainer function, there could be new or increased risks in availability, integrity and publication of the root zone file, which is critical to the operation of the DNS and our operation of our TLDs, including *.com* .

In addition to harming our Registry Services business, changes to internet governance may make it more difficult for us to introduce new services in our Registry Services business and we could also be subject to additional restrictions on how our business is conducted, or to fees or taxes applicable to this business, which may not be equally applicable to our competitors.

We operate two root zone servers and are contracted to perform the Root Zone Maintainer function. Under ICANN's New gTLD program, we face increased risk from these operations.

We operate two of the 13 root zone servers. Root zone servers are name servers that contain authoritative data for the very top of the DNS hierarchy. These servers have the software and DNS configuration data necessary to locate name servers that contain authoritative data for the TLDs. These root zone servers are critical to the functioning of the internet. Under the Cooperative Agreement, we play a key operational role in support of the IANA function as the Root Zone Maintainer. In this role, we provision and publish the authoritative data for the root zone itself multiple times daily and distribute it to all root server operators.

Under its New gTLD Program, ICANN has recommended delegations into the root zone of a large number of new gTLDs. In view of our role as the Root Zone Maintainer, and as a root server operator, we face increased risks should ICANN's delegation of these new gTLDs, which represent unprecedented changes to the root zone in volume and frequency, cause security and stability problems within the DNS and/or for parties who rely on the DNS. Such risks include potential instability of the DNS including potential fragmentation of the DNS should ICANN's delegations create sufficient instability, and potential claims based on our role in the root zone provisioning and delegation process. These risks, alone or in the aggregate, have the potential to cause serious harm to our Registry Services business. Further, our business could also be harmed through security, stability and resiliency degradation if the delegation of new gTLDs into the root zone causes problems to certain components of the DNS ecosystem or other aspects of the global DNS, or other relying parties are negatively impacted as a result of domain name collisions or other new gTLD security issues, such as exposure or other leakage of private or sensitive information.

Additionally, DNSSEC enabled in the root zone and at other levels of the DNS requires new preventative maintenance functions and complex operational practices that did not exist prior to the introduction of DNSSEC. Any failure by us or the IANA functions operator to comply with stated practices, such as those outlined in relevant DNSSEC Practice Statements, introduces risk to DNSSEC relying parties and other internet users and consumers of the DNS, which could have a material adverse impact on our business.

The evolution of internet practices and behaviors and the adoption of substitute technologies may impact the demand for domain names.

Domain names and the domain name system have been used by consumers and businesses to access or disseminate information, conduct ecommerce, and develop an online identity for many years. The growth of technologies such as social media, mobile devices, apps and the dominance of search engines has evolved and changed the internet practices and behaviors of consumers and businesses alike. These changes can impact the demand for domain names by those who purchase domain names for personal, commercial and investment reasons. Factors such as the evolving practices and preferences of internet users

and how they navigate the internet as well the motivation of domain name registrants and how they will monetize their investment in domain names can negatively impact our business. Some domain name registrars and registrants seek to purchase and resell domain names following an increase in their value. Adverse changes in the resale value of domain names could result in a decrease in the demand and/or renewal rates for domain names obtained for resale.

Some domain name registrants use a domain name to access or disseminate information, conduct ecommerce, and develop an online identity. Currently, internet users often navigate to a website either by directly typing its domain name into a web browser, the use of an app on their smart phone or mobile device, the use of a voice recognition technology such as Siri, Cortana, or Echo, or through the use of a search engine. If (i) web browser or internet search technologies were to change significantly; (ii) internet users' preferences or practices shift away from recognizing and relying on web addresses for navigation through the use of new and existing technologies; (iii) internet users were to significantly decrease the use of web browsers in favor of applications to locate and access content; or (iv) internet users were to increasingly use third level domains or alternate identifiers, such as social networking and microblogging sites, in each case the demand for domain names registered by us could decrease. This may trigger current or prospective customers and parties in our target markets to reevaluate their need for registration or renewal of domain names.

Some domain name registrars and registrants seek to generate revenue through advertising on their websites; changes in the way these registrars and registrants are compensated (including changes in methodologies and metrics) by advertisers and advertisement placement networks, such as Google, Yahoo!, Baidu and Bing, have, and may continue to, adversely affect the market for those domain names favored by such registrars and registrants which has resulted in, and may continue to result in, a decrease in demand and/or the renewal rate for those domain names. For example, according to published reports, Google has in the past changed (and may change in the future) its search algorithm, which may decrease site traffic to certain websites and provide less pay-per-click compensation for certain types of websites. This has made such websites less profitable which has resulted in, and may continue to result in, fewer domain registrations and renewals. In addition, as a result of the general economic environment, spending on online advertising and marketing may not increase or may be reduced, which in turn, may result in a further decline in the demand for those domain names.

If any of the above factors negatively impact the renewal of domain names or the demand for new domain names, we may experience material adverse impacts on our business, operating results, financial condition and cash flows.

Many of our target markets are evolving, and if these markets fail to develop or if our products and services are not widely accepted in these markets, our business could be harmed.

We target many new, developing and emerging markets to grow our business. These markets are rapidly evolving, and may not grow. Even if these markets grow, our services may not be widely used or accepted. Accordingly, the demand for our services in these markets is very uncertain. The factors that may affect market acceptance or adoption of our services in these markets include the following:

- regional internet infrastructure development, expansion, penetration and adoption;
- market acceptance and adoption of products and services based upon technologies other than those we use, which are substitutes for our products and services;
- public perception of the security of our technologies and of IP and other networks;
- the introduction and consumer acceptance of new generations of mobile devices, and in particular the use of alternative internet navigation mechanisms other than web browsers;
- increasing cyber threats and the associated customer need and demand for our Security Services offerings;
- government regulations affecting internet access and availability, domain name registrations or the provision of registry services, or e-commerce and telecommunications over the internet;
- preference by markets for the use of their own country's ccTLDs as a substitute or alternative to our TLDs; and
- increased acceptance and use of new gTLDs as substitutes for established gTLDs.

If the market for e-commerce and communications over IP and other networks does not grow or these services are not widely accepted in the market, our business could be materially harmed.

We may face operational and other risks from the introduction of new gTLDs by ICANN and our provision of back-end registry services.

Approximately 1,000 new gTLDs have already been delegated in this initial round of new gTLDs. ICANN plans on offering a second round of new gTLDs after the completion of the initial round, the timing of which is uncertain. As set forth in

the Verisign Labs Technical Report #1130007 version 2.2: New gTLD Security and Stability Considerations released on March 28, 2013, and reiterated in our further publications since then, we continue to believe there are issues regarding the deployment of the new gTLDs that should have been addressed before any new gTLDs were delegated, and despite our and others' efforts, some of these issues have not been addressed by ICANN sufficiently, if at all. For example, domain name collisions have been reported to ICANN, which have resulted in various network interruptions for enterprises as well as confusion and usability issues that have led to phishing attacks. It is anticipated that as additional new gTLDs are delegated more domain name collisions and associated security issues will occur.

We have entered into agreements to provide back-end registry services to other registry operators and applicants for new gTLDs. We may face risks regarding ICANN requirements for mitigating name collisions in the new gTLDs which we operate or for which we provide back-end registry services. For example, the possibility exists that "controlled interruption" periods may disrupt network services or that privacy or secure communications may be impacted as a result of insufficient preparedness by ICANN and the community for the launch of new gTLDs.

Our agreements with ICANN to provide registry services in connection with our new gTLDs, including our IDN gTLDs, and our agreements to provide back-end registry services directly to other applicants and indirectly through reseller relationships expose us to operational and other risks. For example, the increase in the number of gTLDs for which we provide registry services on a standalone basis or as a back-end service provider could further increase costs or increase the frequency or scope of targeted attacks from nefarious actors.

The business environment is highly competitive and, if we do not compete effectively, we may suffer lower demand for our products, price reductions, reduced gross margins and loss of market share.

The internet and communications network services industries are characterized by rapid technological change and frequent new product and service announcements which require us continually to improve the performance, features and reliability of our services, particularly in response to competitive offerings or alternatives to our products and services. In order to remain competitive and retain our market position, we must continually improve our access to technology and software, support the latest transmission technologies, and adapt our products and services to changing market conditions and our customers' and internet users' preferences and practices, or launch entirely new products and services such as new gTLDs in anticipation of, or in response to, market trends. We cannot assure that competing technologies developed by others or the emergence of new industry standards will not adversely affect our competitive position or render our services or technologies noncompetitive or obsolete. In addition, our markets are characterized by announcements of collaborative relationships involving our competitors. The existence or announcement of any such relationships could adversely affect our ability to attract and retain customers. As a result of the foregoing and other factors, we may not be able to compete effectively with current or future competitors, and competitive pressures that we face could materially harm our business.

We face competition in the domain name registry space from other gTLD and ccTLD registries that are competing for the business of entities and individuals that are seeking to obtain a domain name registration and/or establish a web presence. We have applied for new gTLDs including certain IDN gTLDs; however, there is no guarantee that such new gTLDs will be as or more successful than the new gTLDs obtained by our competitors. For example, some of the new gTLDs, including our new gTLDs, may face additional universal acceptance and usability challenges in that current desktop and mobile device software does not ubiquitously recognize these new gTLDs and may be slow to adopt standards or support these gTLDs, even if demand for such products is strong. This is particularly true for IDN gTLDs, but applies to conventional gTLDs as well. As a result of these challenges, it is possible that resolution of domain names within some of these new gTLDs may be blocked within certain state or organizational environments, challenging universal resolvability of these strings and their general acceptance and usability on the internet.

See the "Competition" section in Part I, Item 1 of the Company's Annual Report on Form 10-K for the year ended December 31, 2015, which was filed on February 19, 2016, for further information.

We must establish and maintain strong relationships with registrars and their resellers to maintain their focus on marketing our products and services otherwise our Registry Service business could be harmed.

One registrar accounts for approximately 30% of our revenues. All of our domain name registrations occur through registrars. Registrars and their resellers utilize substantial marketing efforts to increase the demand and/or renewal rates for domain names. Consolidation in the registrar or reseller industry or changes in ownership, management, or strategy among individual registrars or resellers could result in significant changes to their business, operating model and cost structure. Such changes could include reduced marketing efforts or other operational changes that could adversely impact the demand and/or the renewal rates for domain names. With the introduction of new gTLDs, many of our registrars have chosen to, and may continue to choose to, focus their short or long-term marketing efforts on these new offerings and/or reduce the prominence or visibility of our products and services on their e-commerce platforms. Our registrars and resellers not only sell domain name registrations of other competing registries but also sell and support their own services for websites such as email, website hosting, as well as

other services. To the extent that registrars and their resellers focus more on selling and supporting other services and less on the registration and renewal of our TLDs, our revenues could be adversely impacted. Our ability to successfully market our services to, and build and maintain strong relationships with, new and existing registrars or resellers is a factor upon which successful operation of our business is dependent. If we are unable to keep a significant portion of their marketing efforts focused on selling our TLDs as opposed to other competing TLDs or their own services, our business could be harmed.

If we encounter system interruptions or failures, we could be exposed to liability and our reputation and business could suffer.

We depend on the uninterrupted operation of our various systems, secure data centers and other computer and communication networks. Our systems and operations are vulnerable to damage or interruption from:

- power loss, transmission cable cuts and other telecommunications failures;
- damage or interruption caused by fire, earthquake, and other natural disasters;
- attacks, including hacktivism, by miscreants or other nefarious actors;
- computer viruses or software defects;
- physical or electronic break-ins, sabotage, intentional acts of vandalism, terrorist attacks and other events beyond our control;
- risks inherent in or arising from the terms and conditions of our agreements with service providers to operate our networks and data centers;
- state suppression of internet operations; and
- any failure to implement effective and timely remedial actions in response to any damage or interruption.

Most of the computing infrastructure for our Shared Registration System is located at, and most of our customer information is stored in, our facilities in New Castle, Delaware; Dulles, Virginia; and Fribourg, Switzerland. To the extent we are unable to partially or completely switch over to our primary alternate or tertiary sites, any damage or failure that causes interruptions in any of these facilities or our other computer and communications systems could materially harm our business. Although we carry insurance for property damage, we do not carry insurance or financial reserves for such interruptions, or for potential losses arising from terrorism.

In addition, our Registry Services business and certain of our other services depend on the efficient operation of the internet connections to and from customers to our Shared Registration System residing in our secure data centers. These connections depend upon the efficient operation of internet service providers and internet backbone service providers, all of which have had periodic operational problems or experienced outages in the past beyond our scope of control. In addition, if these service providers do not protect, maintain, improve, and reinvest in their networks or present inconsistent data regarding the DNS through their networks, our business could be harmed.

A failure in the operation or update of the root zone servers, the root zone file, the root zone management system, the TLD name servers, or the TLD zone files that we operate, or other network functions, could result in a DNS resolution or other service outage or degradation; the deletion of one or more TLDs from the internet; the deletion of one or more second-level domain names from the internet for a period of time; or a misdirection of a domain name to a different server. A failure in the operation or update of the supporting cryptographic and other operational infrastructure that we maintain could result in similar consequences. A failure in the operation of our Shared Registration System could result in the inability of one or more registrars to register or maintain domain names for a period of time. In the event that a registrar has not implemented back-up services in conformance with industry best practices, the failure could result in permanent loss of transactions at the registrar during that period. Any of these problems or outages could create potential liability, including liability arising from a failure to meet our service level agreements in our Registry Agreements, and could decrease customer satisfaction, harming our business or resulting in adverse publicity that could adversely affect the market's perception of the security of e-commerce and communications over the internet as well as of the security or reliability of our services.

Our operating results may be adversely affected as a result of unfavorable market, economic, social and political conditions.

An unstable global economic, social and political environment, including hostilities and conflicts in various regions both inside and outside the U.S., natural disasters, currency fluctuations, and country specific operating regulations may have a negative impact on demand for our services, our business and our foreign operations. The economic, social and political environment has impacted or may negatively impact, among other things:

- our customers' continued growth and development of their businesses and our customers' ability to continue as going concerns or maintain their businesses, which could affect demand for our products and services;
- current and future demand for our services, including decreases as a result of reduced spending on information technology and communications by our customers;
- price competition for our products and services;
- the price of our common stock;
- our liquidity and our associated ability to execute on any share repurchase plans;
- our ability to service our debt, to obtain financing or assume new debt obligations; and
- our ability to obtain payment for outstanding debts owed to us by our customers or other parties with whom we do business.

In addition, to the extent that the economic, social and political environment impacts specific industry and geographic sectors in which many of our customers are concentrated, that may have a disproportionate negative impact on our business.

Our international operations subject our business to additional economic and political risks that could have an adverse impact on our revenues and business.

A significant portion of our revenues is derived from customers outside the U.S. Doing business in international markets has required and will continue to require significant management attention and resources. We may also need to tailor some of our services for a particular market and to enter into international distribution and operating relationships. We may fail to maintain our ability to conduct business, including potentially material business operations in some international locations, or we may not succeed in expanding our services into new international markets or expand our presence in existing markets. Failure to do so could materially harm our business. Moreover, local laws and customs in many countries differ significantly from those in the U.S. In many foreign countries, particularly in those with developing economies, it is common for others to engage in business practices that are prohibited by our internal policies and procedures or U.S. law or regulations applicable to us. There can be no assurance that our employees, contractors and agents will not take actions in violation of such policies, procedures, laws and/or regulations. Violations of laws, regulations or internal policies and procedures by our employees, contractors or agents could result in financial reporting problems, investigations, fines, penalties, or prohibition on the importation or exportation of our products and services and could have a material adverse effect on our business. In addition, we face risks inherent in doing business on an international basis, including, among others:

- competition with foreign companies or other domestic companies entering the foreign markets in which we operate, as well as foreign governments actively promoting ccTLDs, which we do not operate;
- legal uncertainty regarding liability, enforcing our contracts and compliance with foreign laws;
- tariffs and other trade barriers and restrictions;
- difficulties in staffing and managing foreign operations;
- currency fluctuations;
- potential problems associated with adapting our services to technical conditions existing in different countries;
- difficulty of verifying customer information, including complying with the customer verification requirements of certain countries;
- more stringent privacy policies in some foreign countries;
- additional vulnerability from terrorist groups targeting U.S. interests abroad;
- potentially conflicting or adverse tax consequences;
- reliance on third parties in foreign markets in which we only recently started doing business; and
- potential concerns of international customers and prospects regarding doing business with U.S. technology companies due to alleged U.S. government data collection policies.

We rely on our intellectual property rights to protect our proprietary assets, and any failure by us to protect or enforce, or any misappropriation of, our intellectual property could harm our business.

Our success depends in part on our internally developed technologies and related intellectual property. Despite our precautions, it may be possible for a third party to copy or otherwise obtain and use our intellectual property without authorization. Furthermore, the laws of foreign countries may not protect our proprietary rights in those countries to the same

extent U.S. law protects these rights in the U.S. In addition, it is possible that others may independently develop substantially equivalent intellectual property. If we do not effectively protect our intellectual property, our business could suffer. Additionally, we have filed patent applications with respect to some of our technology in the U.S. Patent and Trademark Office and patent offices outside the U.S. Patents may not be awarded with respect to these applications and even if such patents are awarded, third parties may seek to oppose or otherwise challenge our patents, and such patents' scope may differ significantly from what was requested in the patent applications and may not provide us with sufficient protection of our intellectual property. In the future, we may have to resort to litigation to enforce and protect our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. This type of litigation is inherently unpredictable and, regardless of its outcome, could result in substantial costs and diversion of management attention and technical resources. Some of the software and protocols used in our business are based on standards set by standards setting organizations such as the Internet Engineering Task Force. To the extent any of our patents are considered "standards essential patents," we may be required to license such patents to our competitors on reasonable and non-discriminatory terms.

We also license third-party technology that is used in some of our products and services to perform key functions. These third-party technology licenses may not continue to be available to us on commercially reasonable terms or at all. The loss of or our inability to obtain or maintain any of these technology licenses could hinder or increase the cost of our launching new products and services, entering into new markets and/or otherwise harm our business. Some of the software and protocols used in our Registry Services business are in the public domain or may otherwise become publicly available, which means that such software and protocols are equally available to our competitors.

We rely on the strength of our Verisign brand to help differentiate ourselves in the marketing of our products. Dilution of the strength of our brand could harm our business. We are at risk that we will be unable to fully register, build equity in, or enforce the Verisign logo in all markets where Verisign products and services are sold. In addition, in the U.S. and most other countries' word marks for TLDs have currently not been successfully registered as trademarks. Accordingly, we may not be able to fully realize or maintain the value of these intellectual property assets.

We could become subject to claims of infringement of intellectual property of others, which could be costly to defend and could harm our business.

We cannot be certain that we do not and will not infringe the intellectual property rights of others. Claims relating to infringement of intellectual property of others or other similar claims have been made against us in the past and could be made against us in the future. It is possible that we could become subject to additional claims for infringement of the intellectual property of third parties. The international use of our logo could present additional potential risks for third party claims of infringement. Any claims, with or without merit, could be time consuming, result in costly litigation and diversion of technical and management personnel attention, cause delays in our business activities generally, or require us to develop a non-infringing logo or technology or enter into royalty or licensing agreements. Royalty or licensing agreements, if required, may not be available on acceptable terms or at all. If a successful claim of infringement were made against us, we could be required to pay damages or have portions of our business enjoined. If we could not identify and adopt an alternative non-infringing logo, develop non-infringing technology or license the infringed or similar technology on a timely and cost-effective basis, our business could be harmed.

A third party could claim that the technology we license from other parties infringes a patent or other proprietary right. Litigation between the licensor and a third party or between us and a third party could lead to royalty obligations for which we are not indemnified or for which indemnification is insufficient, or we may not be able to obtain any additional license on commercially reasonable terms or at all.

In addition, legal standards relating to the validity, enforceability, and scope of protection of intellectual property rights in internet-related businesses, including patents related to software and business methods, are uncertain and evolving. Because of the growth of the internet and internet-related businesses, patent applications are continuously being filed in connection with internet-related technology. There are a significant number of U.S. and foreign patents and patent applications in our areas of interest, and we believe that there has been, and is likely to continue to be, significant litigation in the industry regarding patent and other intellectual property rights.

We could become involved in claims, lawsuits or investigations that may result in adverse outcomes.

In addition to possible intellectual property litigation and infringement claims, we are, and may in the future, become involved in other claims, lawsuits and investigations, including with respect to the root zone maintainer agreement now under negotiation with ICANN. Such proceedings may initially be viewed as immaterial but could prove to be material. Litigation is inherently unpredictable, and excessive verdicts do occur. Adverse outcomes in lawsuits and investigations could result in significant monetary damages, including indemnification payments, or injunctive relief that could adversely affect our ability to conduct our business and may have a material adverse effect on our financial condition, results of operations and cash flows. Given the inherent uncertainties in litigation, even when we are able to reasonably estimate the amount of possible loss or range

of loss and therefore record an aggregate litigation accrual for probable and reasonably estimable loss contingencies, the accrual may change in the future due to new developments or changes in approach. In addition, such investigations, claims and lawsuits could involve significant expense and diversion of management's attention and resources from other matters.

We continue to explore new strategic initiatives, the pursuit of any of which may pose significant risks and could have a material adverse effect on our business, financial condition and results of operations.

We are exploring a variety of possible strategic initiatives which may include, among other things, the investment in, and the pursuit of, new revenue streams, services or products, changes to our offerings, initiatives to leverage our patent portfolio, our Security Services business, back-end registry services and IDN gTLDs. In addition, we have evaluated and are pursuing and will continue to evaluate and pursue acquisitions of TLDs that are currently in operation and those that have not yet been awarded as long as they support our growth strategy.

Any such strategic initiative may involve a number of risks, including: the diversion of our management's attention from our existing business to develop the initiative, related operations and any requisite personnel; possible regulatory scrutiny or third-party claims; possible material adverse effects on our results of operations during and after the development process; our possible inability to achieve the intended objectives of the initiative; as well as damage to our reputation if we are unsuccessful in pursuing a strategic initiative. Such initiatives may result in a reduction of cash or increased costs. We may not be able to successfully or profitably develop, integrate, operate, maintain and manage any such initiative and the related operations or employees in a timely manner or at all. Furthermore, under our agreements with ICANN, we are subject to certain restrictions in the operation of *.com*, *.net*, *.name* and other TLDs, including required ICANN approval of new registry services for such TLDs. If any new initiative requires ICANN review or ICANN determines that such a review is required, we cannot predict whether this process will prevent us from implementing the initiative in a timely manner or at all. Any strategic initiative to leverage our patent portfolio will likely increase litigation risks from potential licensees and we may have to resort to litigation to enforce our intellectual property rights.

We depend on key employees to manage our business effectively, and we may face difficulty attracting and retaining qualified leaders.

We operate in a unique competitive and highly regulated environment and we depend on the knowledge, experience, and performance of our senior management team and other key employees in this regard and otherwise. We periodically experience changes in our management team. If we are unable to attract, integrate, retain and motivate these key individuals and additional highly skilled technical, sales and marketing, and other experienced employees, and implement succession plans for these personnel, our business may suffer. For example, our service products are highly technical and require individuals skilled and knowledgeable in unique platforms and software implementation.

Changes in, or interpretations of, tax rules and regulations or our tax positions may adversely affect our effective tax rates.

We are subject to income taxes in both the U.S. and numerous foreign jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain. We are subject to audit by various tax authorities. In accordance with U.S. GAAP, we recognize income tax benefits, net of required valuation allowances and accrual for uncertain tax positions. For example, we claimed a worthless stock deduction on our 2013 federal income tax return and recorded a net income tax benefit of \$380.1 million. Although we believe our tax estimates are reasonable, the final determination of tax audits and any related litigation could be materially different than that which is reflected in historical income tax provisions and accruals. Should additional taxes be assessed as a result of an audit or litigation, an adverse effect on our results of operations, financial condition and cash flows in the period or periods for which that determination is made could result.

A significant portion of our foreign earnings for the current fiscal year was earned in low tax jurisdictions. Our effective tax rate could fluctuate significantly on a quarterly basis and could be adversely affected to the extent earnings are lower than anticipated in countries where we have lower statutory rates and higher than anticipated in countries where we have higher statutory rates.

Various legislative proposals that would reform U.S. corporate tax laws have been proposed by the Obama administration as well as members of Congress, including proposals that would significantly impact how U.S. multinational corporations are taxed on foreign earnings. We are unable to predict whether these or other proposals will be implemented. Although we cannot predict whether or in what form any proposed legislation may pass, if enacted, such legislation could have a material adverse impact on our tax expense or cash flow.

Our foreign earnings, which are indefinitely reinvested offshore, constitute a majority of our cash, cash equivalents and marketable securities, and there is a high cost associated with a change in our indefinite reinvestment assertion or a repatriation of those funds to the U.S.

A majority of our cash, cash equivalents and marketable securities are held by our foreign subsidiaries. Our foreign earnings are indefinitely reinvested offshore and are not available to be used in the U.S. for working capital needs, debt obligations, acquisitions, share repurchases, dividends or other general corporate purposes. In the event that funds from our foreign operations are needed in the U.S. for any purpose, we would be required to accrue and pay additional U.S. taxes in order to repatriate those funds, which could be significant. Further, if we are unable to indefinitely reinvest our foreign earnings our effective tax rate would increase. These could adversely impact our business valuation and stock price.

Our marketable securities portfolio could experience a decline in market value, which could materially and adversely affect our financial results.

As of June 30, 2016, we had \$1.9 billion in cash, cash equivalents, marketable securities and restricted cash, of which \$1.7 billion was invested in marketable securities. The marketable securities consist primarily of debt securities issued by the U.S. Treasury meeting the criteria of our investment policy, which is focused on the preservation of our capital through the investment in investment grade securities. We currently do not use derivative financial instruments to adjust our investment portfolio risk or income profile.

These investments, as well as any cash deposited in bank accounts, are subject to general credit, liquidity, market and interest rate risks, which may be exacerbated by unusual events, such as the U.S. debt ceiling crisis and the Eurozone crisis, which affected various sectors of the financial markets and led to global credit and liquidity issues. During the 2008 financial crisis, the volatility and disruption in the global credit market reached unprecedented levels. If the global credit market deteriorates again or other events negatively impact the market for U.S. Treasury securities, our investment portfolio may be impacted and we could determine that some of our investments have experienced an other-than-temporary decline in fair value, requiring an impairment charge which could adversely impact our results of operations and cash flows.

We are subject to the risks of owning real property.

We own the land and building in Reston, Virginia, which constitutes our headquarters facility. Ownership of this property, as well as our data centers in Dulles, Virginia and New Castle, Delaware, may subject us to risks, including:

- adverse changes in the value of the properties, due to interest rate changes, changes in the commercial property markets, or other factors;
- ongoing maintenance expenses and costs of improvements;
- the possible need for structural improvements in order to comply with environmental, health and safety, zoning, seismic, disability law, or other requirements;
- the possibility of environmental contamination or notices of violation from federal or state environmental agencies; and
- possible disputes with neighboring owners, tenants, service providers or others.

We have anti-takeover protections that may discourage, delay or prevent a change in control that could benefit our stockholders.

Our amended and restated Certificate of Incorporation and Bylaws contain provisions that could make it more difficult for a third party to acquire us without the consent of our Board of Directors ("Board"). These provisions include:

- our stockholders may take action only at a duly called meeting and not by written consent;
- special meetings of our stockholders may be called only by the chairman of the board of directors, the president, our Board, or the secretary (acting as a representative of the stockholders) whenever a stockholder or group of stockholders owning at least thirty-five percent (35%) in the aggregate of the capital stock issued, outstanding and entitled to vote, and who held that amount in a net long position continuously for at least one year, so request in writing;
- vacancies on our Board can be filled until the next annual meeting of stockholders by a majority of directors then in office; and
- our Board has the ability to designate the terms of and issue new series of preferred stock without stockholder approval.

In addition, Section 203 of the General Corporation Law of Delaware prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns or within the last three years has owned 15% or more of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless in the same transaction the interested stockholder acquired 85% ownership of our voting stock (excluding certain shares) or the business combination is approved in a prescribed manner. Section 203 therefore may impact the ability of an acquirer to complete an acquisition of us after a successful tender offer and accordingly could discourage, delay or prevent an acquirer from making an unsolicited offer without the approval of our Board.

We have a considerable number of common shares subject to future issuance.

As of June 30, 2016, we had one billion authorized common shares, of which 107.2 million shares were outstanding. In addition, of our authorized common shares, 12.7 million common shares were reserved for issuance pursuant to outstanding equity and employee stock purchase plans (“Equity Plans”), and 36.4 million shares were reserved for issuance upon conversion of our 3.25% Junior Subordinated Convertible Debentures due 2037 (“Subordinated Convertible Debentures”). As a result, we keep substantial amounts of our common stock available for issuance upon exercise or settlement of equity awards outstanding under our Equity Plans and/or the conversion of Subordinated Convertible Debentures into our common stock. Issuance of all or a large portion of such shares would be dilutive to existing security holders, could adversely affect the prevailing market price of our common stock and could impair our ability to raise additional capital through the sale of equity securities.

Our financial condition and results of operations could be adversely affected if we do not effectively manage our indebtedness.

We have a significant amount of outstanding debt, and we may incur additional indebtedness in the future. Our substantial indebtedness, including any future indebtedness, requires us to dedicate a significant portion of our cash flow from operations or to arrange alternative liquidity sources to make principal and interest payments, when due, or to repurchase or settle our debt, if triggered, by certain corporate events, certain events of default, or conversion. It could also limit our flexibility in planning for or reacting to changes in our business and our industry, or make required capital expenditures and investments in our business; make it difficult or more expensive to refinance our debt or obtain new debt; trigger an event of default; and increase our vulnerability to adverse changes in general economic and industry conditions. Some of our debt contains covenants which may limit our operating flexibility, including restrictions on share repurchases, dividends, prepayment or repurchase of debt, acquisitions, disposing of assets, if we do not continue to meet certain financial ratios. Any rating assigned to our debt securities could be lowered or withdrawn by a rating agency, which could make it more difficult or more expensive for us to obtain additional debt financing in the future. The settlement amount, contingent interest, and potential recapture of income tax deductions related to our Subordinated Convertible Debentures can be substantial, and can increase significantly based on changes in our stock price. The occurrence of any of the foregoing factors could have a material adverse effect on our business, cash flows, results of operations and financial condition.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The following table presents the share repurchase activity during the three months ended June 30, 2016 :

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans or Programs (1)
	(Shares in thousands)			
April 1 – 30, 2016	550	\$ 89.22	550	\$ 866.7 million
May 1 – 31, 2016	576	\$ 85.40	576	\$ 817.5 million
June 1 – 30, 2016	608	\$ 84.95	608	\$ 765.9 million
	<u>1,734</u>		<u>1,734</u>	

(1) Effective February 11, 2016, our Board of Directors authorized the repurchase of approximately \$611.2 million of our common stock, in addition to the \$388.8 million of our common stock remaining available for repurchase under the previous share repurchase program, for a total repurchase authorization of up to \$1.0 billion of our common stock. The share repurchase program has no expiration date. Purchases made under the program could be effected through open market transactions, block purchases, accelerated share repurchase agreements or other negotiated transactions.

ITEM 5. OTHER INFORMATION

On July 27, 2016, our Board of Directors amended our Bylaws to implement the changes discussed in the Company's proxy statement for the 2016 Annual Meeting of Stockholders. The amended Bylaws were effective upon approval by the Board of Directors.

The Bylaws were amended to provide for "proxy access" by eligible stockholders. Specifically, the Bylaws permit a stockholder, or a group of up to twenty stockholders, that has continuously owned at least 3% of the Company's outstanding stock entitled to vote in the election of directors for at least three years, to nominate and include in the Company's proxy materials for an annual meeting of stockholders up to the greater of two directors or 20% of the number of the directors then in office provided that the nominating stockholder(s) and nominee(s) satisfy the requirements described in the provision. (Article I, Section 14). As a result of these amendments, if any stockholder intends to include a director nominee in the proxy statement for the Company's 2017 Annual Meeting of Stockholders, the stockholder must notify the Secretary of the Company in writing and the notice must be delivered to the Secretary at the principal executive office of the Company not earlier than the close of business on November 30, 2016, nor later than the close of business on December 30, 2016. The nomination must otherwise comply with the applicable requirements of the Bylaws.

In addition, the Bylaws were amended to, among other things:

- Conform the definition of stock ownership used in the provisions on stockholder-requested special meetings to the definition used in the proxy access bylaw. (Article I, Section 2)
- Clarify the methods for giving notice for meetings of stockholders and Board of Directors meetings. (Article I, Section 4 and Article II, Section 11)
- Implement majority voting in uncontested director elections with plurality voting retained for contested elections. (Article I, Section 10 and Article II, Section 3)
- Add provisions requiring all director nominees, regardless of whether nominees are nominated by the Board or a stockholder, to provide certain information and representations. (Article I, Section 12)
- Include an advance notice provision regarding nominating persons for election to the Board and proposing other business to be considered at annual and special stockholder meetings. For annual meetings, this provision requires a stockholder to provide notice and certain information about the stockholder and the nominee or item of business generally not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the previous year's annual meeting of stockholders. (Article I, Section 13) As a result of the amendments, if any stockholder intends to nominate a director candidate or propose other business for consideration at the Company's 2017 Annual Meeting of Stockholders (not including a proposal intended for inclusion in the Company's proxy statement in accordance with the SEC's Rule 14a-8 under the Securities Exchange Act of 1934), the stockholder must notify the Secretary of the Company in writing and the notice must be delivered to the Secretary at the principal executive office of the Company not earlier than the close of business on February 9, 2017, nor later than the close of business on March 11, 2017. The notice also must comply with the applicable requirements of the Bylaws.
- Clarify the Board's ability to use the methods in Delaware General Corporation Law Section 141(f) when the Board is taking action by unanimous consent in lieu of a meeting, which includes the use of electronic transmission. (Article II, Section 14)
- Conform provisions relating to Board committees and subcommittees to amendments to the Delaware General Corporation Law set to take effect on August 1, 2016. (Article II, Section 17)
- Clarify the Board's ability to delegate authority to officers, employees and agents outside the Bylaws. (Article III, Section 1)
- Remove inoperative language about stockholder action by written consent without a meeting of stockholders.
- Other miscellaneous wording changes throughout the document to make corrections, to clarify language and to conform the language in the Bylaws to that of the Certificate or the Delaware General Corporation Law.

This description of the amendments to the Bylaws is qualified in its entirety by reference to the text of the Bylaws filed as Exhibit 3.02 to this Form 10-Q.

ITEM 6. EXHIBITS

As required under Item 6—Exhibits, the exhibits filed as part of this report are provided in this separate section. The exhibits included in this section are as follows:

Exhibit Number	Exhibit Description
3.02	Bylaws of VeriSign, Inc.
31.01	Certification of Principal Executive Officer pursuant to Exchange Act Rule 13a-14(a).
31.02	Certification of Principal Financial Officer pursuant to Exchange Act Rule 13a-14(a).
32.01	Certification of Principal Executive Officer pursuant to Exchange Act Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the U.S. Code (18 U.S.C. 1350). *
32.02	Certification of Principal Financial Officer pursuant to Exchange Act Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the U.S. Code (18 U.S.C. 1350). *
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase

* As contemplated by SEC Release No. 33-8212, these exhibits are furnished with this Quarterly Report on Form 10-Q and are not deemed filed with the SEC and are not incorporated by reference in any filing of VeriSign, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in such filings.

BYLAWS
of
VERISIGN, INC.

ARTICLE I
Stockholders

Section 1. Annual Meeting. An annual meeting of the stockholders of the corporation, for the election of the directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date and at such time as the Board of Directors shall each year fix.

Section 2. Special Meetings. (a) Special meetings of the stockholders, for any purpose or purposes prescribed in the notice of the meeting, shall be held at such place, on such date, and at such time as determined by the Board of Directors and may be called only by (i) the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors authorized by resolutions (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), (ii) the Chairman of the Board of Directors, (iii) the President or (iv) the Secretary whenever a stockholder or group of stockholders Owning (as defined below) at least thirty-five percent (35%) in the aggregate of the capital stock issued, outstanding and entitled to vote, and who held that amount in a net long position continuously for at least one year (the "Eligibility Criteria"), so request in writing. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice of the meeting.

In the case of clause (iv) of the immediately preceding sentence, each such written request must be signed by each stockholder making the request and delivered to the Secretary at the principal executive office of the corporation and shall set forth (a) a brief description of the business desired to be brought before the special meeting of the stockholders, including the complete text of any resolutions to be presented at the special meeting of the stockholders with respect to such business, and the reasons for conducting such business at the meeting; (b) the date of request; (c)(i) if any stockholder making the request is a registered holder of the corporation's stock, the name, address and ownership information, as they appear on the corporation's books, of each such stockholder and (ii) if any stockholder making the request is not a registered holder of the corporation's stock, proof of satisfaction by each such stockholder of the Eligibility Criteria which shall be substantially similar to the proof specified by Rule 14a-8(b)(2)(i) or (ii) under the Securities Exchange Act of 1934 (the "Exchange Act"), as amended from time to time, in each case, including a written agreement to update and supplement such information upon the occurrence of any changes thereto; (d) a representation that each requesting stockholder intends to appear in person or by proxy at the special meeting of the stockholders to transact the business specified; and (e) a representation that each requesting stockholder intends to hold the shares of the corporation's stock set forth in the written request through the date of the special meeting of the stockholders; provided that, if any such requesting stockholder (x) fails to satisfy the Eligibility Criteria or to follow one of the procedural requirements described in clauses (a) through (e) of this sentence (the "Procedural Requirements"), the corporation shall not be obligated to call a special meeting unless the remaining requesting stockholders continue to satisfy the Eligibility Criteria and the Procedural Requirements or (y) fails to hold the required number of shares through the date of the special meeting (a "Non Performing Holder"), the corporation may cancel the special meeting (if previously called but not yet held) unless the remaining requesting stockholders have not failed to hold such shares through such date and continue to satisfy the Eligibility Criteria; provided, further, that the corporation may disregard future requests to call special meetings from each Non Performing Holder for the following two calendar years. Following receipt by the Secretary of a written request of stockholders that complies with the requirements set forth in this Section 2 (a "Special Meeting Request"), the Secretary shall call a special meeting of the stockholders.

(b) Revocation of Special Meeting Request. A stockholder may revoke a Special Meeting Request at any time by written revocation. Following such revocation, the Board of Directors, in its discretion, may cancel the special meeting unless, in the case of a Special Meeting Request, any remaining requesting stockholders continue to satisfy the Eligibility Criteria and the Procedural Requirements. For purposes of this Section 2, written revocation shall mean delivering a notice of revocation to the Secretary.

(c) Limitations. The Secretary shall not call a special meeting in response to a Special Meeting Request if (i) an identical or substantially similar item (as determined by the Board of Directors, a “Similar Item”) is included or will be included in the corporation’s notice of meeting as an item of business to be brought before a meeting of stockholders that will be held not later than ninety (90) days after the delivery date of the Special Meeting Request (the “Delivery Date”); (ii) the Delivery Date is during the period commencing ninety (90) days prior to the date of the next annual meeting of stockholders and ending on the date of the next annual meeting of stockholders; (iii) a Similar Item was presented at any meeting of stockholders held within one hundred and eighty (180) days prior to the Delivery Date; (iv) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; or (v) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law. For purposes of this Section 2, the election of directors shall be deemed to be a Similar Item with respect to all items of business involving the election or removal of directors.

For the purposes of this Section 2, a stockholder or beneficial owner is deemed to “Own” only those outstanding shares of capital stock as to which the person possesses both (A) the full voting and investment rights pertaining to the shares and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares, except that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (1) sold by such person in any transaction that has not been settled or closed, (2) borrowed by the person for any purposes or purchased by the person pursuant to an agreement to resell, or (3) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by the person, whether the instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of capital stock, if the instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, the person’s full right to vote or direct the voting of the shares, and/or (y) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of the shares by the person. The terms “Owned,” “Owning” and other variations of the word “Own,” when used with respect to a stockholder or beneficial owner, have correlative meanings. For purposes of clauses (1) through (3), the term “person” includes its affiliates. A stockholder or beneficial owner “Owns” shares held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of directors and the right to direct the disposition thereof and possesses the full economic interest in the shares. The person’s Ownership of shares is deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the stockholder.

Section 3. Place of Meetings. All meetings of stockholders shall be held at the principal office of the corporation unless a different place is fixed by the person or persons calling the meeting and stated in the notice of the meeting.

Section 4. Notices of Meetings and Adjourned Meetings. A written notice of each annual or special meeting of the stockholders stating the place, date, and hour thereof, shall be given by the Secretary (or the person or persons calling the meeting), not less than 10 nor more than 60 days before the date of the meeting, to each stockholder entitled to such notice, and, if mailed, shall be given by depositing it postage prepaid in the United States mail, directed to each stockholder at his or her address as it appears on the records of the corporation. Notices of all special meetings of stockholders shall state the purpose or purposes for which the meeting is called. An affidavit of the Secretary, Assistant Secretary, or transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. No notice need be given to any person with whom communication is unlawful or to any person who has waived such notice in the manner permitted by Section 229 of the Delaware General Corporation Law (the “DGCL”). When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken except that, if the adjournment is for more than 30 days or if, after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in this Section 4.

Section 5. Quorum. At any meeting of the stockholders, a quorum for the transaction of business shall consist of one or more individuals appearing in person or represented by proxy and owning or representing a majority of the shares of the corporation then outstanding and entitled to vote thereat, unless or except to the extent that the presence of a larger number may be required by law (including as required from time to time by the DGCL or the Certificate of Incorporation of the corporation (the “Certificate of Incorporation”). Where a separate vote by a class or classes is required, a majority of the shares of such class or classes then outstanding and entitled to vote present in person or by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares of stock entitled to vote thereat who are present, in person or by proxy, may adjourn the meeting to another place, date, or time.

Section 6. Organization. Such person as the Board of Directors may have designated or, in the absence of such a person, the President of the corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the shares entitled to vote thereat who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the corporation, the secretary of the meeting shall be such person as the chairman appoints.

Section 7. Conduct of Business. The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her in order.

Section 8. Voting. Unless otherwise provided in the Certificate of Incorporation and subject to the provisions of Section 6 of Article IV hereof, each stockholder shall have one vote for each share of stock entitled to vote held by him or her of record according to the records of the corporation. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote unless the pledgor in a transfer on the books of the corporation has expressly empowered the pledgee to vote the pledged shares, in which case only the pledgee or his or her proxy shall be entitled to vote. If shares stand of record in the names of two or more persons or if two or more persons have the same fiduciary relationship respecting the shares then, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided to the contrary: (a) if only one votes, his or her act binds all; (b) if more than one votes, the act of the majority so voting binds all; and (c) if more than one votes and the vote is evenly split, the effect shall be as provided by law.

Section 9. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or any group of persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

Section 10. Action at Meeting.

(a) Voting - General. When a quorum is present at any meeting, action of the stockholders on any matter properly brought before such meeting, other than the election of directors, shall require, and may be effected by, the affirmative vote of the holders of a majority in interest of the stock present or represented by proxy and entitled to vote on the subject matter, except where a different vote is expressly required by law, the Certificate of Incorporation or these Bylaws, in which case such express provision shall govern and control.

(b) Voting - Directors. Except as provided in Section 7 of Article II of these Bylaws, each director shall be elected by the affirmative vote of the Majority of the Votes Cast (as defined herein) with respect to that director at any meeting for the election of directors at which a quorum is present, provided that if as of a date that is five business days in advance of the date the corporation files its definitive proxy statement (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission ("SEC") the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the votes cast at such meeting. If the Certificate of Incorporation so provides, no ballot shall be required for the election of directors unless requested by a stockholder present or represented at the meeting and entitled to vote in the election. For purposes of this paragraph (b), the term "Majority of the Votes Cast" means, with respect to a nominee for director, that the number of shares voted "for" the election of that nominee must exceed the number of votes cast "against" that nominee.

Section 11. Stockholder Lists. The officer who has charge of the stock ledger of the corporation shall prepare and make available, at least 10 days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting during ordinary business hours, at the principal place of business of the corporation. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 12. Submission of Information by Director Nominees. (a) To be eligible to be a nominee for election or re-election as a director of the corporation, a person must deliver to the Secretary at the principal executive office of the corporation the following information:

(i) a written representation and agreement, which shall be signed by such person and shall represent and agree that such person: (A) consents to serving as a director if elected and (if applicable) to being named in the corporation's proxy statement and form of proxy as a nominee; (B) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity: (1) as to how the person, if elected as a director, will act or vote on any issue or question that has not been disclosed to the corporation, or (2) that could limit or interfere with the person's ability to comply, if elected as a director, with such person's fiduciary duties under applicable law; (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the corporation; and (D) if elected as a director, will comply with all of the corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other corporation policies and guidelines applicable to directors (which will be provided to such person promptly following a request therefor); and

(ii) all completed and signed questionnaires required of the corporation's directors (which will be provided to such person promptly following a request therefor).

(b) A nominee for election or re-election as a director of the corporation shall also provide to the corporation such other information as it may reasonably request. The corporation may request such additional information as necessary to permit the corporation to determine the eligibility of such person to serve as a director of the corporation, including information relevant to a determination whether such person can be considered an independent director.

(c) Notwithstanding any other provision of these Bylaws, if a stockholder has submitted notice of an intent to nominate a candidate for election or re-election as a director pursuant to Section 13 of this Article I or Section 14 of this Article I, the questionnaires described in Section 12(a)(ii) above and the additional information described in clause (b) of this Section 12 above shall be considered timely if provided to the corporation promptly upon request by the corporation, but in any event within the time period for delivery of a stockholder's notice pursuant to Section 13 of this Article I or Section 14 of this Article I, respectively, and all information provided pursuant to this Section 12 shall be deemed part of the stockholder's notice submitted pursuant to Section 13 of this Article I or Section 14 of this Article I, respectively.

Section 13. Notice of Stockholder Business: Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors (C) by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 13(a) is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 13(a) or (D) by an Eligible Stockholder (as defined in clause (c) of Section 14 of this Article I) pursuant to the requirements of Section 14 of this Article I. For the avoidance of doubt, the foregoing clauses (C) and (D) shall be the exclusive means for a stockholder to make nominations or propose other business at an annual meeting of stockholders (other than a proposal included in the corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act).

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and, in the case of business other than nominations, such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive office of the corporation not later than the close of business (as defined in clause (c)(ii) of this Section 13) on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the date on which public announcement (as defined in clause (c)(ii) of this Section 13) of the date of such meeting is first made by the corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice of the meeting has already been given to stockholders or with respect to which there has been a public announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, and (2) the information required to be submitted by nominees pursuant to clause (a)(i) of Section 12 of this Article I above;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the other business is proposed:

(1) the name and address of such stockholder, as they appear on the corporation's books, and the name and address of such beneficial owner,

(2) the class or series and number of shares of stock of the corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting, and

(3) a representation that the stockholder (or a qualified representative of the stockholder) intends to appear at the meeting to make such nomination or propose such business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the other business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a "Control Person"):

(1) the class or series and number of shares of stock of the corporation which are beneficially owned (as defined in clause (c) (ii) of this Section 13) by such stockholder or beneficial owner and by any Control Person as of the date of the notice, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the corporation beneficially owned by such stockholder or beneficial owner and by any Control Person as of the record date for the meeting,

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner or Control Person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting,

(3) a description of any agreement, arrangement or understanding (including without limitation any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, beneficial owner or Control Person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the corporation's stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or Control Person with respect to securities of the corporation, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting,

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation, within the meaning of Exchange Act Rule 14a-1(l), with respect to the nomination or other business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least

fifty percent (50%) of the corporation's stock entitled to vote generally in the election of directors in the case of a nomination and to holders of at least the percentage of the corporation's stock required to approve or adopt the business to be proposed, in the case of a proposal.

(iii) Notwithstanding anything in clause (ii) of this Section 13(a) or clause (b) of this Section 13 to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 13 shall set forth a representation that the stockholder will notify the corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 13(a), and such information when provided to the corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 13(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such meeting.

(v) Notwithstanding anything in this Section 13(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the corporation naming all of the nominees for directors or specifying the size of the increased Board of Directors made by the corporation at least 10 days prior to the last day a stockholder may deliver a notice in accordance with clause (ii) of this Section 13(a), a stockholder's notice required by this Section 13(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the corporation at the principal executive office of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

(b) Special Meeting. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the Board of Directors, (ii) provided that one or more directors are to be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 13(b) is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election and who delivers a written notice setting forth the information required by clause (a) of this Section 13 and provides the additional information required by clause (a) of Section 12 of this Article I above, or (iii) in the case of a stockholder-requested special meeting, by any stockholder of the corporation pursuant to clause (a)(iv) of Section 2 of this Article I. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the notice required by this Section 13(b) shall be delivered to the Secretary at the principal executive office of the corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the date on which public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made by the corporation. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in this Section 13 shall be eligible to be elected or re-elected at any meeting of stockholders of the corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 13. Except as otherwise required by law, each of the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 13. If any proposed nomination or other business is not in compliance with this Section 13, then except as otherwise required by law, the chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 13, unless otherwise required by law, or otherwise determined by the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting, if the stockholder does not provide

the information required under Section 12 of this Article I above or clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 13 to the corporation within the time frames specified herein, or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of these Bylaws, to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the corporation prior to the making of such nomination or proposal at such meeting stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 13, the “close of business” shall mean 6:00 p.m. local time at the principal executive office of the corporation on any calendar day, whether or not the day is a business day, and a “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 13, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (B) the right to vote such shares, alone or in concert with others and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

Section 14. Proxy Access for Director Nominations.

(a) Subject to the terms and conditions of these Bylaws, in connection with an annual meeting of stockholders at which directors are to be elected, the corporation (i) shall include in its proxy statement and on its form of proxy the names of, and (ii) shall include in its proxy statement the “Additional Information” (as defined below) relating to, a number of nominees specified pursuant to clause (b) of this Section 14 below (the “Authorized Number”) for election to the Board of Directors submitted pursuant to this Section 14 (each, a “Stockholder Nominee”), if:

(i) the Stockholder Nominee satisfies the eligibility requirements in this Section 14;

(ii) the Stockholder Nominee is identified in a timely notice (the “Stockholder Notice”) that satisfies this Section 14 and is delivered by a stockholder that qualifies as, or is acting on behalf of, an Eligible Stockholder (as defined below);

(iii) the Eligible Stockholder satisfies the requirements in this Section 14 and expressly elects at the time of the delivery of the Stockholder Notice to have the Stockholder Nominee included in the corporation’s proxy materials; and

(iv) the additional requirements of these Bylaws are met.

(b) The maximum number of Stockholder Nominees appearing in the corporation’s proxy materials with respect to an annual meeting of stockholders (the “Authorized Number”) shall not exceed the greater of (i) two or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 14 with respect to the annual meeting, or if such amount is not a whole number, the closest whole number (rounding down) below twenty percent (20%); provided that the Authorized Number shall be reduced (i) by any Stockholder Nominee whose name was submitted for inclusion in the corporation’s proxy materials pursuant to this Section 14 but whom the Board of Directors decides to nominate as a Board of Directors nominee, and (ii) by any nominees who were previously elected to the Board of Directors as Stockholder Nominees at any of the preceding two annual meetings and who are nominated for election at the annual meeting by the Board of Directors as a Board of Directors nominee. In the event that one or more vacancies for any reason occurs after the date of the Stockholder Notice but before the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Authorized Number shall be calculated based on the number of directors in office as so reduced.

(c) To qualify as an “Eligible Stockholder,” a stockholder or a group as described in this Section 14(c) must:

(i) Own and have Owned (as defined below), continuously for at least three years as of the date of the Stockholder Notice, a number of shares (as adjusted to account for any stock dividend, stock split, subdivision, combination, reclassification or recapitalization of the shares of capital stock issued, outstanding and entitled to vote generally in the

election of directors (for purposes of this Section 14, "Voting Capital Stock") that represents at least three percent (3%) of the outstanding shares of Voting Capital Stock as of the date of the Stockholder Notice (the "Required Shares"); and

(ii) thereafter continue to Own the Required Shares through such annual meeting of stockholders.

For purposes of satisfying the ownership requirements of this Section 14(c), a group of not more than twenty (20) stockholders and/or beneficial owners may aggregate the number of shares of Voting Capital Stock that each group member has individually Owned continuously for at least three years as of the date of the Stockholder Notice if all other requirements and obligations for an Eligible Stockholder set forth in this Section 14 are satisfied by and as to each stockholder or beneficial owner comprising the group whose shares are aggregated. No shares may be attributed to more than one Eligible Stockholder, and no stockholder or beneficial owner, alone or together with any of its affiliates, may individually or as a member of a group qualify as or constitute more than one Eligible Stockholder under this Section 14. A group of any two or more funds shall be treated as only one stockholder or beneficial owner for this purpose if they are (A) under common management and investment control or (B) under common management and funded primarily by a single employer. For the purposes of this Section 14, the term "affiliate" or "affiliates" shall have the meanings ascribed thereto under the rules and regulations promulgated under the Exchange Act.

(d) For purposes of this Section 14:

(i) The terms "Own," "Owned," "Owning" and other variations of the word "Own" when used with respect to a stockholder or beneficial owner shall have the same meanings as defined in Section 2 of this Article I.

(ii) A stockholder or beneficial owner's Ownership of shares shall be deemed to continue during any period in which the person has loaned the shares if the person has the power to recall the loaned shares on not more than five business days' notice.

(e) For purposes of this Section 14, the "Additional Information" referred to in clause (a) of this Section 14 that the corporation will include in its proxy statement is:

(i) the information set forth in the Schedule 14N provided with the Stockholder Notice concerning each Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the corporation's proxy statement by the applicable requirements of the Exchange Act and the rules and regulations thereunder; and

(ii) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder (or, in the case of a group, a written statement of the group), not to exceed 500 words, in support of its Stockholder Nominee(s), which must be provided at the same time as the Stockholder Notice for inclusion in the corporation's proxy statement for the annual meeting (the "Statement").

Notwithstanding anything to the contrary contained in this Section 14, the corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule, regulation or listing standard. Nothing in this Section 14 shall limit the corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(f) The Stockholder Notice shall set forth all information, representations and agreements required under clause (a)(ii) of Section 13 of this Article I above, including the information required with respect to (i) any nominee for election as a director, (ii) any stockholder giving notice of an intent to nominate a candidate for election, and (iii) any stockholder, beneficial owner or other person on whose behalf the nomination is made under this Section 14. In addition, such Stockholder Notice shall include:

(i) a copy of the Schedule 14N that has been or concurrently is filed with the SEC under the Exchange Act;

(ii) a written statement of the Eligible Stockholder (and in the case of a group, the written statement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder), which statement(s) shall also be included in the Schedule 14N filed with the SEC: (A) setting forth and certifying to the number of shares of Voting Capital Stock the Eligible Stockholder Owns and has Owned (as defined in clause (d) of this Section 14) continuously for at least three years as of the date of the Stockholder Notice, and (B) agreeing to continue to Own such shares through the annual meeting;

(iii) the written agreement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) addressed to the corporation, setting forth the following additional agreements, representations, and warranties:

(A) it shall provide (1) within five business days after the date of the Stockholder Notice, one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three-year holding period, specifying the number of shares that the Eligible Stockholder Owns, and has Owned continuously in compliance with this Section 14, (2) within five business days after the record date for the annual meeting both the information required under clause (a)(ii)(D)(1) of Section 13 of this Article I and notification in writing verifying the Eligible Stockholder's continuous Ownership of the Required Shares, in each case, as of such date, and (3) immediate notice to the corporation if the Eligible Stockholder ceases to own any of the Required Shares prior to the annual meeting;

(B) it (1) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the corporation, and does not presently have this intent, (2) has not nominated and shall not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 14, (3) has not engaged and shall not engage in, and has not been and shall not be a participant (as defined in Item 4 of Exchange Act Schedule 14A) in, a solicitation within the meaning of Exchange Act Rule 14a-1(l), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee or a nominee of the Board of Directors, and (4) shall not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the corporation; and

(C) it will (1) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the corporation or out of the information that the Eligible Stockholder provided to the corporation, (2) indemnify and hold harmless the corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of the nomination or solicitation process pursuant to this Section 14, (3) comply with all laws, rules, regulations and listing standards applicable to its nomination or any solicitation in connection with the annual meeting, (4) file with the SEC any solicitation or other communication by or on behalf of the Eligible Stockholder relating to the corporation's annual meeting of stockholders, one or more of the corporation's directors or director nominees or any Stockholder Nominee, regardless of whether the filing is required under Exchange Act Regulation 14A, or whether any exemption from filing is available for such materials under Regulation 14A under the Exchange Act, and (5) at the request of the corporation, promptly, but in any event within five business days after such request, (or by the day prior to the day of the annual meeting, if earlier) provide to the corporation such additional information as reasonably requested by the corporation; and

(iv) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all members of the group with respect to the nomination and matters related thereto, including withdrawal of the nomination and the written agreement, representation, and warranty of the Eligible Stockholder that it shall provide within five business days after the date of the Stockholder Notice, documentation reasonably satisfactory to the corporation demonstrating that the number of stockholders and/or beneficial owners within such group does not exceed twenty (20), including whether a group of funds qualifies as one stockholder or beneficial owner within the meaning of clause (c) of this Section 14.

All information provided pursuant to this Section 14(f) shall be deemed part of the Stockholder Notice for purposes of this Section 14.

(g) To be timely under this Section 14, the Stockholder Notice must be delivered by a stockholder to the Secretary of the corporation at the principal executive office of the corporation not later than the close of business (as defined in clause (c)(ii) of Section 13 of this Article I) on the 120th day nor earlier than the close of business on the 150th day prior to the first anniversary of the date or approximate date (as stated in the corporation's proxy materials) the definitive proxy statement was first released to stockholders in connection with the preceding year's annual meeting of stockholders; provided, however, that in the event the annual meeting is more than 30 days before or after the anniversary of the previous year's annual meeting, or if no annual meeting was held in the preceding year, to be timely, the Stockholder Notice must be so delivered not earlier than the close of business on the 150th day prior to such annual meeting and not later than the close of business on the later of the 120th day prior to such annual meeting or the 10th day following the day on which public announcement (as defined in clause (c)(ii) of Section 13 of this Article I) of the date of such meeting is first made by the corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice has been given or with

respect to which there has been a public announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of the Stockholder Notice as described above.

(h) Within the time period for delivery of the Stockholder Notice, for each Stockholder Nominee, all written and signed representations and agreements and all completed and signed questionnaires required pursuant to clause (a) of Section 12 of this Article I, including consent to being named in the corporation's proxy statement and form of proxy as a nominee, shall be delivered to the Secretary of the corporation at the principal executive office of the corporation. The Stockholder Nominee must promptly, but in any event within five business days after such request, provide to the corporation such other information as it may reasonably request. The corporation may request such additional information as necessary to permit the Board of Directors to determine if each Stockholder Nominee satisfies the requirements of this Section 14.

(i) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominees to the corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 14.

(j) Notwithstanding anything to the contrary contained in this Section 14, the corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee shall occur, notwithstanding that proxies in respect of such vote may have been received by the corporation, if:

(i) the Eligible Stockholder or Stockholder Nominee breaches any of its agreements, representations, or warranties set forth in the Stockholder Notice (or otherwise submitted pursuant to this Section 14), any of the information in the Stockholder Notice (or otherwise submitted pursuant to this Section 14) was not, when provided, true, correct and complete, or the Eligible Stockholder or applicable Stockholder Nominee otherwise fails to comply with its obligations pursuant to these Bylaws, including, but not limited to, its obligations under this Section 14;

(ii) the Stockholder Nominee (A) is not independent under any applicable listing standards, any applicable rules of the SEC, and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors, (B) is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (C) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding (excluding traffic violations and other minor offenses) within the past 10 years or (D) is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended;

(iii) the corporation has received a notice (whether or not subsequently withdrawn) that a stockholder intends to nominate any candidate for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director in clause (a)(i)(C) of Section 13 of this Article I; or

(iv) the election of the Stockholder Nominee to the Board of Directors would cause the corporation to violate the Certificate of Incorporation of the corporation, these Bylaws, any applicable law, rule, regulation or listing standard.

(k) An Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 14 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy materials and include such assigned rank in its Stockholder Notice submitted to the corporation. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 14 exceeds the Authorized Number, the Stockholder Nominees to be included in the corporation's proxy materials shall be determined in accordance with the following provisions: one Stockholder Nominee who satisfies the eligibility requirements in this Section 14 shall be selected from each Eligible Stockholder for inclusion in the corporation's proxy materials until the Authorized Number is reached, going in order of the amount (largest to smallest) of shares of the corporation each Eligible Stockholder disclosed as Owned in its Stockholder Notice submitted to the corporation and going in the order of rank (highest to lowest) assigned to each Stockholder Nominee by such Eligible Stockholder. If the Authorized Number is not reached after one Stockholder Nominee who satisfies the eligibility requirements in this Section 14 has been selected from each Eligible Stockholder, this selection process shall continue as many times as necessary, following the same order each time, until the Authorized Number is reached. Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements in this Section 14 thereafter is

nominated by the Board of Directors, thereafter is not included in the corporation's proxy materials or thereafter is not submitted for director election for any reason (including the Eligible Stockholder's or Stockholder Nominee's failure to comply with this Section 14), no other nominee or nominees shall be included in the corporation's proxy materials or otherwise submitted for election as a director at the applicable annual meeting in substitution for such Stockholder Nominee.

(l) Any Stockholder Nominee who is included in the corporation's proxy materials for a particular annual meeting of stockholders but withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, including for the failure to comply with any provision of these Bylaws (provided that in no event shall any such withdrawal, ineligibility or unavailability commence a new time period (or extend any time period) for the giving of a Stockholder Notice), shall be ineligible to be a Stockholder Nominee pursuant to this Section 14 for the next two annual meetings.

(m) Notwithstanding the foregoing provisions of this Section 14, unless otherwise required by law or otherwise determined by the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting, if the stockholder delivering the Stockholder Notice (or a qualified representative of the stockholder, as defined in clause (c)(i) of Section 13 of this Article I) does not appear at the annual meeting of stockholders of the corporation to present its Stockholder Nominee or Stockholder Nominees, such nomination or nominations shall be disregarded, notwithstanding that proxies in respect of the election of the Stockholder Nominee or Stockholder Nominees may have been received by the corporation. Without limiting the Board of Directors' power and authority to interpret any other provisions of these Bylaws, the Board of Directors (and any other person or body authorized by the Board of Directors) shall have the power and authority to interpret this Section 14 and to make any and all determinations necessary or advisable to apply this Section 14 to any persons, facts or circumstances, in each case, acting in good faith. This Section 14 shall be the exclusive method for stockholders to include nominees for director election in the corporation's proxy materials.

ARTICLE II

Directors

Section 1. Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or these Bylaws directed or required to be exercised or done by the stockholders.

Section 2. Number of Directors. The Board of Directors shall consist of one or more members. The number of directors shall be no less than six (6) and no more than nine (9), the number thereof to be fixed from time to time by resolution of the Board of Directors.

Section 3. Election and Tenure. Each director shall be elected by the vote specified in clause (b) of Section 10 of Article I or as provided in Section 7 of this Article II. Each director shall serve until his or her successor is elected and qualified, or until his or her earlier resignation or removal.

Section 4. Qualification. No director need be a stockholder.

Section 5. Removal. Any director or the entire Board of Directors may be removed with or without cause, by the holders of a majority of the shares then entitled to vote at an election of the directors except as otherwise provided by law.

Section 6. Resignation. Any director of the corporation may resign at any time by giving written notice to the Board of Directors, to the Chairman of the Board of Directors, if any, to the President, or to the Secretary, and any member of a committee may resign therefrom at any time by giving notice as aforesaid or to the chairman or secretary of such committee. Any such resignation shall take effect at the time (or upon the happening of an event) specified therein, or, if the time (or event) be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. Vacancies and Newly Created Directorships. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled (a) by the stockholders at any meeting, (b) by a majority of the directors then in office, although less than a quorum, or (c) by a sole remaining director. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more Directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the Directors elected by such class, classes or series then in office or by the sole remaining director so elected. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of directors who are entitled to act on the filling of

such vacancy or vacancies and who are then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies by vote to take effect when such resignation or resignations shall become effective.

Section 8. Annual Meeting. The first meeting of each newly elected Board of Directors may be held without notice immediately after an annual meeting of stockholders (or a special meeting of stockholders held in lieu of an annual meeting) at the same place as that at which such meeting of stockholders was held; or such first meeting may be held at such place and time as shall be fixed by the consent in writing of all the directors, or may be called in the manner hereinafter provided with respect to the call of special meetings.

Section 9. Regular Meetings. Regular meetings of the directors may be held at such times and places as shall from time to time be fixed by resolution of the Board of Directors, and no notice need be given of regular meetings held at times and places so fixed, provided, however, that any resolution relating to the holding of regular meetings shall remain in force only until the next annual meeting of stockholders and that, if at any meeting of Directors at which a resolution is adopted fixing the times or place or places for any regular meetings any Director is absent, no meeting shall be held pursuant to such resolution without notice to or waiver by such absent Director pursuant to Section 11 of this Article II.

Section 10. Special Meetings. Special meetings of the directors may be called by the Chairman of the Board of Directors, if any, the President, or by at least one-third of the directors then in office (rounded up to the nearest whole number), and shall be held at the place and on the date and hour designated in the call thereof.

Section 11. Notices. Notices of any special meeting of the directors shall be given to each director by the Secretary or an Assistant Secretary (a) by mailing to him or her, postage prepaid, and addressed to him or her at his or her address as registered on the books of the corporation, or if not so registered at his or her last known home or business address, a written notice of such meeting at least 4 days before the meeting, (b) by delivering such notice by hand or by telegram, telecopy, telex, facsimile or electronic transmission (including without limitation e-mail) to him or her at least 48 hours before the meeting, or (c) by giving such notice in person or by telephone at least 48 hours in advance of the meeting. Any notice given personally or by telephone, telegram, telecopy, telex, facsimile or electronic transmission (including without limitation e-mail) may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. In the absence of the Secretary or an Assistant Secretary, such notice may be given by the officer or one of the directors calling the meeting. Notice need not be given to any director who has waived notice in accordance with Section 229 of the DGCL. A notice or waiver of notice of a meeting of the directors need not specify the business to be transacted at or the purpose of the meeting.

Section 12. Quorum. At any meeting of the directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board of Directors, a majority of those present (or, if not more than two directors are present, any director present) may adjourn the meeting from time to time to another place, date or time, without notice other than announcement at the meeting prior to adjournment, until a quorum shall be present.

Section 13. Participation in Meetings by Conference Telephone. One or more members of the Board of Directors, or any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 13 shall constitute presence in person at such meeting.

Section 14. Conduct of Business; Action by Written Consent. At any meeting of the Board of Directors at which a quorum is present, business shall be transacted in such order and manner as the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided in these Bylaws or required by law. Without limiting the manner by which a consent of directors may be given under Section 141(f) of the DGCL, action may be taken by the Board of Directors, or any committee thereof, without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the records of proceedings of the Board of Directors or committee.

Section 15. Place of Meetings. The Board of Directors may hold its meetings, and have an office or offices, within or without the State of Delaware.

Section 16. Compensation. The Board of Directors shall have the authority to fix stated salaries for directors for their service in such capacity and to provide for payment of a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors. The Board of Directors shall also have the authority to provide for payment of a fixed sum and expenses of attendance, if any, payable to members of committees for attending committee

meetings. Nothing herein contained shall preclude any director from serving the corporation in any other capacity and receiving compensation for such services.

Section 17. Committees. (a) The Board of Directors, by resolution passed by a majority of the number of directors required at the time to constitute a full Board of Directors as fixed in or determined pursuant to these Bylaws as then in effect, may from time to time designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have such power or authority in reference to amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in Subsection (a) of Section 151 of the DGCL, fix the designations and any preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares in a series of stock or authorize the increase or decrease in the shares of any series), adopting an agreement of merger or consolidation under Sections 251, 252, 254, 255, 256, 257, 258, 263, or 264 of the DGCL, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property or assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the Bylaws of the corporation. Such a committee may, to the extent expressly provided in the resolution of the Board of Directors, have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL.

(b) At any meeting of any committee or subcommittee of a committee, a majority of the directors then serving on such committee of the Board of Directors or subcommittee of a committee shall constitute a quorum for the transaction of business by the committee or subcommittee, unless the Certificate of Incorporation, these Bylaws, a resolution of the Board of Directors or a resolution of a committee that created the subcommittee requires a greater or lesser number, provided that in no case shall a quorum be less than 1/3 of the directors then serving on the committee or subcommittee. The vote of the majority of the members of a committee or subcommittee present at a meeting at which a quorum is present shall be the act of the committee or subcommittee, unless the Certificate of Incorporation, these Bylaws, a resolution of the Board of Directors or a resolution of a committee that created the subcommittee requires a greater number.

(c) Each committee, except as otherwise provided by resolution of the Board of Directors, shall fix the time and place of its meetings within or without the State of Delaware, shall adopt its own rules and procedures, and shall keep a record of its acts and proceedings and report the same from time to time to the Board of Directors.

(d) Unless otherwise provided in the Certificate of Incorporation, these Bylaws or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE III

Officers

Section 1. Officers and Their Election. The officers of the corporation shall be a Chief Executive Officer, a President, a Secretary, a Chief Financial Officer and such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers and other officers as the Board of Directors may from time to time determine and elect or appoint. The Board of Directors may appoint one of its members to the office of Chairman of the Board of Directors and another of its members to the office of Vice-Chairman of the Board of Directors and from time to time define the powers and duties of these and other officers, employees or agents of the corporation notwithstanding any other provisions of these Bylaws. All officers shall be elected by the Board of Directors and shall serve at the will of the Board of Directors. Any officer may, but need not, be a director. Two or more offices may be held by the same person. All officers shall perform such duties and have such powers as the Board of Directors shall designate by resolution, or in the absence of such resolution, as set forth in these Bylaws. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article III.

Section 2. Term of Office. The Chief Executive Officer, the President, the Chief Financial Officer and the Secretary shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 3. Vacancies. Any vacancy at any time existing in any office may be filled by the Board of Directors.

Section 4. Chairman of the Board of Directors. The Board of Directors may, in its discretion, elect a Chairman of the Board of Directors from among its members. He or she may be the Chief Executive Officer of the corporation if so designated by the Board of Directors, and he or she shall preside at all meetings of the Board of Directors at which he or she is present and shall exercise and perform such other powers and duties as may from time to time be assigned to him or her by the Board of Directors or prescribed by the Bylaws.

Section 5. Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer of the corporation who may also be the Chairman of the Board of Directors or President of the corporation or both. It shall be his or her duty and he or she shall have the power to see that all orders and resolutions of the Board of Directors are carried into effect. He or she shall from time to time report to the Board of Directors all matters within his or her knowledge which the interests of the corporation may require to be brought to its notice.

Section 6. President. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation except as the Board of Directors may otherwise provide. The President shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 7. Vice Presidents. In the absence or disability of the President, his or her powers and duties shall be performed by the vice president, if only one, or, if more than one, by the one designated for the purpose by the Board of Directors. Each vice president shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 8. Chief Financial Officer. The Chief Financial Officer shall be the treasurer of the corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depositories as shall be designated by the Board of Directors or in the absence of such designation in such depositories as he or she shall from time to time deem proper. The Chief Financial Officer (or any Assistant Chief Financial Officer) shall sign all stock certificates as treasurer of the corporation. He or she shall disburse the funds of the corporation as shall be ordered by the Board of Directors, taking proper vouchers for such disbursements. He or she shall promptly render to the Chief Executive Officer and to the Board of Directors such statements of his or her transactions and accounts as the Chief Executive Officer and Board of Directors respectively may from time to time require. The Chief Financial Officer shall perform such duties and have such powers additional to the foregoing as the Board of Directors may designate.

Section 9. Assistant Chief Financial Officers. In the absence or disability of the Chief Financial Officer, his or her powers and duties shall be performed by the Assistant Chief Financial Officer, if only one, or if more than one, by the one designated for the purpose by the Board of Directors. Each Assistant Chief Financial Officer shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 10. Secretary. The Secretary shall issue notices of all meetings of stockholders, of the Board of Directors and of committees thereof where notices of such meetings are required by law or these Bylaws. He or she shall record the proceedings of the meetings of the stockholders and of the Board of Directors and shall be responsible for the custody thereof in a book to be kept for that purpose. He or she shall also record the proceedings of the committees of the Board of Directors unless such committees appoint their own respective secretaries. Unless the Board of Directors shall appoint a transfer agent and/or registrar, the Secretary shall be charged with the duty of keeping, or causing to be kept, accurate records of all stock outstanding, stock certificates issued and stock transfers. He or she shall sign such instruments as require his or her signature. The Secretary shall have custody of the corporate seal and shall affix and attest such seal on all documents whose execution under seal is duly authorized. In his or her absence at any meeting, an Assistant Secretary or the Secretary pro tempore shall perform his or her duties thereat. He or she shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 11. Assistant Secretaries. In the absence or disability of the Secretary, his or her powers and duties shall be performed by the Assistant Secretary, if only one, or, if more than one, by the one designated for the purpose by the Board of Directors. Each Assistant Secretary shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 12. Salaries. The salaries and other compensation of officers, agents and employees shall be fixed from time to time by or under authority from the Board of Directors. No officer shall be prevented from receiving a salary or other compensation by reason of the fact that he or she is also a director of the corporation.

Section 13. Removal. The Board of Directors may remove any officer, either with or without cause, at any time.

Section 14. Bond. The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

Section 15. Resignations. Any officer of the corporation may resign at any time by giving written notice to the Board of Directors, to the Chairman of the Board of Directors, if any, to the Chief Executive Officer or to the Secretary of the corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE IV

Capital Stock

Section 1. Stock Certificates; Uncertificated Shares. The shares of capital stock of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation (or the transfer agent or registrar, as the case may be). Notwithstanding the adoption of such a resolution, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of, the corporation by the Chairman or Vice-Chairman of the Board of Directors or the President or a Vice President, and by the Chief Financial Officer (in his or her capacity as treasurer) or an Assistant Chief Financial Officer (in his or her capacity as assistant treasurer), or the Secretary or an Assistant Secretary, certifying the number of shares owned by him or her in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before the certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 2. Classes of Stock. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the face or back of each certificate issued by the corporation to represent such class or series shall either (a) set forth in full or summarize the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions thereof, or (b) contain a statement that the corporation will furnish a statement of the same without charge to each stockholder who so requests. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered holder thereof such written notice as may be required by law as to the information required by law to be set forth or stated on stock certificates.

Section 3. Transfer of Stock. Shares of stock shall be transferable only upon the books of the corporation pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe. The Board of Directors may at any time or from time to time appoint a transfer agent or agents or a registrar or registrars for the transfer or registration of shares of stock. Except where a certificate, or uncertificated shares, are issued in accordance with Section 5 of Article IV of these Bylaws, one or more outstanding certificates representing in the aggregate the number of shares involved shall be surrendered for cancellation before a new certificate, or uncertificated shares, are issued representing such shares.

Section 4. Holders of Record. Prior to due presentment for registration of transfer the corporation may treat the holder of record of a share of its stock as the complete owner thereof exclusively entitled to vote, to receive notifications and otherwise entitled to all the rights and powers of a complete owner thereof, notwithstanding notice to the contrary.

Section 5. Stock Certificates. The Board of Directors may direct that a new stock certificate or certificates, or uncertificated shares, be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates or his or her legal representative, to give the corporation a bond sufficient to indemnify it

against any claim that may be made against the corporation on account of the alleged loss, theft, or destruction, of such certificates or the issuance of such new certificate or certificates, or uncertificated shares.

Section 6. Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action other than stockholder action by written consent, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than 60 nor less than 10 days before the date of any meeting of stockholders, nor more than 60 days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE V

Miscellaneous Provisions

Section 1. Interested Directors and Officers. (a) No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, if:

(i) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the number of disinterested directors is less than a quorum; or

(ii) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(iii) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the shareholders.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 2. Indemnification.

(a) Right to Indemnification. The corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director or officer, to the fullest extent authorized by law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that except as provided in Subsection (c) of this Section with respect to proceedings

to enforce rights to indemnification, the corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the corporation; and provided further that as to any matter disposed of by a compromise payment by such person, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expenses shall be provided unless such compromise and indemnification therefor shall be appropriated:

(i) by a majority vote of a quorum consisting of disinterested directors;

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the Board of Directors consisting of all the disinterested directors;

(iii) if there are not two or more disinterested directors in office, then by a majority of the directors then in office, provided they have obtained a written finding by special independent legal counsel appointed by a majority of the directors to the effect that, based upon a reasonable investigation of the relevant facts as described in such opinion, the person to be indemnified appears to have acted in good faith in the reasonable belief that his or her action was in the best interests of the corporation (or, to the extent that such matter relates to service with respect to an employee benefit plan, in the best interests of the participants or beneficiaries of such employee benefit plan);

(iv) by the holders of a majority of the shares of stock entitled to vote for the election of directors, which majority may include interested directors and officers; or

(v) by a court of competent jurisdiction.

An “interested” director or officer is one against whom in such capacity the proceeding in question or other proceeding on the same or similar grounds is then pending. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Right to Advancement of Expenses. The right to indemnification conferred in Subsection (a) of this Section shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise, which undertaking may be accepted without reference to the financial ability of such person to make repayment.

(c) Right of Indemnitee to Bring Suit. If a claim under Subsection (a) or (b) of this Section is not paid in full by the corporation within 60 days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking the corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the corporation to recover an

advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section or otherwise shall be on the corporation.

(d) Non-exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, certificate of incorporation, bylaw, agreement, vote of disinterested directors or otherwise. The corporation's indemnification under this Section 2 of any person who is or was a director or officer of the corporation, or is or was serving, at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person receives as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the corporation, (ii) from such other corporation, partnership, joint venture, trust or other enterprise, or (iii) under any other applicable indemnification provision.

(e) Joint Representation. If both the corporation and any person to be indemnified are parties to an action, suit or proceeding (other than an action or suit by or in the right of the corporation to procure a judgment in its favor), counsel representing the corporation therein may also represent such indemnified person (unless such dual representation would involve such counsel in a conflict of interest in violation of applicable principles of professional ethics), and the corporation shall pay all fees and expenses of such counsel incurred during the period of dual representation other than those, if any, as would not have been incurred if counsel were representing only the corporation; and any allocation made in good faith by such counsel of fees and disbursements payable under this paragraph by the corporation versus fees and disbursements payable by any such indemnified person shall be final and binding upon the corporation and such indemnified person.

(f) Indemnification of Employees and Agents of the Corporation. Except to the extent that rights to indemnification and advancement of expenses of employees or agents of the corporation may be required by any statute, the Certificate of Incorporation, this Section or any other bylaw, agreement, vote of disinterested directors or otherwise, the corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the corporation to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of directors and officers of the corporation.

(g) Insurance. The corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL (as currently in effect or hereafter amended), the Certificate of Incorporation or these Bylaws.

(h) Nature of Indemnification Right; Modification of Repeal of Indemnification. Each person who is or becomes a director or officer as described in subsection (a) of this Section 2 shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Section 2. All rights to indemnification (and the advancement of expenses) under this Section 2 shall be deemed to be provided by a contract between the corporation and the person who serves as a director or officer of the corporation at any time while these Bylaws and other relevant provisions of the DGCL and other applicable law, if any, are in effect. Such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any modification or repeal of this Section 2 shall not adversely affect any right or protection existing under this Section 2 at the time of such modification or repeal.

Section 3. Stock in Other Corporations. Subject to any limitations that may be imposed by the Board of Directors, the President or any person or persons authorized by the Board of Directors may, in the name and on behalf of the corporation, (a) call meetings of the holders of stock or other securities of any corporation or other organization, stock or other securities of which are held by this corporation, (b) act, or appoint any other person or persons (with or without powers of substitution) to act in the name and on behalf of the corporation, or (c) express consent or dissent, as a holder of such securities, to corporate or other action by such other corporation or organization.

Section 4. Checks, Notes, Drafts and Other Instruments. Checks, notes drafts and other instruments for the payment of money drawn or endorsed in the name of the corporation may be signed by any officer or officers or person or persons authorized by the Board of Directors to sign the same. No officer or person shall sign any such instrument as aforesaid unless authorized by the Board of Directors to do so.

Section 5. Corporate Seal. The seal of the corporation shall be circular in form, bearing the name of the corporation, the word "Delaware", and the year of incorporation, and the same may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 6. Books and Records. The books, accounts and records of the corporation, except as may be otherwise required by law, may be kept outside of the State of Delaware, at such place or places as the Board of Directors may from time to time appoint. Except as may otherwise be provided by law, the Board of Directors shall determine whether and to what extent the books, accounts, records and documents of the corporation, or any of them, shall be open to the inspection of the stockholders.

Section 7. Severability. If any term or provision of the Bylaws, or the application thereof to any person or circumstances or period of time, shall to any extent be invalid or unenforceable, the remainder of the Bylaws shall be valid and enforced to the fullest extent permitted by law.

Section 8. Interpretations. Words importing persons include firms, associations and corporations, all words importing the singular number include the plural number and vice versa, and all words importing the masculine gender include the feminine gender.

Section 9. Amendments. The Board of Directors is expressly empowered to adopt, amend or repeal these Bylaws; provided that the Board of Directors shall not have the power to alter, amend or repeal any bylaw adopted by the stockholders that by its terms may be altered, amended or repealed only by the stockholders. The stockholders also have the power to adopt, amend or repeal the Bylaws of the corporation.

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, D. James Bidzos, Chief Executive Officer of VeriSign, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. the Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended June 30, 2016 , as filed with the Securities and Exchange Commission (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 28, 2016

/S/ D. JAMES BIDZOS

D. James Bidzos
Chief Executive Officer

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, George E. Kilguss, III, Chief Financial Officer of VeriSign, Inc. (the “Company”), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. the Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended June 30, 2016 , as filed with the Securities and Exchange Commission (the “Report”), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 28, 2016

/S/ G EORGE E. K ILGUSS , III

George E. Kilguss, III
Chief Financial Officer

EXHIBIT C-46



August 1, 2016

Verisign Statement Regarding .Web Auction Results

RESTON, Va.--(BUSINESS WIRE)-- VeriSign, Inc. (NASDAQ:VRSN), a global leader in domain names and internet security, today announced the following information pertaining to the .web top-level domain (TLD):

The Company entered into an agreement with Nu Dot Co LLC wherein the Company provided funds for Nu Dot Co's bid for the .web TLD. We are pleased that the Nu Dot Co bid was successful.

We anticipate that Nu Dot Co will execute the .web Registry Agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) and will then seek to assign the Registry Agreement to Verisign upon consent from ICANN.

As the most experienced and reliable registry operator, Verisign is well-positioned to widely distribute .web. Our expertise, infrastructure, and partner relationships will enable us to quickly grow .web and establish it as an additional option for registrants worldwide in the growing TLD marketplace. Our track record of over 19 years of uninterrupted availability means that businesses and individuals using .web as their online identity can be confident of being reliably found online. And these users, along with our global distribution partners, will benefit from the many new domain name choices that .web will offer.

About Verisign

Verisign, a global leader in domain names and internet security, enables internet navigation for many of the world's most recognized domain names and provides protection for websites and enterprises around the world. Verisign ensures the security, stability and resiliency of key internet infrastructure and services, including the .com and .net domains and two of the internet's root servers, as well as performs the root zone maintainer functions for the core of the internet's Domain Name System (DNS). Verisign's Security Services include intelligence-driven Distributed Denial of Service Protection, iDefense Security Intelligence and Managed DNS. To learn more about what it means to be Powered by Verisign, please visit Verisign.com.

VRSNF

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S&P 500
2,841.26
-4.81 (-0.17%)



Dow 30
25,552.31
+138.21 (+0.53%)



Nasdaq
7,873.27
-58.97 (-0.74%)



Russell 2000
1,701.36
+16.16 (+0.96%)



Crude Oil
69.83
+0.53 (+0.76%)



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Edited Transcript of VRSN earnings conference call or presentation 8-Feb-2018 9:30pm GMT

Q4 2017 Verisign Inc Earnings Call

DULLES Feb 9, 2018 (Thomson StreetEvents) -- Edited Transcript of Verisign Inc earnings conference call or presentation Thursday, February 8, 2018 at 9:30:00pm GMT

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Symbol	Last Price	Change	% Ch
VRSN VeriSign, Inc.	151.18	-0.01	-0.1

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Corporate Participants

* D. James Bidzos

VeriSign, Inc. - Founder, President, CEO & Executive Chairman

* David Atchley

VeriSign, Inc. - VP & Corporate Treasurer

* George E. Kilguss

VeriSign, Inc. - Executive VP & CFO

Conference Call Participants

* Gregg Steven Moskowitz

Cowen and Company, LLC, Research Division - MD and Senior Research Analyst

* Matthew Steven Lemenager

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Robert W. Baird & Co. Incorporated, Research Division - Junior Analyst

Rumors

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* Ugam Kamat

JP Morgan Chase & Co, Research Division - Analyst

* Walter H Pritchard

Citigroup Inc, Research Division - MD and U.S. Software Analyst

=====

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MarketWatch

Presentation

Operator [1]

Good day, everyone, welcome to VeriSign's Fourth Quarter and Full Year 2017 Earnings Call. Today's conference is being recorded, and unauthorized recording of this call is not permitted.

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Fortune

At this time, I would like to turn the conference over to Mr. David Atchley, Vice President of Investor Relations and Corporate Treasurer. Please go head, sir.

David Atchley, VeriSign, Inc. - VP & Corporate Treasurer [2]

Thank you, operator, and good afternoon, everyone. Welcome to VeriSign's Fourth Quarter and Full Year 2017 Earnings Call. With me are: Jim Bidzos, Executive Chairman, President and CEO; Todd Strubbe, Executive Vice President and COO; and George Kilguss, Executive Vice President and CFO.

A California DMV employee who napped at work every day for 3 hours cost the state at least \$40,000

Business Insider

This call and our presentation are being webcast from our Investor Relations website, which is available under About VeriSign on verisign.com. There, you will also find our fourth quarter and full year 2017 earnings release. At the end of this call, the presentation will be available on that site. And within a few hours, the replay of the call will be posted.

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Financial results in our earnings release are unaudited, and our remarks include forward-looking statements that are subject to the risks and uncertainties that we discuss in detail in our documents filed with the SEC, specifically the most recent reports on Forms 10-K and 10-Q, which identify risk factors that could cause actual results to differ materially from those contained in the forward-looking statements. VeriSign retains its long-standing policy not to comment on financial performance or guidance during the quarter, unless it is done through a public disclosure.

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The financial results in today's call and the matters we will be discussing today include GAAP and non-GAAP measures used by VeriSign. GAAP to non-GAAP reconciliation information is appended

to our earnings release and slide presentation, as applicable, each of which can be found on the Investor Relations section of our website.

In a moment, Jim and George will provide some prepared remarks. And afterward, we will open the call for your questions. With that, I would like to turn the call over to Jim.

Nokia CEO Refutes Claims It's Losing Market Share to Arch Rival
Bloomberg

D. James Bidzos, VeriSign, Inc. - Founder, President, CEO & Executive Chairman [3]

Thanks, David, and good afternoon, everyone. I'm pleased to report another solid quarter, which capped a strong 2017 for VeriSign. Fourth quarter and full year results were in line with our objectives of offering security and stability to our customers while generating profitable growth and providing long-term value to our shareholders.

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For 2017, VeriSign delivered strong financial performance, reporting \$1,165,000,000 in revenues, resulting in \$653 million in free cash flow and generating full year 2017 non-GAAP operating margins of 65.3%.

2017 was a strong year for the .com and .net domain name base in which the company processed 36.7 million registrations and finished the year with 146.4 million names. During the year, we marked more than 20 years of uninterrupted availability of the VeriSign DNS for .com and .net. Also last year, we renewed the .net registry agreement for another 6 years until 2023.

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During the fourth quarter, we continued our share repurchase program by repurchasing 1.3 million shares for \$145 million. During the full year 2017, we repurchased 6.3 million shares for \$593 million. Effective today, the Board of Directors increased the amount of VeriSign common stock authorized for share repurchase by approximately \$586 million to a total of \$1 billion authorized and available under the share repurchase program, which has no expiration.

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Our financial position is strong with \$2.4 billion in cash, cash equivalents and marketable securities at the end of the quarter. We continually evaluate the overall cash and investing needs of the business and consider the best uses for our cash, including potential share repurchases.

At the end of December, the domain name base in .com and .net totaled 146.4 million, consisting of 131.9 million names for .com and 14.5 million names for .net. During the fourth quarter, we processed 36.7 million new registrations and the domain name base increased by 0.57 million names. During the quarter, we continued to see strength from domestic registrars, which was offset by a lower second-time renewal rate associated with the remaining China surge names from late 2015.

What happened on Facebook's nightmare conference call that wiped out nearly \$150B in market value in 90 minutes (FB)
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Although renewal rates are not fully measurable until 45 days after the end of the quarter, we believe that the renewal rate for the fourth quarter of 2017 will be 72.2%. We expect full year 2018 domain name base growth of between 2% and 3%. For the first quarter, we expect

Twitter 'shadow banning' is Trump's latest

an increase to the domain name base of between 1.5 million to 2 million registrations.

social media cause
TechCrunch

I'd like to comment now on a recent positive development in our efforts to become the registry operator for .web. You may have seen the 8-K we filed in January. In it, we disclosed that the U.S. Department of Justice's Antitrust Division notified us that it had disclosed its investigation regarding the .web top level domain. We are now engaged in ICANN's process to move the delegation of .web forward. However, as this is ICANN's process, we cannot say when it will conclude. And while it's possible that our operation of .web will commence this year, the 2018 revenue guidance we will provide does not include any revenue from .web. Of course, we'll provide you with updates as appropriate.

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And now I'd like to turn the call over to George.

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [4]

Thank you, Jim, and good afternoon, everyone. For the year ended December 31, 2017, the company generated revenue of \$1,165,000,000, up 2% from fiscal 2016, and delivered GAAP operating income of \$708 million, up 3% from \$687 million for the full year 2016.

Trump hotel ruling could open door to his financial records

Associated Press

Revenue for the fourth quarter totaled \$296 million, up 3.2% year-over-year and up by 1.1% sequentially. During the quarter, 60% of our revenue was from customers in the U.S. and 40% was from customers abroad.

Qualcomm ends \$44 billion NXP bid after fail to win China approval

Reuters

As it relates to fourth quarter GAAP results, operating income totaled \$176 million compared with \$169 million in the fourth quarter of 2016. The operating margin in the quarter came to 59.7% compared to 59% in the same quarter a year ago. Net income totaled \$103 million compared to \$106 million a year earlier, which produced diluted earnings per share of \$0.83 in the fourth quarter this year compared to \$0.84 for the fourth quarter last year.

As of December 31, 2017, the company maintained total assets of \$2.9 billion and total liabilities of \$4.2 billion. Assets included \$2.4 billion of cash, cash equivalents and marketable securities, of which \$729 million were held domestically with the remainder held abroad.

I'll now review some additional fourth quarter financial metrics, which include non-GAAP operating margin, non-GAAP earnings per share, operating cash flow and free cash flow. I then will discuss our 2018 full-year guidance.

As it relates to non-GAAP metrics, fourth quarter operating expense, which excludes \$13 million of stock-based compensation, totaled \$106 million compared to \$97 million last quarter and \$103 million in the same quarter a year ago. Non-GAAP operating expenses were higher in the fourth quarter as we had indicated on our last call, primarily due to an increase in sales and marketing spending in the fourth quarter.

Non-GAAP operating margin for the fourth quarter was 64.1% compared to 63.9% in the same quarter of 2016. Non-GAAP net income for the fourth quarter was \$119 million, resulting in a non-GAAP diluted earnings per share of \$0.96 based on a weighted average diluted share count of 124.3 million shares. This compares to \$0.92 in the fourth quarter of 2016 and \$1 last quarter based on 125.5 million and 124.1 million weighted average diluted shares, respectively.

Dilution related to the convertible debentures was 25.2 million shares based on the average share price during the fourth quarter compared with 20.6 million for the same quarter in 2016 and 24 million shares last quarter. The share count was reduced by the full effect of third quarter 2017 repurchase activity and the weighted effect of the 1.3 million shares repurchased during the fourth quarter. Operating cash flow for the fourth quarter was \$199 million and free cash flow was \$190 million compared with \$205 million and \$198 million, respectively, for the fourth quarter last year.

Now I'd like to provide an update on implications to the company of the Tax Cuts and Jobs Act enacted in December 2017, which I will refer to as the Tax Act. As stated in today's earnings release, fourth quarter and full year 2017 GAAP financial results include a net \$9 million tax expense increase resulting from the Tax Act. This increase is comprised of a provisional income tax expense of \$196 million, consisting of onetime U.S. taxes on accumulated foreign earnings triggered by the Tax Act and related foreign withholding taxes, both net of applying previously unrecognized foreign tax credits. This expense is offset by an income tax benefit of \$187 million resulting from the revaluation of our net deferred tax liabilities from 35% to the 21% U.S. federal income tax rate in the Tax Act.

As a result of the onetime U.S. taxes on accumulated foreign earnings, we also intend to repatriate by early in the second quarter of 2018 approximately \$1.1 billion of cash held by foreign subsidiaries, net of foreign withholding taxes and based on current exchange rates. Additionally, on a go-forward basis, due to the Tax Act, annual earnings of our foreign subsidiaries will be taxed by the U.S. This allows for annual repatriation without further U.S. taxation of distributable capital reserves from foreign entities. The taxation of foreign earnings and withholding taxes associated with ongoing repatriations will increase cash taxes over the amount the company has historically paid.

Also the lower corporate tax rates and limitations under deductibility of interest implemented by the Tax Act decreases the value of future interest expense deductions. In light of the Tax Act, we are presently evaluating our capital structure, including a possible redemption of our convertible debentures.

Finally, since mid-2017, we have used a tax rate of 25% to calculate our non-GAAP net income and non-GAAP earnings per share. Looking ahead, we believe a more reasonable estimate of the tax rate to calculate our non-GAAP net income and non-GAAP earnings per share is 22%. As a result, we will begin to use 22% non-GAAP tax rate when reporting first quarter 2018 non-GAAP results.

With respect to full year 2018 guidance, revenue is expected to be in the range of \$1,195,000,000 to \$1,215,000,000. Non-GAAP operating margin is expected to be between 65.5% and 66.5%. Our non-GAAP interest expense and non-GAAP nonoperating income net is expected to be an expense of between \$115 million and \$122 million. Capital expenditures are expected to be between \$45 million and \$55 million. And finally, cash taxes are expected to be between \$70 million and \$90 million. This 2018 cash tax guidance reflects our best estimate of the various impacts of the Tax Act, including the impacts of our intended repatriation.

In summary, the company continued to demonstrate sound financial performance during the fourth quarter and the full year 2017. Now I'll turn the call back to Jim for his closing remarks.

D. James Bidzos, VeriSign, Inc. - Founder, President, CEO & Executive Chairman [5]

Thank you, George. 2017 was another solid year for VeriSign. There was further expansion of the domain name base and revenues. We generated an efficiently returned value to shareholders. We renewed the .net registry agreement for another 6 years until 2023. And we marked more than 20 years of uninterrupted availability of the VeriSign DNS for .com and .net.

Finally, earlier this year, we disclosed that the U.S. Department of Justice notified us that it closed its investigation regarding the .web top level domain. We continued our work to protect, grow and manage the business while continuing our focus on providing long-term value to our shareholders. We think our focus on profitable growth and disciplined execution will extend the long trend lines of growth in our top and bottom line and allow us to continue our consistent track record of generating and returning value to our shareholders in the most efficient manner.

We will now take your questions. Operator, we're ready for the first question.

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Questions and Answers

Operator [1]

(Operator Instructions) We'll take our first question from Gregg Moskowitz with Cowen and Company.

Gregg Steven Moskowitz, Cowen and Company, LLC, Research Division - MD and Senior Research Analyst [2]

Jim, in the third quarter, the top 5 keyword searches for .com involved some form of cryptocurrency and/or blockchain. How instrumental do you think crypto has been in driving .com gross adds over the past several months or so?

D. James Bidzos, VeriSign, Inc. - Founder, President, CEO & Executive Chairman [3]

I don't think I have at the tip of my fingers the precise numbers. But I don't believe that they're material. I have seen a lot of activity in the secondary markets of trading in .com registrations that have crypto in them. But I don't think that there any meaningful direct contributions to new .net registrations in the numbers that we reported. And there's just a huge amount of interest in cryptocurrencies and Bitcoin, as you know, now that it's hit the exchanges. And what we've seen, I would say specifically, is a spike in value in the secondary market of .com names with any multiple keyword names with crypto in them.

Gregg Steven Moskowitz, Cowen and Company, LLC, Research Division - MD and Senior Research Analyst [4]

Okay. And then George, you had told us that you would spend more on marketing in Q4 and you did. And I know I'm dating myself here, but I would have go all the way back to 2007 to find another quarter where sales and marketing expense grew this much in absolute dollars on a sequential basis. So can you maybe just sort of give a little bit more color on the activities that you undertook in Q4 as well as what the sales and marketing strategy is for 2018?

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [5]

Sure. I mean, keep in mind though on an annual basis, our total marketing expense is pretty flat year-over-year. As I talked about a few quarters ago, we clearly look to execute our marketing programs that we think drive the best return for the company. And sometimes those programs we have to pivot during the year. And we had lighter marketing expenses, as we talked about, in the middle of 2017. And we finally got some programs coming out. We did make a little bit of a shift away from some registrar marketing programs to more direct marketing programs. We did do some of our advertising for our brands, both .com and .net, both domestically and abroad. And so we've been doing a little bit more direct marketing as a result of that. And those programs came out in the fourth quarter and will continue to run in the first half of 2018 here.

Gregg Steven Moskowitz, Cowen and Company, LLC, Research
Division - MD and Senior Research Analyst [6]

Okay, great. And then just one last question for me. Can you expand on why your cash taxes are so much higher in 2018? And as part of that, is the (inaudible) tax shield associated with the convert, is that less valuable going forward under the tax reform?

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [7]

Yes. So as mentioned in my prepared remarks, from a GAAP perspective, we made an accrual for the onetime transition tax. And that was partially offset by the reevaluation of our DTLs. So from a GAAP perspective, that was about \$9 million. From a cash tax perspective, as you mentioned, we're guiding to \$70 million to \$90 million in 2018. And that's up from about \$28 million this year. As mentioned, this reflects a variety of the impacts from the Tax Act, including the impacts of our intended repatriation. And while I don't think it makes sense to go through all the puts and takes of the tax calculation, I think the big items impacting the company from a cash tax perspective going forward are really the tax on foreign earnings, the U.S. tax on foreign earnings, and then the U.S. limitations on interest deductions, partially offset by the U.S. tax rate. But that amount does include impacts as well from our repatriation. As far as interest limitations, yes, tax reform clearly has diminished benefits for interest expense. There are some limitations there. And as a result, as I've mentioned, we are looking at our entire capital structure. We're looking at it. We'll be evaluating it. And as our converts are part of that capital structure, we look at them as well.

Operator [8]

We'll go next to Rob Oliver with Baird.

Matthew Steven Lemenager, Robert W. Baird & Co. Incorporated,
Research Division - Junior Analyst [9]

This is Matt Lemenager on for Rob. I realize it might be early, but just looking to see if there's any plan around .web, maybe things around go-to-market, how that might look any different than .com. And would you be doing extra marketing just to get that brand up and going? Any early thoughts? I realize no expectation on the guidance or anything. But any early thoughts?

D. James Bidzos, VeriSign, Inc. - Founder, President, CEO & Executive Chairman [10]

Yes, I think it's just too early at this point to discuss any details about go-to-market or launch plans for .web. There's an ICANN process that we're now engaged in with the Department of Justice having closed their investigation of .web. And when that process completes, I'm sure we'll have a lot more to say. But at this point, it would just be premature.

Matthew Steven Lemenager, Robert W. Baird & Co. Incorporated, Research Division - Junior Analyst [11]

Got it. And on the expectations for domain growth 2% to 3% for this year, any difference in the expectations for U.S. versus international? I know you've talked about strength in the economy in the United States and that the China phenomenon has kind of rolled off. I didn't know if any of the international markets were starting to come back.

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [12]

So in 2017, we absolutely have seen a good U.S. market. But having said that, European markets have also done well for us. Our expectation is that we'll see good growth in both U.S. and international markets next year. But we don't guide to the specific markets or their performances.

Matthew Steven Lemenager, Robert W. Baird & Co. Incorporated, Research Division - Junior Analyst [13]

Got it. And the last question I had on the repatriation. Would it be fair to assume that the primary use case would be for share repurchases? Or do you think there would be other avenues that you would look to deploy the repatriated cash?

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [14]

Well, I think in general, I don't think there will be a change in how we approach capital allocation. As always, we look at the needs of the business using our strategic framework of protect, grow and manage. And we do what we think is best for the business. As you may recall, our strategic framework includes making sure we maintain an adequate amount of liquidity for the business, both today and for tomorrow, what we think the needs are to continue to invest in our

protect mission for the network and our business for today and tomorrow, to invest in technology and innovation that we think will drive profitable growth of the business. And then once we accomplish those goals, we then evaluate how much excess capital we think is appropriate to return to shareholders and in what form. So we think that framework, which we've been using for the past 6 years, has served us well. And we'll continue to use that framework as it relates to the capital of the corporation.

Operator [15]

And we'll go next to Sterling Auty with JPMorgan.

Ugam Kamat, JP Morgan Chase & Co, Research Division - Analyst [16]

This is Ugam Kamat on for Sterling Auty. So Jim, you mentioned that the renewal rate out of China was disappointing, especially the second-time renewal rate. So just wondering what was the renewal rate especially in China? Like you gave the blended renewal rate, but just wondering, what was the renewal rate in China? And how many names are left? And what would be the future renewal rates that you expect to come out from this region?

D. James Bidzos, VeriSign, Inc. - Founder, President, CEO & Executive Chairman [17]

Yes. So we don't guide renewal rates by country. As mentioned, the cohort that was originally from the 2015 China surge, that cohort was about 1.4 million names coming into the year. And that renewal rate was probably, on a blended basis, maybe about 40% for that cohort. So we did have a portion of those names come out. However, we were anticipating that. We did comment on that last quarter. And that was in the guidance that we gave and we fell within the range of the guidance. But most of that cohort now is, I would say, through the system for many material names. And I would expect renewal rates to go back to more normalized rates.

Ugam Kamat, JP Morgan Chase & Co, Research Division - Analyst [18]

All right, perfect. That's helpful. And secondly, since we are coming closer to the Cooperative Agreement date in October, any particular update that you can give us on the process that you're having with the Department of Commerce? Or any particular survey that they

might have done to allow the renewal of Cooperative Agreement or just allow it to expire?

D. James Bidzos, VeriSign, Inc. - Founder, President, CEO & Executive Chairman [19]

Well, so first of all, I guess just to remind everybody on the call, in late September 2016, NTIA approved the .com Registry Agreement to be extended to November 30, 2024. At that time, NTIA chose not to extend the Cooperative Agreement. So it is currently scheduled to terminate on November 30 in 2018. Whether to extend that Cooperative Agreement or not is NTIA's decision and their process, and so can't comment on that. They do have the right to conduct a public interest review for the sole purpose of determining whether or not they'll exercise their right to extend the term of the Cooperative Agreement. Now one update that is new since the last time we talked is that David Redl was confirmed as the Assistant Secretary and Administrator of the NTIA in November of 2017. Unfortunately, that's all the update I can give you there. We can't comment on Mr. Redl's appointment or the NTIA in regard to their process related to the Cooperative Agreement. That's theirs, not ours. As soon as we can, we'll share whatever information we do have though.

Operator [20]

And we'll take our last question from Walter Pritchard with Citi.

Walter H Pritchard, Citigroup Inc, Research Division - MD and U.S. Software Analyst [21]

I think all my questions have been answered. Just one I wanted to make sure I clarified. On the tax scenario that you've outlined, the \$70 million to \$90 million and the tax rate going down to 22%, does that contemplate redeeming the convert? And if not, does the redeeming of the convert potentially have additional tax impact beyond what you talked about?

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [22]

So Walter, as I mentioned, we're just evaluating our convertible debentures in conjunction with evaluating our capital structure. So we're still looking at that. So our guidance is really based on where we see it today of what we're doing. It doesn't involve looking at any changes from that fact. We're still evaluating it.

Walter H Pritchard, Citigroup Inc, Research Division - MD and U.S.
Software Analyst [23]

And then does that \$70 million to \$90 million cash tax rate, it sounds like that doesn't mean most companies are talking about having an 8-year (inaudible)

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [24]

Yes. So if you're referring to -- so I think you're referring to the transition tax. The Tax Act allows you to look at your taxes, what they would have been with the Tax Act or without. So it's a with-or-without calculation. And for us, when we do that calculation, we expect to actually defer that amount of tax over the 8 years allowed by the Tax Act.

Walter H Pritchard, Citigroup Inc, Research Division - MD and U.S.
Software Analyst [25]

Okay. So the \$70 million to \$90 million, would that be a pretty good number for the next, say, several years that would include that 8-year period, too?

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [26]

So as we mentioned previously, we don't guide to a long-term cash tax rate. However, I would say in the short term, we expect that, that rate to still be below our GAAP tax rate as we use up foreign tax credits. At the end of 2017, we had about \$122 million of foreign tax credits. And we now expect to utilize those over the next 2 to 3 years.

Walter H Pritchard, Citigroup Inc, Research Division - MD and U.S.
Software Analyst [27]

Okay. So sorry to be -- just to keep going on this. But the \$70 million to \$90 million does include still the benefits of some of those foreign tax credits. And then those would expire at some point here?

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [28]

That's correct.

Walter H Pritchard, Citigroup Inc, Research Division - MD and U.S.
Software Analyst [29]

Okay. Any just detail on how much per year you can use up that \$122 million?

George E. Kilguss, VeriSign, Inc. - Executive VP & CFO [30]

Like I said, they'll be probably fully utilized over the next 3 years. So obviously, you'll use them up -- use more of them up in year 1 and 2 and probably less in year 3. But the utilization of FTCs, to be perfectly candid, is somewhat complex and is dependent on a variety of factors. So it's a little bit -- clearly, I have an idea of what they'd be. But it's probably premature to give that number because they can change over time depending on how foreign income is recognized overseas.

Operator [31]

And at this time, I would like to turn the call back over to David Atchley for any additional or closing remarks.

David Atchley, VeriSign, Inc. - VP & Corporate Treasurer [32]

Thank you, operator. Please call the Investor Relations department with any follow-up questions from this call. Thank you for your participation. This concludes our call. Have a good evening.

Operator [33]





And again, this does conclude today's call. You may now disconnect.

EXHIBIT C-48

VeriSign (VRSN) Q1 2018 Results - Earnings Call Transcript

Apr. 26, 2018 6:33 PM ET | 1 Like
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Q1: 04-23-18 Earnings Summary

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EPS of \$1.07 beats by \$0.02 | Revenue of \$299.29M (+ 3.7% Y/Y) beats by \$1.55M

Sterling Auty - JPMorgan Securities LLC

And just a follow-up to that. When the announcement came that they would look at the cooperative agreement before November – or at the November 30th timeline, I think there were some discussion of a public interest study, has that come up in your discussions or is there anything that's been made public around that part in the process?

D. James Bidzos - VeriSign, Inc.

Yeah. As I said, it's just – we're engaged. I don't think it'd be appropriate for me to say anything about what's come up in the discussions that we're having, but they're are ongoing. And all I can tell you is that we'll certainly keep you posted, and if there are any milestones or anything to report, we'll do it promptly.

Sterling Auty - JPMorgan Securities LLC

All right. Sounds good. And then one question on the business, looking at the domestic/international split, we went through that timeframe with the Chinese names. But I'm really curious, when you look at the international sourced growth in particular, what are you seeing in terms of where the areas of biggest growth at the moment and how do you think about the sustainability of it?

George E. Kilguss III - VeriSign, Inc.

Sterling, this is George. I mean, when we talk about growth, we do think the drivers of domain name growth continue to be internet adoption, internet penetration, and continued growth of e-commerce. So, we think that those worldwide metrics bode well for our business. Where growth comes from quarter to quarter does vary. This quarter, in the first quarter, we saw good growth out of the U.S., out of China, and continued results out of our European registrars, registrars in all those areas seem to be performing well for us.

Sterling Auty - JPMorgan Securities LLC

Okay. Thank you.

Operator

And we will take our next question from Matthew Wells with Citi. Please go ahead.

Matthew Wells - Citigroup Global Markets, Inc.

Hi, Jim. This is Matt with Citi. I wanted to ask if you had any update on .web?

D. James Bidzos - VeriSign, Inc.

Nothing. Nothing since we last spoke. And for those who weren't here or aren't familiar with what the status is, we're engaged in ICANN's process to move the delegation forward for .web. That's ICANN's process, so we can't say when it'll conclude. Just as a reminder too for all of you looking at the guidance of course, while it's possible that our operation of .web will start this year, we did not include, the 2018 revenue guidance provided does not include any revenue from .web, and we'll give you more updates as available, but unfortunately that's all I can give you now.

Matthew Wells - Citigroup Global Markets, Inc.

Thanks on that. And I have one more question. Has .web and that purchase come up with your discussions with the NTIA at all?

D. James Bidzos - VeriSign, Inc.

No. Our discussions with NTIA are about the cooperative agreement, .web we view separately. And the Department of Justice, of course, closed its open investigation of .web. So, it has not come up. We wouldn't expect it to.

Matthew Wells - Citigroup Global Markets, Inc.

Thank you. Yes. That's helpful.

Operator

And we will take our last question from Rob Oliver with Baird. Please go ahead.

Matt S. Lemenager - Robert W. Baird & Co., Inc.

Good afternoon. Thanks. It's Matt Lemenager on for Rob. I've a question on the renewal rate, 74.9% this quarter is a bit higher than it's been trending. And I know we're kind of churning through the China names and things like that, and the renewal rate might be expected to go up. But was there anything that drove the 74.9% renewal rate? Because that ticked up from the highest metric at least in recent years.

D. James Bidzos - VeriSign, Inc.

Yeah. Matt, thanks. As you point out, our preliminary renewal rate of 74.9% was a good renewal rate for us, but I think as you also alluded to, when you compare that to our Q1 2017 renewal rate of 72.5%, the change there is really primarily related to a depressed Q1 2017 rate that was negatively impacted by the China surge names that were registered in the first quarter of 2016 that did not renew in the first quarter of 2017.

Comments (0)

EXHIBIT C-49



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8 August 2016

Mr. Akram Atallah
 President, Global Domains Division
 Internet Corporation for Assigned Names and Numbers
 12025 Waterfront Drive, Suite 300
 Los Angeles, CA 90094

Re: .WEB Auction

Dear Akram:

Afilias Domains No. 3 Limited, a wholly-owned subsidiary of Afilias plc, is an applicant for the .WEB top-level domain under the ICANN new gTLD program. On 27-28 August 2016, ICANN conducted an auction (the "Auction") for the .WEB string per the rules and procedures set forth in the New gTLD Applicant Guidebook (the "Guidebook"). As announced by ICANN on 28 August 2016 (<https://www.icann.org/news/announcement-2-2016-07-28-en>), the successful bidder in the Auction was Nu Dot Co LLC ("NDC").

Subsequent to the conclusion of the auction, it has been publically disclosed that VeriSign, Inc. acquired rights in the NDC application for .WEB. VeriSign's press release, dated 1 August 2016, states *"The Company [i.e., VeriSign] entered into an agreement with Nu Dot Co LLC wherein the Company provided funds for Nu Dot Co's bid for the .web TLD. We are pleased that the Nu Dot Co bid was successful. We anticipate that Nu Dot Co will execute the .web Registry Agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) and will then seek to assign the Registry Agreement to Verisign upon consent from ICANN."* (<https://investor.verisign.com/releasedetail.cfm?ReleaseID=981994>)

Further, in its 10-Q for the quarter ended 30 June 2016, filed with the U.S. Securities and Exchange Commission on 28 July 2016, VeriSign states *"Subsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016."*

Paragraph 10 of the Terms and Conditions set forth in the Guidebook includes in part the following language: "Applicant may not resell, assign or transfer any of applicant's rights or obligations in connection with the application." We have not been able to review a copy of the agreement(s) between NDC and VeriSign with respect to this arrangement, but it appears likely, given the public statements of VeriSign, that DNC and VeriSign entered into an agreement in the form of an option or similar arrangement with respect to the rights and obligations of NDC regarding its .WEB application. An option to acquire a string won at auction, together with a promise to fund the auction, is exactly the type of transfer of rights and obligations in connection with an application that ICANN was attempting to stop by including this language in the Terms and Conditions. Otherwise, such language would have no real purpose. The language of paragraph 10 precludes not only a transfer of all rights or obligations in an application, but of any rights or obligations. There is no materiality threshold, and



no procedure to seek consent or waiver of these terms. It is an absolute prohibition of this type of arrangement in clear and unambiguous terms.

The purposes of a prohibition on transferring rights and obligations in an application are obvious. ICANN and the community spent years engaged in a stakeholder driven process to develop the important processes and procedures by which one could submit an application for a new gTLD. These procedures were developed to endure a level playing field for gTLD applicants and to protect the integrity of the process. The application requirements and associated filing deadlines were clear and strictly enforced from the beginning. To allow third parties to circumvent the entire Guidebook process simply by buying rights in an application once filed renders the entire Guidebook and ICANN process mere folly and negatively impacts to a material degree the rights and expectations of applicants that have played by the rules.

There is no cure provided in the Guidebook for violations of paragraph 10 of the Terms and Conditions. The only reasonable and fair solution is to disqualify the NDC application and proceed to the next highest bidder in the auction to contract for the string, at the price at which the third highest bidder exited the auction.

Further, section 1.2.7 of the Guidebook provides:

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

Clearly, an agreement to provide at least \$135 Million to an applicant constitutes a material change in that applicant's financial condition. Further, the type of option agreement that apparently exists between NDC and VeriSign likely constitutes a change in control of the applicant. A change in control can be effected by contract as well as by changes in equity ownership. It is our understanding that NDC never notified ICANN of these changes per the terms of the Guidebook. In the interest of fairness to the other .WEB auction participants, ICANN should exercise its right under paragraph 1.2.7 and deny NDC's application.

We request that ICANN promptly undertake an investigation of the matters set forth in this letter and take appropriate action against NDC and its .WEB application for violations of the Guidebook as we have requested.

In addition to this letter, we are filing a complaint with the ICANN Ombudsman with regard to this matter. We strongly urge ICANN to stay any further action in this matter with respect to NDC, including entering into a registry agreement for .WEB with NDC, or acting on any request of NDC or VeriSign to



assign such agreement to VeriSign, until the Ombudsman has had an opportunity to investigate and report on this matter.

Regards,

A handwritten signature in blue ink, appearing to read "M. Scott Hemphill". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

M. Scott Hemphill
Vice President & General Counsel

cc: Steve Crocker, Chairman of the Board
Göran Marby, President and CEO

EXHIBIT C-50



The Internet Corporation for Assigned Names and Numbers

16 September 2016

Mr. John Kane
Vice President, Corporate Services
Afilias Domains No. 3 Limited
2 La Touche House
IFSC Dublin 1
Ireland

Dear Mr. John Kane:

In various fora, Ruby Glen LLC (Ruby Glen) and Afilias Domains No. 3 Limited (Afilias) have raised questions regarding, among other things, whether NU DOT CO LLC (NDC) should have participated in the 27-28 July 2016 auction for the .WEB contention set and whether NDC's application for the .WEB gTLD should be rejected. To help facilitate informed resolution of these questions, ICANN would find it useful to have additional information.

Accordingly, ICANN invites Ruby Glen, NDC, Afilias, and Verisign, Inc. (Verisign) to provide information and comment on the topics listed in the attached. Please endeavor to respond to all of the topics/questions for which you have information to do so. To allow ICANN to promptly evaluate these matters, please provide responses to globalsupport@icann.org no later than 7 October 2016.

Thank you for your cooperation and attention to this matter. Please do not hesitate to let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Christine A. Willett".

Christine A. Willett
Vice President, gTLD Operations



The Internet Corporation for Assigned Names and Numbers

**TOPICS ON WHICH RUBY GLEN, NU DOT CO LLC,
AFILIAS, AND VERISIGN ARE INVITED TO COMMENT**

Please note that all responses to these questions will be taken into consideration in ICANN's evaluation of the issues raised, but that does not mean that ICANN will adopt any particular response as definitive and authoritative.

Topics for Comment

1. Afiliias and Ruby Glen have alleged that NDC failed promptly to notify ICANN of "changes in ownership and control of the applicant" [i.e., NDC], as contemplated by Section 1.2.7 of the gTLD Applicant Guidebook (Version 2012-06-04) (AGB). Please provide or describe any evidence of which you are aware regarding whether ownership or control of NDC changed after NDC applied for the .WEB gTLD.

2. In the *Ruby Glen, LLC v. ICANN* lawsuit, two NDC officers, Jose Ignacio Rasco III and Nicolai Bezsonoff, provided declarations dated 25 July 2016 under penalty of perjury regarding ownership and control of NDC. What evidence, if any, is there that statements made in those declarations are false?

3. AGB Section 1.2.7 speaks of changes in ownership and control specifically "***of the applicant.***" Please describe other NDC activities besides its having applied for the .WEB gTLD, and the activities relating to that application. Do you think that a change regarding only one of many activities of an applicant constitutes a change in ownership and control within the meaning of AGB Section 1.2.7? Please explain why or why not.

4. In his 8 August 2016, letter, Scott Hemphill stated: "A change in control can be effected by contract as well as by changes in equity ownership." Do you think that an applicant's making a contractual promise to conduct particular activities in which it is engaged in a particular manner constitutes a "change in control" of the applicant? Do you think that compliance with such a contractual promise constitutes such a change in control? Please give reasons.

5. Do you think that AGB Section 1.2.7 requires an applicant to disclose to ICANN all contractual commitments it makes to conduct its affairs in particular ways? If not, in what circumstances (if any) would disclosure be required?

6. In his 8 August 2016, letter, Scott Hemphill stated that "an agreement to provide at least \$135 Million to an applicant constitutes a material change in that applicant's financial condition." In your view, does AGB Section 1.2.7 require applicants to notify ICANN of all



changes in their financial condition? If the requirement is limited by an (unstated) materiality test, how should materiality be determined?

7. Do you think that changes to an applicant's financial condition that do not negatively reflect on an applicant's qualifications to operate the gTLD should be deemed material? If so, why? Do you think that an applicant's obtaining a funding commitment from a third party to fund bidding at auction negatively affects that applicant's qualifications to operate the gTLD? Please explain why, describing your view of the relevance of (a) the funding commitment the applicant received and (b) the consideration the applicant gave to obtain that commitment (e.g., a promise to repay; a promise to use a particular backend provider; an option to receive some ownership interest in the applicant in the future; some promise about how the gTLD will be operated).

8. Do you have any knowledge or information that applicants in other circumstances have obtained post-application funding commitments (whether received through loans, contributions from affiliated companies, or otherwise) for their auction bidding or other operations? If so, please elaborate. Do you know if applicants have commonly notified ICANN of those funding commitments? If so, please explain. Should applicants be required to notify ICANN of those funding commitments? If so, in what circumstances?

9. Do you think that requiring applicants to disclose funding commitments (whether through loans, contributions from affiliated companies, or otherwise) they obtain for auction bids would help or harm the auction process? Would a requirement that applicants disclose their funding arrangements create problems for applicants (for example, making funding commitments harder to obtain)? To what extent, if any, do you think scrutinizing such arrangements (beyond determining whether they negatively reflect on an applicant's qualifications) would be within ICANN's proper mission? Would required disclosure of applicants' funding sources pose any threat to robust competition?

10. The final sentence of AGB Section 1.2.7 states that failures to notify ICANN of changes "may result in denial of the application." What standards do you think ICANN should follow in determining whether a particular failure to make a required notification should lead to denial of an application? If an applicant or related entities have multiple applications and it is discovered that the applicant or related entities have external funding commitments not disclosed to ICANN, should all of that applicant's or its related entities' applications be denied?

11. Afiliias and Ruby Glen have also raised questions as to whether NDC violated the last sentence of AGB, Module 6, Paragraph 10, which states: "Applicant may not resell, assign, or



transfer any of the applicant’s rights or obligations in connection with the application.” Do you think the “rights or obligations” mentioned in that sentence are limited to those that flow from approval of the application (e.g., the right to enter a registry agreement), or do you think that they also include rights and obligations concerning the prosecution of the application (e.g., obligations to respond to additional inquiries from ICANN; rights to assist in pursuing the application by raising or addressing concerns)? In responding on this topic, please address the context established by the first two sentences of AGB Module 6, Paragraph 10.

12. Do you have knowledge or information that gTLD applicants in other circumstances have assigned others to handle aspects of the process by which applications are evaluated? If so, please describe with specifics what you know about this practice. For example, do applicants empower persons or companies with which they are working to take charge of handling various stages of the evaluation process? If so, do you think this violates AGB Module 6, Paragraph 10?

13. Specifically with regard to the auction process, what knowledge or information do you have regarding the extent to which applicants within contention sets have taken suggestions or direction from others regarding how to conduct bidding? How common is this practice? (It is noted that Clause 68 of the “Auction Rules for New gTLDs (Version 2014-11-03)” (Auction Rules) and Section 2.6 of the “New gTLD Auctions Bidder Agreement (Version 2014-04-03)” (Bidder Agreement) prohibit certain collusive activities between applicants; the immediately preceding two questions are directed to suggestions or directions not violating those prohibitions.) Clause 12 of the Auction Rules states in part “Before an Auction to resolve a given Contention Set, each Qualified Applicant may designate a party to bid on its behalf (‘Designated Bidder’).” Designated Bidders must execute Bidder Agreements with the Auction Manager reflecting their rights and obligations concerning the conduct of the auction. Do you think that designation of a Designated Bidder violates the last sentence of AGB Module 6, Paragraph 10?

14. Clause 12 of the Auction Rules states that a purpose for an applicant’s selection of a Designated Bidder is to allow the Designated Bidder to bid on the applicant’s behalf. Do you think that clause merely states a purpose for designation, or does it obligate the Designated Bidder to bid on behalf of only the applicant? What do you think the phrase “its behalf” means in the Auction Rules and Bidder Agreement? Do you think it indicates that the Designated Bidder acts in the stead of the applicant, or does it additionally indicate that the Designated Bidder must act in only the interest of the applicant? (In this regard, please discuss the wording of the seventh recital in the Bidder Agreement.) Where no Designated Bidder is designated, do you think the Auction Rules or the Bidder Agreement requires that



an applicant acting for itself as the Bidder act only in its own interest? If so, please explain why. As relevant to this topic 14, do you think there are any inconsistencies between the Auction Rules and the Bidder Agreement? If so, please explain those inconsistencies in detail.

15. Clause 13 of the Auction Rules states: “Before each Auction, each Bidder shall nominate up to two people (“Authorized Individuals”) to bid on its behalf in the Auction.” Authorized Individuals have certain rights and obligations in connection with the auction. Do you think that an applicant’s nomination of an Authorized Individual violates the last sentence of AGB Module 6, Paragraph 10?

16. Do you think that an applicant’s entry into a contract promising in exchange for a payment of money to make bids and otherwise participate in the auction in the manner directed by the other party to the contract constitutes “resell[ing], assign[ing], or transfer[ing] any of applicant’s rights or obligations in connection with the application,” as prohibited by AGB Module 6, Paragraph 10? Please explain why or why not.

17. Do you think that AGB Module 6, Paragraph 10 would be violated by a contractual promise by an applicant to request ICANN’s consent to transfer to another party any registry agreement it receives as the result of its application? If so, under what circumstances? To the best of your knowledge and information, in the context of any other gTLD has an applicant agreed, before entry into a registry agreement, to seek ICANN’s consent to transfer the agreement after it is entered?

18. Do you think that AGB Module 6, Paragraph 10 would be violated by a contractual promise by an applicant to seek to transfer to another party, but only upon consent of ICANN, any registry agreement it receives as the result of its application? If so, under what circumstances? To the best of your knowledge and information, in the context of any other gTLD has an applicant made such an agreement?

19. Do you think that AGB Module 6, Paragraph 10 means that a resale, assignment, or transfer contrary to its last sentence constitutes a violation that can result in forfeiture or denial of the application, or is its effect simply that any such attempted resale, assignment, or transfer of the application is ineffective? In your response, please address Restatement (Second) of Contracts §§ 317 and 322 (including comment b) and any other applicable legal principles.

20. In his 9 September 2016 letter, Scott Hemphill stated that NDC and Verisign’s efforts to give Verisign control over the .WEB gTLD “must be sanctioned by ICANN by disqualifying NDC’s bid and rejecting its application.” Assuming that a resale, assignment, or transfer



contrary to the last sentence of AGB Module 6, Paragraph 10 can result in forfeiture or denial of the application (see topic 19 above), do you think that the application must be forfeited or denied in all cases? If ICANN has discretion to determine an appropriate remedy, what factors do you think should guide ICANN's discretion?

EXHIBIT C-51



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October 7, 2016

Christine A. Willett
 Vice President, gTLD Operations
 Internet Corporation for Assigned Names and Numbers
 12025 Waterfront Drive, Suite 300
 Los Angeles, CA 90094

Re: Response of Afilias Domains No. 3 Ltd. ("Afilias") to 16 September 2016 Request for
 Comments from the Internet Corporation for Assigned Names and Numbers ("ICANN")

Dear Ms. Willett:

We appreciate the opportunity to provide comments on behalf of Afilias to the questions posed by ICANN in its 16 September 2016 letter. Further, we acknowledge receipt of the letter from Mr. Atallah, dated 30 September 2016, providing a response to previous letters submitted by Afilias regarding this matter. However, we note that Mr. Atallah's letter fails to respond to the serious issues concerning the auction for the rights to administer the .WEB generic top-level domain ("gTLD") raised in Scott Hemphill's letters of 8 August 2016 and 9 September 2016. Further, Mr. Atallah states that, while the .WEB/.WEBS contention set was placed on hold by ICANN on 19 August 2016, such action was taken because of the initiation of an ICANN Accountability Mechanism by another applicant. We are concerned that this statement appears to imply that ICANN is not placing the contention set on hold in order to address the issues raised by Afilias.

As reflected in the accompanying answers to ICANN's questions, Afilias reaffirms its position that the actions taken by NU DOT CO LLC ("NDC") and Verisign, Inc. ("Verisign") in connection with the auction and NDC's failure to disclose material information relating to its bid for the .WEB rights should result in the disqualification of NDC as a member of the contention set for .WEB and the invalidation of NDC's bid.

As part of its review, ICANN must recognize and investigate the significant harm to competition arising from Verisign's agreement with NDC to acquire the rights to .WEB. Verisign's actions are clearly designed to preserve Verisign's existing monopoly in gTLD services that results from its control of .COM and .NET. If awarded to Afilias, the .WEB gTLD will be uniquely situated to challenge Verisign's gTLD services dominance by providing registrants a compelling alternative to .COM and .NET. If Verisign is permitted by ICANN to succeed in its efforts to secure the rights to .WEB, on the other hand, this potential for important new competition will be destroyed. Verisign (through NDC) cannot be allowed to obtain the rights to .WEB through subterfuge, when all of the remaining applicants agreed to and played by the rules.

Accordingly, we urge ICANN to disqualify NDC's bid and prevent Verisign from obtaining control over the .WEB gTLD in order to ensure competition in the gTLD marketplace and prevent an unlawful act of monopolization based on anti-competitive behavior.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kane". The signature is stylized and includes a long horizontal line extending to the right.

John Kane
 Vice President, Corporate Services



Afilias' Comments on ICANN's September 16, 2016 Topics

Topic 01. Afilias and Ruby Glen have alleged that NDC failed promptly to notify ICANN of "changes in ownership and control of the applicant" [i.e., NDC], as contemplated by Section 1.2.7 of the gTLD Applicant Guidebook (Version 2012-06-04) (AGB). Please provide or describe any evidence of which you are aware regarding whether ownership or control of NDC changed after NDC applied for the .WEB gTLD.

Response. According to Afilias' review of publicly available documents, "ownership or control of NDC changed after NDC applied for the .WEB gTLD." Specifically,

- Verisign's 1 August 2016 press release states that it "entered into an agreement with Nu Dot Co LLC wherein the Company provided funds for Nu Dot Co's bid for the .web TLD. ... We anticipate that Nu Dot Co ... will then seek to assign the Registry Agreement to Verisign upon consent from ICANN."
- Verisign's 10-Q for the quarter ended 30 June 2016, filed with the U.S. Securities and Exchange Commission on 28 July 2016, states that "[s]ubsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during third quarter of 2016."
- Ruby Glen alleges that "NDC also made statements indicating a potential change in the ownership of NDC, including an admission that the board of NDC had changed to add 'several others'" in its Amended Complaint for *Ruby Glen, LLC v. ICANN*.

In the unique circumstances of the present case, the arrangement between Verisign and NDC constitutes the effective control of NDC by Verisign. If NDC is granted the rights to administer the .WEB gTLD from ICANN, those rights would constitute the principal business asset of NDC. NDC appears to have given Verisign de facto control over NDC's business by entering into an agreement by which Verisign will fund NDC's bid for .WEB and which gives Verisign the power to direct and control NDC's participation in the auction for .WEB in exchange for an assignment of all rights in .WEB from NDC to Verisign. Thus, Afilias has a good faith basis to believe that "ownership or control of NDC changed after NDC applied for the .WEB gTLD" and NDC did not disclose this change in violation of ICANN's rules.

Accordingly, ICANN must carefully investigate NDC's conduct by obtaining further information from NDC and Verisign, including: (1) agreements between NDC and Verisign; (2) changes to NDC's board of directors; and (3) inter-company transactions between NDC and Verisign, including the sale of assets to Verisign. Such information must also be disclosed to Afilias, the party materially affected and injured by Verisign's and NDC's actions.

Topic 02. In the *Ruby Glen, LLC v. ICANN* lawsuit, two NDC officers, Jose Ignacio Rasco III and Nicolai Bezsonoff, provided declarations dated 25 July 2016 under penalty of perjury regarding ownership and control of NDC. What evidence, if any, is there that statements made in those declarations are false?

Response. Please see our response to Topic 01. In the event that Messrs. Rasco and Bezsonoff are deposed or questioned by ICANN, Afilias requests that it be informed of the



same. If necessary, in due course, we will seek the deposition of Messrs. Rasco and Bezsonoff among others.

Topic 03. AGB Section 1.2.7 speaks of changes in ownership and control specifically "*of the applicant.*" Please describe other NDC activities besides its having applied for the .WEB gTLD, and the activities relating to that application. Do you think that a change regarding only one of many activities of an applicant constitutes a change in ownership and control within the meaning of AGB Section 1.2.7? Please explain why or why not.

Response. Please see our response to Topic 01.

Topic 04. In his 8 August 2016, letter, Scott Hemphill stated: "A change in control can be effected by contract as well as by changes in equity ownership." Do you think that an applicant's making a contractual promise to conduct particular activities in which it is engaged in a particular manner constitutes a "change in control" of the applicant? Do you think that compliance with such a contractual promise constitutes such a change in control? Please give reasons.

Response. Please see our response to Topic 01.

Topic 05. Do you think that AGB Section 1.2.7 requires an applicant to disclose to ICANN all contractual commitments it makes to conduct its affairs in particular ways? If not, in what circumstances (if any) would disclosure be required?

Response. The plain language of AGB § 1.2.7 states that disclosure "via submission of the appropriate forms" is required when "information previously submitted by an applicant becomes untrue or inaccurate" or gives rise to a material "change in circumstances" during the evaluation process. The plain language of the AGB thus clearly identifies circumstances that require a disclosure to ICANN. Afilias believes that the AGB requires applicants to disclose extraordinary commitments and changes in circumstances that materially affect the implications of the award of registry rights in terms of ICANN's authorities. Here, as the commitment between NDC and Verisign uniquely raises antitrust issues, Afilias believes that NDC was required to disclose its contractual arrangement with Verisign because such arrangement will potentially destroy any new competition given Verisign's existing monopoly in gTLD services. ICANN's exercise of its authorities includes a duty to ensure that there will be an effective potential for development of competition among providers of gTLD registry services. One of ICANN's core values is to "promot[e] competition in the registration of domain names where practicable and beneficial in the public interest." Bylaws, Art. 1 § 2(6). A third party (such as Verisign) secretly funding bids to gain or preserve a monopoly directly contravenes this core value.

Topic 06. In his 8 August 2016, letter, Scott Hemphill stated that "an agreement to provide at least \$135 Million to an applicant constitutes a material change in that applicant's financial condition." In your view, does AGB Section 1.2.7 require applicants to notify ICANN of all changes in their financial condition? If the requirement is limited by an (unstated) materiality test, how should materiality be determined?

Response. Please see our response to Topic 05.



Topic 07. Do you think that changes to an applicant's financial condition that do not negatively reflect on an applicant's qualifications to operate the gTLD should be deemed material? If so, why? Do you think that an applicant's obtaining a funding commitment from a third party to fund bidding at auction negatively affects that applicant's qualifications to operate the gTLD? Please explain why, describing your view of the relevance of (a) the funding commitment the applicant received and (b) the consideration the applicant gave to obtain that commitment (e.g., a promise to repay; a promise to use a particular backend provider; an option to receive some ownership interest in the applicant in the future; some promise about how the gTLD will be operated).

Response. The plain language of AGB § 1.2.7 requires the applicant to "promptly notify ICANN" if "at any time during the evaluation process information [including changes in financial position] previously submitted by an applicant becomes untrue or inaccurate". And failure to notify ICANN of "any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application."

An applicant that obtains a funding commitment from a third party to fund bidding at an auction negatively affects that applicant's qualifications when the third party is attempting to gain or preserve a monopoly. One of ICANN's core values is to "promot[e] competition in the registration of domain names where practicable and beneficial in the public interest." Bylaws, Art. 1 § 2(6). A third party secretly funding bids to obtain a monopoly directly contravenes this core value.

Verisign's significant financial strength was built upon its ICANN-granted position as a monopoly provider of registry services. When those monopolist profits are then employed to finance a bid to maintain that dominant market position, it is anticompetitive and material to the affected bid and to ICANN new gTLD process as a whole.

Here, NDC's agreement with Verisign is essentially an agreement not-to-compete, which stifles competition. Neither NDC nor Verisign has offered any procompetitive justification for the deal or otherwise indicated that they are engaged in a procompetitive joint venture to operate the .WEB gTLD. Verisign's monopoly position gives it significant market power in the gTLD registration market. Through its secret agreement with NDC, Verisign intends to foreclose the possibility of any competition from .WEB.

Verisign's acquisition of .WEB likely means (1) fewer resources being invested in maximizing .WEB's competitive potential, (2) a dramatically reduced chance that .WEB will act as a competitive check on .COM and .NET, and (3) that .WEB will not be marketed to compete and siphon away customers from .COM and .NET. This will deprive Internet users, businesses, and Web site developers of commercially promising and viable new domains for their Web sites. This competitive harm will likely never be undone.

Topic 08. Do you have any knowledge or information that applicants in other circumstances have obtained post-application funding commitments (whether received through loans, contributions from affiliated companies, or otherwise) for their auction bidding or other operations? If so, please elaborate. Do you know if applicants have commonly notified ICANN of those funding commitments? If so, please explain. Should applicants be required to notify ICANN of those funding commitments? If so, in what circumstances?

Response. We are not aware of similar arrangements that would have the effect of creating or preserving a monopoly in gTLD registry services like Verisign's monopoly. Afilias is aware



of applications in other circumstances that have obtained post-application funding commitments. These situations are not analogous to the commitment between NDC and Verisign, however, because Verisign's acquisition of .WEB raises serious antitrust issues by stifling competition in favor of Verisign's dominance in gTLD services. Prior applicants' circumstances have no relevance to this unique situation.

Topic 09. Do you think that requiring applicants to disclose funding commitments (whether through loans, contributions from affiliated companies, or otherwise) they obtain for auction bids would help or harm the auction process? Would a requirement that applicants disclose their funding arrangements create problems for applicants (for example, making funding commitments harder to obtain)? To what extent, if any, do you think scrutinizing such arrangements (beyond determining whether they negatively reflect on an applicant's qualifications) would be within ICANN's proper mission? Would required disclosure of applicants' funding sources pose any threat to robust competition?

Response. Please see our response to Topic 08.

Disclosure is required when there is a change in circumstances that affects competition. AGB § 1.2.7 clearly states that a disclosure "via submission of the appropriate forms" is required when "information previously submitted by an applicant becomes untrue or inaccurate" during the application process. NDC deliberately chose not to disclose its relationship with Verisign in order to avoid questions about their anti-competitive relationship, deliberately violating AGB § 1.2.7 and thus harming the auction process.

ICANN should act in accordance with its core values, which dictate that it should not only "promote and sustain a competitive environment" but also "introduce[e] and promot[e] competition in the registration of domain names where practicable and beneficial to the public interest." Bylaws, Art. I §§ 2(5), (6). In accordance with its mission, then, ICANN must therefore scrutinize arrangements that contravene these values and stifle competition – such as the one between NDC and Verisign.

The importance of a competitive environment is particularly stressed in ICANN's Bylaws. Despite ICANN's core value of "applying documented policies neutrally and objectively, with integrity and fairness", Bylaws, Art. I § 2(8), ICANN's own Bylaws permit the disparate treatment of parties for the "promotion of effective competition." Bylaws, Art. II § 3.

Topic 10. The final sentence of AGB Section 1.2.7 states that failures to notify ICANN of changes "may result in denial of the application." What standards do you think ICANN should follow in determining whether a particular failure to make a required notification should lead to denial of an application? If an applicant or related entities have multiple applications and it is discovered that the applicant or related entities have external funding commitments not disclosed to ICANN, should all of that applicant's or its related entities' applications be denied?

Response. Consistent with ICANN's obligations to promote competition, ICANN must deny an application improperly and surreptitiously funded by a third party in order to obtain control over a gTLD and to stifle competition and harm consumers. Here, ICANN must disqualify NDC's bid and prevent Verisign from acquiring the rights in .WEB. Verisign, which already exercises exclusive control over .COM and .NET, chose not to apply for .WEB, as it could have done. Rather, Verisign secretly funded NDC's application to game the system and to obtain control over .WEB for Verisign in order to stifle competition for .COM and .NET's



existing monopoly. Indeed, Verisign has few incentives to market .WEB aggressively because its growth would inevitably come at the expense of Verisign's dominant position with .COM and .NET. The damage will likely be irreparable as ICANN contracts are generally automatically renewed.

Indeed, there are several standards from ICANN's own Articles of Incorporation and Bylaws that support NDC's disqualification. They are as follows:

- ICANN is required to "operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets." Articles of Incorporation, Art. 4.
- ICANN is required to "[m]ak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness." Bylaws, Art. I § 2(8).
- ICANN is required to "not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition." Bylaws, Art. II § 3.
- ICANN is required to "[a]ct[] with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected." Bylaws, Art. I § 2(9).
- ICANN is directed to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." Bylaws, Art. III § 1.
- ICANN is required to "promot[e] competition in the registration of domain names where practicable and beneficial in the public interest." Bylaws, Art. I § 2(6).
- ICANN is required to "[r]emain[] accountable to the Internet community through mechanisms that enhance ICANN's effectiveness." Bylaws, Art. I § 2(10).

Topic 11. Afilias and Ruby Glen have also raised questions as to whether NDC violated the last sentence of AGB, Module 6, Paragraph 10, which states: "Applicant may not resell, assign, or transfer any of the applicant's rights or obligations in connection with the application." Do you think the "rights or obligations" mentioned in that sentence are limited to those that flow from approval of the application (e.g., the right to enter a registry agreement), or do you think that they also include rights and obligations concerning the prosecution of the application (e.g., obligations to respond to additional inquiries from ICANN; rights to assist in pursuing the application by raising or addressing concerns)? In responding on this topic, please address the context established by the first two sentences of AGB Module 6, Paragraph 10.

Response. Under the plain language of AGB Module 6, Paragraph 10, an "[a]pplicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application." Thus, it is clear that "any" rights or obligations in "connection" with the application cannot be resold, assigned, or transferred to a third party.



Topic 12. Do you have knowledge or information that gTLD applicants in other circumstances have assigned others to handle aspects of the process by which applications are evaluated? If so, please describe with specifics what you know about this practice. For example, do applicants empower persons or companies with which they are working to take charge of handling various stages of the evaluation process? If so, do you think this violates AGB Module 6, Paragraph 10?

Response. Afilias is not aware of other circumstances where an applicant (such as NDC) empowers a person or a company to improperly gain or preserve a monopoly in violation of ICANN's Bylaws. The commitment between NDC and Verisign uniquely raises antitrust issues for the reasons discussed above. Prior applicants' circumstances thus have no relevance to this unique situation.

Topic 13. Specifically with regard to the auction process, what knowledge or information do you have regarding the extent to which applicants within contention sets have taken suggestions or direction from others regarding how to conduct bidding? How common is this practice? (It is noted that Clause 68 of the "Auction Rules for New gTLDs (Version 2014-11-03)" (Auction Rules) and Section 2.6 of the "New gTLD Auctions Bidder Agreement (Version 2014-04-03)" (Bidder Agreement) prohibit certain collusive activities between applicants; the immediately preceding two questions are directed to suggestions or directions not violating those prohibitions.) Clause 12 of the Auction Rules states in part "Before an Auction to resolve a given Contention Set, each Qualified Applicant may designate a party to bid on its behalf ('Designated Bidder')." Designated Bidders must execute Bidder Agreements with the Auction Manager reflecting their rights and obligations concerning the conduct of the auction. Do you think that designation of a Designated Bidder violates the last sentence of AGB Module 6, Paragraph 10?

Response. The actions of other gTLD applicants are not relevant to NDC's actions. NDC deliberately chose not to disclose its relationship with Verisign in order to avoid questions about their anti-competitive relationship and deliberately violated AGB § 1.2.7's requirement to "promptly notify ICANN" of "any change in circumstance" that would have a material effect on the potential to create effective new competition for Verisign's existing monopoly in gTLD services.

NDC is helping Verisign solidify its monopoly over gTLDs. Verisign has enjoyed uninterrupted gTLD dominance for over a decade thanks to its control over .COM and .NET. As a result of this control, Verisign has a dominant share of all gTLD registrations. The next closest competitors have much smaller shares.

As stated above, Verisign's acquisition of .WEB likely means (1) fewer resources being invested in maximizing .WEB's competitive potential, (2) a dramatically reduced change that .WEB will act as a competitive check on .COM and .NET, and (3) that .WEB will not be marketed to compete and siphon away customers from .COM and .NET. If NDC and Verisign are permitted to consummate their arrangement, the result will deprive Internet users, businesses, and Web site developers of commercially promising and viable new domains for their Web sites. This competitive harm will likely never be undone.

Topic 14. Clause 12 of the Auction Rules states that a purpose for an applicant's selection of a Designated Bidder is to allow the Designated Bidder to bid on the applicant's behalf. Do you think that clause merely states a purpose for designation, or does it obligate the Designated Bidder to bid on



behalf of only the applicant? What do you think the phrase "its behalf" means in the Auction Rules and Bidder Agreement? Do you think it indicates that the Designated Bidder acts in the stead of the applicant, or does it additionally indicate that the Designated Bidder must act in only the interest of the applicant? (In this regard, please discuss the wording of the seventh recital in the Bidder Agreement.) Where no Designated Bidder is designated, do you think the Auction Rules or the Bidder Agreement requires that an applicant acting for itself as the Bidder act only in its own interest? If so, please explain why. As relevant to this topic 14, do you think there are any inconsistencies between the Auction Rules and the Bidder Agreement? If so, please explain those inconsistencies in detail.

Response. Afilias believes that in applying its rules in the present circumstances, ICANN should focus on the uniquely harmful competition implications of an undisclosed arrangement between NDC and Verisign, the current dominant monopolist in gTLD services. Other applications or potential applications of the rules in other circumstances are not necessarily relevant to the present unique situation.

Topic 15. Clause 13 of the Auction Rules states: "Before each Auction, each Bidder shall nominate up to two people ('Authorized Individuals') to bid on its behalf in the Auction." Authorized Individuals have certain rights and obligations in connection with the auction. Do you think that an applicant's nomination of an Authorized Individual violates the last sentence of AGB Module 6, Paragraph 10?

Response. Please see our response to Topic 14.

Topic 16. Do you think that an applicant's entry into a contract promising in exchange for a payment of money to make bids and otherwise participate in the auction in the manner directed by the other party to the contract constitutes "resell[ing], assign[ing], or transfer[ing] any of applicant's rights or obligations in connection with the application," as prohibited by AGB Module 6, Paragraph 10? Please explain why or why not.

Response. Please see our responses to Topics 05, 07, 08, and 14.

Topic 17. Do you think that AGB Module 6, Paragraph 10 would be violated by a contractual promise by an applicant to request ICANN's consent to transfer to another party any registry agreement it receives as the result of its application? If so, under what circumstances? To the best of your knowledge and information, in the context of any other gTLD has an applicant agreed, before entry into a registry agreement, to seek ICANN's consent to transfer the agreement after it is entered?

Response. Please see our responses to Topics 05, 07, 08, and 14.

Topic 18. Do you think that AGB Module 6, Paragraph 10 would be violated by a contractual promise by an applicant to seek to transfer to another party, but only upon consent of ICANN, any registry agreement it receives as the result of its application? If so, under what circumstances? To the best of your knowledge and information, in the context of any other gTLD has an applicant made such an agreement?

Response. Please see our responses to Topics 05, 07, 08, and 14.



Topic 19. Do you think that AGB Module 6, Paragraph 10 means that a resale, assignment, or transfer contrary to its last sentence constitutes a violation that can result in forfeiture or denial of the application, or is its effect simply that any such attempted resale, assignment, or transfer of the application is ineffective? In your response, please address Restatement (Second) of Contracts §§ 317 and 322 (including comment b) and any other applicable legal principles.

Response. Please see our responses to Topics 05, 07, 08, and 14.

Topic 20. In his 9 September 2016 letter, Scott Hemphill stated that NDC and Verisign's efforts to give Verisign control over the .WEB gTLD "must be sanctioned by ICANN by disqualifying NDC's bid and rejecting its application." Assuming that a resale, assignment, or transfer contrary to the last sentence of AGB Module 6, Paragraph 10 can result in forfeiture or denial of the application (see topic 19 above), do you think that the application must be forfeited or denied in all cases? If ICANN has discretion to determine an appropriate remedy, what factors do you think should guide ICANN's discretion?

Response. Afilias contests the specific circumstances surrounding NDC's actions, which violate the AGB, and declines to make generalizations regarding resales, assignments, or transfers contrary to the AGB. For the reasons provided in our responses above, ICANN should disqualify NDC's bid based on the principles found in ICANN's Bylaws and Articles of Incorporation, and on NDC's violations of the AGB. ICANN cannot permit Verisign to acquire rights in .WEB and thereby stifle competition and preserve its existing monopoly of gTLD services in direct contravention of ICANN's core values, all to the likely detriment of consumer choice and trust in ICANN.

EXHIBIT C-52

ARIF HYDER ALI

arif.ali@dechert.com
Contact Information Redacted Direct
+1 202 261 3079 Fax

18 June 2018

VIA E-MAIL

ICANN
12025 Waterfront Dr., Suite 300
Los Angeles, CA 90094-2536
independentreview@icann.org

Re: Afilias' Notice Invoking the Cooperative Engagement Process

Dear ICANN:

Our clients, Afilias plc and Afilias Domains No. 3 Limited (together, "**Afilias**"), hereby initiate the Cooperative Engagement Process ("**CEP**") with ICANN pursuant to Article 4, Section 4.3(e) of the ICANN Bylaws. The undersigned and Scott Hemphill will serve as the points of contact on behalf of Afilias for the CEP.

Pursuant to ICANN's accountability mechanism framework and rules, Afilias hereby commences the CEP with ICANN to resolve or narrow issues in dispute between Afilias and ICANN that, absent resolution, Afilias intends to submit to an Independent Review Process ("**IRP**"). As explained in our prior correspondence,¹ Afilias opposes the proposed delegation of .WEB to NDC for a multitude of reasons, including: (1) the fact that NDC's contractual obligation to assign the .WEB Registry Agreement to Verisign, Inc. ("**Verisign**") violates the letter and spirit of the rules set out in the New gTLD Applicant Guidebook (the "**AGB**") and Auction Rules for Indirect Contentions ("**Auction Rules**"); (2) the anti-competitive effects that such an assignment will have in light of Verisign's registry monopoly; (3) ICANN's lack of transparency regarding its investigation of the .WEB auction process; and (4) ICANN's disregard for its Articles of Incorporation, Bylaws, the AGB, and the Auction Rules.

¹ We incorporate our prior correspondence by reference. *See, e.g.*, Exhibit 1, Letter from S. Hemphill to A. Atallah (8 Aug. 2016); Exhibit 2, Letter from S. Hemphill to A. Atallah (9 Sep. 2016); Exhibit 3, Letter from J. Kane to C. Willett (7 Oct. 2016); Exhibit 4, Letter from A. Ali to ICANN Board (16 Apr. 2018); Exhibit 5, Letter from A. Ali to ICANN (23 Apr. 2018); Exhibit 6, Letter from A. Ali to J. LeVee (1 May 2016).

Any action taken by ICANN to continue the transition to delegation process for .WEB with NDC, including the contracting process for the .WEB Registry Agreement, would violate ICANN's Articles of Incorporation (“**Articles**”) and Bylaws.² Specifically, under its Articles and Bylaws,

1. ICANN is obligated to operate “for the benefit of the Internet community as a whole ... through open and transparent processes that enable competition and open entry in Internet-related markets.”³ ICANN's Bylaws specifically require ICANN to promote competition: “In performing its Mission, the following ‘Core Values’ should also guide the decisions and actions of ICANN: ... (iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process.” (Bylaws, Article 1, Section 1.2(b)(iv))
2. ICANN is obligated to “[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment.”⁴ ICANN therefore cannot ignore the violations of, among others, the following documented policies:
 - a. “An application will not be considered, in the absence of exceptional circumstances, if ... [t]he application form is incomplete (either the questions have not been fully answered or required supporting documents are missing).”⁵ (AGB, Section 1.2.1)
 - b. “If at any time during the evaluation process in formation previously submitted by an applicant become untrue or inaccurate, the applicant must

² We understand that the transition to delegation process, as explained in the AGB, consists of (1) contracting for the Registry Agreement (“In Contracting”); (2) pre-delegation testing (“In PDT”); and (3) delegating the gTLD (“Transition to Delegation”). See Exhibit 7, New gTLD Applicant Guidebook (4 June 2012), pp. 5-2 – 5-10; Exhibit 8, Update on Application Status and Contention Sets, ICANN (1 August 2016) (identifying the statuses that apply to individual applications post-auction and pre-delegation: “In Contracting,” “In PDT,” and “Transition to Delegation”).

³ Exhibit 9, ICANN Articles of Incorporation (30 Sep. 2016), Art. 4; Exhibit 10, ICANN Bylaws, Art. 1, Sec. 1.2(a).

⁴ Exhibit 10, ICANN Bylaws (22 July 2017), Art. 1, Sec. 1.2(a)(v).

⁵ Exhibit 7, New gTLD Applicant Guidebook (6 June 2012), p. 1-3. Applicants must disclose “funding and revenue” information on their operation of the gTLD and provide “[d]ocumentation of third-party funding commitments.” *Id.* at pp. 1-26, 1-41.

promptly notify ICANN via submission of the appropriate forms ... [which] includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.... Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.”⁶ (AGB, Section 1.2.7)

- c. “However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation.”⁷ (AGB, Section 4.1.3)
- d. “Applicant warrants that the statements and representations contained in the application ... are true and accurate and complete in all material respects Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.”⁸ (AGB, Terms and Conditions for Top-Level Domain Applications, Paragraph 1)
- e. “Applicant may not resell, assign, or transfer any of applicant’s rights or obligations in connection with the application.”⁹ (AGB, Terms and Conditions for Top-Level Domain Applications, Paragraph 10)
- f. “Participation in an Auction is limited to Bidders,”¹⁰ and bids “must be placed by a Bidder for its Application in an Open Contention Set.”¹¹ (ICANN Auction Rules 12 and 40)

⁶ *Id.* at p. 1-30.

⁷ *Id.* at p. 4-6.

⁸ *Id.* at p. 6-2.

⁹ *Id.* at p. 6-6.

¹⁰ Exhibit 11, Power Auctions LLC, *Auction Rules for New gTLDs: Indirect Contentions Edition* (24 Feb. 2015), Rule 12.

¹¹ *Id.* at Rule 40(b).

3. ICANN must operate “through open and transparent processes”¹² in accordance with, among other relevant provisions, the following Bylaws:
 - a. “Specifically, ICANN commits to do the following . . . [e]mploy open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector.” (Bylaws, Article 1, Section 1.2(a)(iv))
 - b. “In performing its Mission, the following ‘Core Values’ should also guide the decisions and actions of ICANN: . . . (ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.” (Bylaws, Article 1, Section 1.2(b)(ii))
 - c. ICANN “shall operat[e] to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN’s constituent bodies.” (Bylaws, Article 3, Section 3)
4. ICANN must “[o]perat[e] with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN’s other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community.” (Bylaws, Article 1, Section 1.2(b)(v))

¹² Exhibit 10, ICANN Bylaws (22 July 2017), Art. 1, Sec. 1.2(a).

Afilias therefore requests that ICANN stay all actions and processes related to the .WEB gTLD for the duration of the CEP and any subsequent IRP, including, without limitation, execution of any .WEB Registry Agreement. ICANN has previously placed the .WEB/.WEBS contention set “On-Hold,” staying the transition to delegation process for .WEB, “to reflect a pending ICANN Accountability Mechanism initiated by [a] member in the contention set.”¹³ Afilias requests the same treatment as a “similarly situated” applicant in the same contention.¹⁴

Afilias requests confirmation by ***5:00 p.m. EST on Friday 22 June 2018*** that ICANN will immediately place the contention set on hold.

Afilias reserves all of its rights and remedies in all available fora, whether within or outside of the United States of America, including the right to seek emergency interim relief pursuant to the ICDR Arbitration Rules.

Sincerely,



Arif Hyder Ali

¹³ Exhibit 12, Letter from A. Atallah to S. Hemphill (30 Sep. 2016), p. 1.

¹⁴ ICANN has emphasized that all applicants in the .WEB/.WEBS contention set must be treated equally. Exhibit 13, Letter to A. Ali from J. LeVee (28 Apr. 2018), p. 2 (“Providing Afilias with a special notice that is not available to others similarly situated would constitute preferential treatment and would contradict Article 2, Section 2.3 of the ICANN Bylaws.”).

EXHIBIT C-53

From: "Ali, Arif" <Arif.Ali@dechert.com>
Date: June 20, 2018 at 7:38:31 PM EDT
To: "LeVee, Jeffrey A." <jlevec@JonesDay.com>
Cc: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Subject: Re: .WEB

Dear Jeff:

Receipt acknowledged with thanks. We trust that ICANN will update the status of the contention set promptly and notify all concerned parties. We understand that per your message below that the contention set is on hold.

We look forward to working with you and your client and hope that we can resolve this matter in an amicable fashion.

Kind regards.

Arif

Arif Hyder Ali

Cell: Con ac nformation Redac ed

www.dechert.com/arif_ali/

Sent from my iPhone

On Jun 20, 2018, at 6:09 PM, LeVee, Jeffrey A. <jlevec@JonesDay.com> wrote:

Gentlemen:

A few thoughts:

1. Arif and I have worked together on ICANN matters for nearly a decade. We have always been cordial, and I expect that we will continue to be.
2. Arif also knows from his years of working on ICANN matters that ICANN does not give advance notice of changes in this type of status, and ICANN does not answer hypothetical questions. This is not a matter of transparency; it is a matter that, until certain actions are taken, ICANN cannot know with certainty how it will respond. Further, inasmuch as there are multiple stakeholders with respect to .WEB and .WEBS, answering private questions via email to you, without including all of the interested parties, would be wrong on many levels.
3. There obviously was no way for ICANN to know that Afilias would not forward to you ICANN's notice of 6 June 2018, which is why I assumed that you had it. In any event, these types of notices never state how long it will take before contracting will occur because ICANN simply does not know (and the time to contracting has varied substantially with respect to various applicants under the New gTLD Program).
4. Now that Afilias has formerly submitted a request for CEP, ICANN will put the contention set on hold.

Jeff LeVee

[JONES DAY® - One Firm WorldwideSM](#)

Telephone: (213) 243-2572

From: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Sent: Monday, June 18, 2018 3:28 PM

To: LeVee, Jeffrey A. <jlevee@JonesDay.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>

Subject: RE: .WEB

Dear Jeff,

We are in receipt of your email from Saturday, 16 June, advising us that ICANN sent a notice dated 6 June to John Kane of Afilias stating that "the .WEB/.WEBS contention set is no longer 'On-Hold.'"

Arif and I thought that we had had a cordial and productive conversation with you on 5 June, when we asked you questions about how ICANN intended to proceed with the .WEB registry agreement, and you agreed to pass those questions on to ICANN. You told us that if we did not hear back from you by the middle of

the week of 11 June, then we should follow up – which we did in our email of 14 June.

We were therefore surprised to receive your 16 June email, given our repeated requests that ICANN provide us, as Afiliás' counsel, with 60 days' notice of ICANN's changing the "On-Hold" status of the contention set. In the alternative, we asked you and ICANN if we could expect to receive *any* notice in advance of ICANN's changing the "On-Hold" status. See Letter from Arif Ali to Jeffrey LeVee dated 1 May 2018, p. 2 ("If ICANN believes some other notice period [from the 60-day period Afiliás requested] is applicable, we would ask ICANN to state what the notice period is and to identify where in its policies such notice period is set forth."). Neither you nor ICANN would even answer the basic question of whether Afiliás (or we as Afiliás' counsel) would receive any advance notice of ICANN's changing the "On-Hold" status.

You are quick to accuse us of being "disingenuous" because we did not "even ...mention" the 6 June notice when we sent you our most recent inquiry on 14 June. In fact, Mr. Kane (who was traveling to Australia last week) initially missed the email amidst the numerous other emails he received from ICANN in the same time frame.

Indeed, Arif and I did not learn of the 6 June notice until you forwarded it to us on Saturday. We observe that when we spoke to you by phone on 5 June and specifically asked you about the status of the .WEB contention set, you said nothing about the notice that ICANN apparently planned to send to Afiliás the next day. And while you advised us that you would pass on our questions to ICANN, we heard nothing further from you until your 16 June email. Rather than accuse you of being "disingenuous" on this occasion, we will give you the benefit of the doubt and assume that you as ICANN's counsel simply did not know about the 6 June notice until recently.

In any event, the 6 June notice provides no information about how ICANN intends to proceed – including, for example, when it plans to execute the .WEB registry agreement. Nor is there any information about when or on what basis ICANN made its decision to remove the contention set from its "On-Hold" status. We have previously asked for basic information concerning ICANN's "investigation" of the matter. ICANN has still provided no information whatsoever (e.g., when the investigation started, when it ended, what it entailed, what it concluded and on what basis) – and apparently has no intention of doing so.

Rather than answer the straightforward questions we have asked, you accuse us of "posturing." In fact, as is evident from our email below, we simply want to know when and how ICANN plans to

proceed, so that Afilias can invoke the available dispute resolution mechanisms in a timely fashion, in which Afilias reserves its rights pending the resolution of this dispute. ICANN appears unwilling to provide us with any answers. Your communications continually refer to ICANN's "processes." Unfortunately, there has been no transparency as to what those "processes" are. As a result, we are in the dark as to when or how ICANN plans to proceed – or, for that matter, how it has gotten to this stage.

We will continue to be transparent concerning Afilias' plans, in the hope that ICANN might eventually reciprocate to some degree. We previously advised you and ICANN that Afilias would commence a CEP if ICANN announced its intention to execute a .WEB registry agreement with a party other than Afilias. We have also advised that, in the event that the CEP is unsuccessful, Afilias will commence an IRP. Afilias submitted its CEP notice to ICANN earlier today.

We have previously asked — and you and ICANN have so far declined to answer – whether ICANN will (as it has in numerous other similar instances) put the contention set back on hold pending the resolution of Afilias' CEP and IRP requests (including, *inter alia*, staying the execution of the .WEB registry agreement). This is an obvious and straightforward question which is simply not addressed in ICANN's "documented" policies. During our call on 5 June, you said it has previously been ICANN's practice to put the contention set "On Hold" at least pending a CEP request. However, you have not told us whether ICANN will do so pending Afilias' CEP. In the absence of any answer to this question, our concern is that ICANN will simply proceed to execute the .WEB registry agreement and inform Afilias afterwards – which would by design deprive Afilias of its right to seek interim relief regarding the agreement's execution.

We sincerely hope that that is not how you and ICANN intend to proceed. Although Afilias disputes the manner in which ICANN has handled the .WEB contention set to date, it is still Afilias' hope that we can resolve the dispute in an orderly and transparent fashion that is fair to all interested parties. However, it will be difficult to proceed in that fashion if ICANN will not answer our basic questions on what it intends to do. If ICANN does not advise us whether it will put the contention set back on hold (and delay the execution of the .WEB registry agreement) by 5:00 pm EST on Friday, 22 June, Afilias will have no choice but to commence the IRP process and request an emergency arbitrator to issue interim relief.

As always, we would be happy to discuss these matters further by telephone or otherwise.

Very truly yours,

Alexandre de Gramont
Partner

Dechert LLP

1900 K Street N.W.

Washington, DC 20006

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Contact information Redacted Mobile

+1 202 261 3082 Fax

alex.degramont@dechert.com

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From: LeVee, Jeffrey A. [<mailto:jlevec@JonesDay.com>]

Sent: Saturday, June 16, 2018 9:14 AM

To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>

Subject: RE: .WEB

Gentlemen:

As there is nothing to keep ICANN from moving forward with contracting for .WEB, ICANN took the .WEB/.WEBS contention set off hold on 6 June 2018. On that same date, your client was notified of this change as per ICANN's processes. Attached is the notice sent to John Kane, the primary contact for Afilias, who your client selected for the notice. This means that, as you well know, ICANN will now be moving to contracting with the party that prevailed in contention resolution, which was not Afilias.

Your failure even to mention this notice in your email below is disingenuous at best, and your attempt to place on ICANN some obligation to provide you with advanced notice of something that ICANN has no obligation to provide is nothing more than posturing.

As you and your client require ICANN to follow its processes, Afilias must do the same in relation to the New gTLD Program.

Jeff LeVee

[JONES DAY® - One Firm WorldwideSM](#)

Telephone: (213) 243-2572

From: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Sent: Thursday, June 14, 2018 6:27 PM

To: LeVee, Jeffrey A. <jlevee@JonesDay.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>

Subject: .WEB

Dear Jeff,

We wanted to follow up on our conversation of last week. We understand that you are traveling for depositions, but recall your suggestion that we should follow up with you if we did not hear back from you by the middle of this week.

As we have previously advised ICANN, Afilias plans to initiate the Cooperative Engagement Process (“CEP”) immediately if ICANN decides to execute a .WEB registry agreement with any party other than Afilias. ICANN’s execution of a .WEB registry agreement with any party other than Afilias will cause irreparable harm to Afilias and, indeed, to the broader Internet community.

We do not think it will be in anyone’s interest if Afilias has to rush to court and/or to commence an IRP process and seek injunctive relief in order to prevent ICANN’s execution of the .WEB registry agreement (although Afilias is prepared to do so if necessary). We hope that ICANN will provide sufficient advance notice of its intent to execute a .WEB registry agreement with any party other than Afilias, so that Afilias and ICANN can engage in a meaningful CEP without being distracted by collateral proceedings. As we have also advised ICANN, if such CEP were not successful, Afilias would commence an IRP.

Again, we think it will be to the benefit of all interested parties if we can agree on an orderly, fair, and transparent process for the resolution of continuing disputes arising from the .WEB contention set. Accordingly, we respectfully request ICANN to answer the following questions:

1. How many days’ notice will be provided between (a) ICANN’s announcement that it is proceeding to execute a .WEB registry agreement with a party other than Afilias and (b) execution of such agreement?
2. Will ICANN voluntarily stay the execution of the .WEB registry agreement pending the resolution of the CEP?
3. Will ICANN voluntarily stay the execution of the .WEB registry agreement pending the resolution of the IRP?

We would be grateful if you would let us know ICANN’s responses to these questions.

Best regards, Alex

Alexandre de Gramont
Partner

Dechert LLP

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Washington, DC 20006

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Contact Information Redacted Mobile

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alex.degramont@dechert.com

dechert.com

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EXHIBIT C-54

From: Independent Review <independentreview@icann.org>
Sent: Tuesday, November 13, 2018 6:43 PM
To: Ali, Arif; Wong, Rosey
Cc: Litwin, Ethan; Cilingin, Jenn; Scott Hemphill; de Gramont, Alexandre; Independent Review
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif,

Pursuant to our discussion during the Cooperative Engagement Process (CEP) conference we had today, we are writing to confirm that the CEP for this matter is closed effective today, 13 November 2018.

ICANN will grant Afiliias an extension of time to 27 November 2018 (14 days following the close of CEP) to file an IRP regarding the matters raised in the CEP if Afiliias chooses to do so, and if Afiliias satisfies the standing requirements, the timing requirements, and the criteria necessary to make a claim that the ICANN Board violated its Articles of Incorporation or Bylaws. Please note that this extension will not alter any deadlines that may have expired before the initiation of the CEP.

With regard to our discussion regarding contention set status and interim relief from the IRP panel, we will revert back to you in the next day or two.

Please let us know if you have any questions.

Best Regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Wednesday, October 31, 2018 at 1:58 PM
To: "Wong, Rosey" <Rosey.Wong@dechert.com>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>, Scott Hemphill Contact Information Redacted "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –

Given the recent conclusion of ICANN63 in Barcelona and additional scheduling issues, we need to postpone the CEP conference to the 13 November date, which was mentioned as a possibility in our email below. It appears that Arif and Ethan are the only ones who have responded to the calendar invite sent for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST. As a reminder, a representative of Afiliias must also participate in the CEP conference.

Thank you for sending the draft IRP Request in your earlier email. ICANN is in the process of reviewing the materials in advance of the 13 November CEP conference.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Friday, October 19, 2018 at 3:25 PM
To: "Wong, Rosey" <Rosey.Wong@dechert.com>, Independent Review <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Rosey –
Thank you for sending the available dates and times below.

We will be sending two calendar invites for CEP conferences – one for 1 November 12:00pm-1:00pm Pacific / 3:00pm-4:00pm EST and one for 13 November 1:00pm-2:00pm Pacific / 4:00pm-5:00pm EST.
We are setting up two calls so that if there is a scheduling conflict on 1 November or if we need to have a further CEP conference after 1 November, we will already have a second call scheduled.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>
Date: Monday, October 15, 2018 at 12:36 PM
To: Independent Review <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

We are available for a further CEP call during the following times:

01 November 2018: 2pm-7pm EST
12 November 2018: 9am-7pm EST

13 November 2018: 9am-6pm EST
14 November 2018: 11am-12pm; 2pm-7pm EST

We look forward to hearing from you soon.

Thank you,
Rosey

Rose Marie Wong
Associate

Dechert LLP
+1 215 994 2052
rosey.wong@dechert.com
dechert.com [dechert.com]

From: Independent Review [mailto:independentreview@icann.org]
Sent: Thursday, October 11, 2018 3:40 PM
To: Wong, Rosey <Rosey.Wong@dechert.com>; Ali, Arif <Arif.Ali@dechert.com>
Cc: Litwin, Ethan <Ethan.Litwin@dechert.com>; Scott Hemphill Contact Information Redacted; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; Cilingin, Jenn <Jenn.Cilingin@dechert.com>; Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

As you may be aware, ICANN63 is scheduled to take place in Barcelona beginning next week. Therefore, please send us all dates and times that your client is available for a further CEP call between 1-16 November 2018 (please indicate all availability, so we can coordinate schedules).

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>
Date: Wednesday, October 10, 2018 at 9:00 PM
To: Independent Review <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Cilingin, Jenn" <Jenn.Cilingin@dechert.com>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear ICANN,

Unfortunately, none of the dates/times proposed in your email below work for us. We will be back in touch shortly with proposed dates and times for next week.

In our last CEP call, we had discussed a further explanation of our position. Subject to the rules on confidentiality and non-disclosure that apply to CEP, please find attached a draft IRP request, which sets out Afiliias' position. We understand that the draft is and will remain confidential as part of the materials exchanged during the CEP, and that ICANN will not assert any waiver of any privilege by virtue of our having provided you with the draft. We look forward to discussing with you on our next CEP call a concrete timeline and proposal regarding the steps that ICANN will take to disqualify NDC's application and/or disqualify NDC's bids in the ICANN auction for .WEB. We remain hopeful that we will be able to resolve this matter amicably.

Sincerely,

Arif Hyder Ali

www.dechert.com/arif_ali [[dechert.com](mailto:arif.ali@dechert.com)]

Dechert LLP

+1 202 261 3307 Washington, D.C.

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+44 207 1847372 Assistant (Annette Brombley)

Contact Information Redacted Mobile

arif.ali@dechert.com

From: Independent Review [<mailto:independentreview@icann.org>]

Sent: Wednesday, October 10, 2018 7:47 PM

To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott Hemphill Contact Information Redacted; independentreview@icann.org

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear All –

We have received no response to our email below and therefore presume that Afiliias was/is not available during the dates/times offered in the email below for a further CEP call.

In an effort to schedule a CEP call prior to ICANN63, we offer the following date and times. Please indicate by tomorrow whether Afiliias is available on Monday for a one hour CEP call during the times offered below.

15 October – Monday

10:30am – 12:00pm (Pacific)

2:00pm – 3:30pm (Pacific)

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "independentreview@icann.org" <independentreview@icann.org>

Date: Friday, October 5, 2018 at 2:12 PM

To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Greetings:

As we have not heard from you since 10 September, we offer you the following dates and times next week for a further CEP call. Please advise which one works for you.

8 Oct, Monday, 11a – noon PST

10 Oct, Wed, 2-3p PST

11 Oct, Thurs, 2-3p PST

We look forward to hearing from you soon.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

On Sep 10, 2018, at 11:51 AM, de Gramont, Alexandre <Alexandre.deGramont@dechert.com> wrote:

Dear ICANN:

When we spoke on 28 August, you had indicated that you would be available to continue the CEP today. We are disappointed that you have now cancelled two CEP calls that we had on calendar – and are now proposing a single, two-hour time slot over the next two weeks as an alternative. In any event, we are unavailable on 12 September between 7:00 am and 9:00 am (Pacific time).

We will discuss internally and revert to you soon on our position re moving forward.

Best regards,

Alexandre de Gramont

Partner

Dechert LLP

1900 K Street N.W.

Washington, DC 20006

+1 202 261 3320 Direct

Contact Information Redacted Mobile

+1 202 261 3082 Fax

alex.degramont@dechert.com

dechert.com [dechert.com]

From: Independent Review [<mailto:independentreview@icann.org>]

Sent: Monday, September 10, 2018 1:58 PM

To: Ali, Arif <Arif.Ali@dechert.com>; de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Cc: Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; Scott

Hemphill Contact Information Redacted; Independent Review <independentreview@icann.org>
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

We have not received a response to our 6 September email (below).
Could you please let us know as soon as possible if you and your client are available for a one hour call on 12 September between 7:00am – 9:00am (Pacific time) so that we can schedule it accordingly. Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>
Date: Thursday, September 6, 2018 at 2:25 PM
To: "Ali, Arif" <Arif.Ali@dechert.com>, "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "independentreview@icann.org" <independentreview@icann.org>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott Hemphill Contact Information Redacted
Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Arif –

Regarding scheduling the further CEP call that we discussed during our 28 August 2018 CEP conference, unfortunately schedules are very tight over the next two weeks. Please let us know if you and your client are available for a one hour call on 12 September 2018 between 7:00am – 9:00am (Pacific time).

Also, please let us know if you intend to submit any further documents or information in advance of our next call.

Best Regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Ali, Arif" <Arif.Ali@dechert.com>

Date: Tuesday, August 28, 2018 at 3:34 PM

To: Amy Stathos <amy.stathos@icann.org>, "de Gramont, Alexandre"

<Alexandre.deGramont@dechert.com>

Cc: "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "independentreview@icann.org"

<independentreview@icann.org>, "Wong, Rosey" <Rosey.Wong@dechert.com>, Scott

Hemphill <shemphill@afiliasth.com>

Subject: Re: [Independent Review] Afiliasth's Notice Invoking the Cooperative Engagement Process

Dear Amy:

Further to our call today, I assume that you had an opportunity to review our earlier correspondence on the matter of Afiliasth's claim. In any event, I am re-sending them so that they are at the top of your In-Box.

Kind regards,

Arif Hyder Ali

www.dechert.com/arif_ali [[dechert.com](mailto:arif.ali@dechert.com)]

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+44 207 1847372 Assistant (Annette Brombley)

+1 202 538 9133 Mobile

arif.ali@dechert.com

From: Amy Stathos [<mailto:amy.stathos@icann.org>]

Sent: Monday, July 30, 2018 12:36 PM

To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey

<Rosey.Wong@dechert.com>; Scott Hemphill Contact Information Redacted; independentreview@icann.org

Subject: Re: [Independent Review] Afiliasth's Notice Invoking the Cooperative Engagement Process

Importance: High

Thank you for the detailed agenda below, we will continue to analyze this in advance of our call, but unfortunately we are going to have to re-schedule the call that is scheduled for today. Sorry for the late notice.

We will work internally to find some times next week for a call, and will ensure that we have the right people to participate.

We will be in touch in next day or two to reschedule. Again, sorry for the late notice. Please confirm your receipt of this note.

Thank you.

Amy Stathos

Deputy General Counsel

Internet Corporation for Assigned Names and Numbers

+1-310-301-3866 (direct)

amy.stathos@icann.org

On Jul 23, 2018, at 12:40 PM, de Gramont, Alexandre
<Alexandre.deGramont@dechert.com> wrote:

Dear ICANN:

Thank you for your email below. I will plan to join Messrs. Hemphill and Ali on the call. Others on our team may also be present.

In the meantime, we believe it would be helpful to propose an agenda around which to organize the call. Afilias has three general goals for the CEP call: (1) to understand ICANN's positions concerning the resolution of the .WEB contention set, and the bases for those positions; (2) to understand whether ICANN is willing to reconsider its positions, or if there are any avenues toward a resolution of this matter without having to proceed to an IRP; and (3) if not, to see if we can agree on at least certain aspects concerning the schedule and process for the IRP. With those goals in mind, we propose the following agenda:

I. ICANN'S POSITIONS

1. Is it ICANN's intention to enter a .WEB registry agreement with NDC, with the understanding that NDC has contractually committed to assigning the exclusive right to operate the .WEB registry (and/or transferring any other rights obtained through NDC's application) to Verisign? If so, has ICANN informed or otherwise discussed with NDC or Verisign whether ICANN will agree to such assignment and/or transfer?

2. Is it ICANN's position that NDC's application – which made no mention of Verisign's involvement, and specifically stated that its goal was to increase competition among registry operators and diminish “[c]ongestion in the current availability of commercial TLD names [which] fundamentally advantages older incumbent players” – complied with the letter and spirit of the AGB?

3. Is it ICANN's position that NDC was not required to disclose that it had assigned or otherwise transferred any of its rights as an applicant (including, without limitation, the exclusive right to operate the .WEB registry) to Verisign in exchange for Verisign's funding of NDC's bid prior to the commencement of the auction?

4. Is it ICANN's position that it fully investigated the concerns about the conduct of NDC and Verisign raised by Afilias (and other applicants) after the conclusion of the auction? If so, is ICANN willing to tell us what the investigation entailed and uncovered?

5. Did ICANN consider disqualifying NDC's application after ICANN learned that NDC had agreed to assign or otherwise transfer any rights in

its application for .WEB to Verisign in exchange for Verisign's funding of NDC's bid? If so, is ICANN willing to tell us the basis of its decision not to disqualify NDC's application?

6. Is it ICANN's position that ICANN complied with its Articles of Incorporation and Bylaws in its handling of NDC's .WEB application and in its decision to enter into a .WEB registry agreement with NDC?

II. WHETHER ICANN IS WILLING TO RECONSIDER ITS POSITIONS

1. Is ICANN willing to reconsider its positions, in particular, its decision to enter a .WEB registry agreement with NDC, without Afilias having to commence an IRP?

2. Does ICANN have other ideas on how this dispute might be amicably resolved absent an IRP?

III. PROCEDURAL AND SCHEDULING ISSUES FOR AN IRP (IF NECESSARY)

1. If the CEP is unsuccessful, will ICANN, consistent with other IRPs, keep the contention set on hold pending the resolution of this IRP? Or will Afilias have to seek an emergency arbitrator to order interim relief? If the latter, will ICANN tell us when it plans to execute the .WEB registry agreement with NDC and/or Verisign?

2. If the CEP is unsuccessful, and Afilias commences an IRP, can we agree on a schedule for the submission of Afilias' IRP request (and if necessary, its request for an emergency arbitrator to order interim relief), as well as for further steps in the procedure?

Please let us know if you have any questions or comments concerning our proposed agenda. We would of course be pleased to consider additional items that ICANN would like to propose. In the meantime, we will look forward to speaking with Mr. Jeffrey next week.

Kind regards,

Alexandre de Gramont
Dechert LLP
Counsel for Afilias

From: Independent Review [<mailto:independentreview@icann.org>]

Sent: Thursday, July 19, 2018 4:36 PM

To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; 'Independent Review' <independentreview@icann.org>

Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Informat on Redacted

Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont –

Thank you for your response.

We will schedule the CEP conference for Monday 30 July 2018 11:00am-12:00pm (Pacific time).

We will send a meeting invite to Mr. Hemphill and Mr. Ali with call-in information to follow.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>

Date: Monday, July 16, 2018 at 1:31 PM

To: 'Independent Review' <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below. I have conferred with Messrs. Hemphill and Ali. They are both available on **Monday, 30 July between 10:00 am and 12:00 pm (Pacific time)**. Please let us know when in that time frame you would like to begin and we will plan accordingly.

Alexandre de Gramont
Partner

Dechert LLP
1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact Information Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [<mailto:independentreview@icann.org>]

Sent: Monday, July 16, 2018 1:45 PM

To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Confidential Information Redacted

Independent Review <independentreview@icann.org>

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

Following up on my emails below regarding scheduling the CEP conference as set forth in Section 4 of the CEP.

You indicated that Mr. Ali and Mr. Hemphill were not available on 17 July 2018 10-11am (Pacific) or on 19 July 2018 11am-12pm (Pacific) – the dates and times provided below in my 6 July email.

In an effort to accommodate Afiliias' schedule and to find a mutually acceptable date and time for the conference, below are additional dates and times when Mr. Jeffrey is available for a one-hour telephonic CEP conference. Please let us know as soon as possible if Mr. Ali and Mr. Hemphill are available for these dates and times (please indicate all availability, so we can coordinate schedules).

Dates and Times:

Wed. 18 July 2018 3:00pm – 5:00pm (Pacific)

Thurs. 19 July 2018 2:00pm – 4:00pm (Pacific)

Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific)

Tuesday 31 July 3:00pm – 5:00pm (Pacific)

Thursday 3 August 2:00pm – 4:00pm (Pacific)

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

Date: Thursday, July 12, 2018 at 5:11 PM

To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>,

'Independent Review' <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan"

<Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>,

'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

Unfortunately, Mr. Jeffrey is not available the week of 23 July.

He is available on the following dates and times the following week:
Monday 30 July 10:00am – 12:00pm (Pacific) and/or 3:00pm – 5:00pm (Pacific)
Tuesday 31 July 3:00pm – 5:00pm (Pacific)
Thursday 3 August 2:00pm – 4:00pm (Pacific)

Please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed above for a one hour telephonic CEP conference (please indicate all availability, so we can coordinate schedules).

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>
Date: Thursday, July 12, 2018 at 3:10 AM
To: 'Independent Review' <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill'Contact Information Redacted
Subject: Re: [Independent Review] Afiliast' Notice Invoking the Cooperative Engagement Process

We are having trouble with both those dates and times. Would Mr. Jeffrey be available on Monday, July 23, between 8am and noon Pacific time?

Thanks, Alex

Alexandre de Gramont
Partner

Dechert LLP
1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact Information Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

From: Independent Review [<mailto:independentreview@icann.org>]
Sent: Tuesday, July 10, 2018 2:49 PM
To: Independent Review <independentreview@icann.org>; de Gramont, Alexandre

<Alexandre.deGramont@dechert.com>

Cc: Ali, Arif <Arif.Ali@dechert.com>; Litwin, Ethan <Ethan.Litwin@dechert.com>; Wong, Rosey <Rosey.Wong@dechert.com>; 'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

I am following up on my email below.

Could you please let us know if Mr. Hemphill and Mr. Ali are available on the dates and times listed below for a one hour telephonic CEP conference.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of Independent Review <independentreview@icann.org>

Date: Friday, July 6, 2018 at 12:07 PM

To: "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "'independentreview@icann.org'" <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Dear Mr. Gramont,

Thank you for responding.

Mr. Jeffrey is available for a telephonic CEP conference on the following days and times:

17 July 2018 10:00am – 11:00am (Pacific time)

19 July 2018 11:00am – 12:00pm (Pacific time)

Please let us know if Mr. Hemphill and Mr. Ali are available on either of those two dates.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>

Date: Friday, July 6, 2018 at 10:01 AM

To: "'independentreview@icann.org'" <independentreview@icann.org>

Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>, 'Scott Hemphill' Contact Information Redacted

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

Thank you for your email below and we apologize for not responding sooner. Our team has been in an arbitration hearing in Paris that just finished up today. In any event, neither Mr. Ali nor Mr. Hemphill were able to attend ICANN62. We would be available for a meeting (preferably in Washington, D.C. or elsewhere on the east coast) from July 17-24 or July 30-Aug. 3. If those dates don't work, we will have to look for dates in September. Please let us know.

Kind regards,

Alexandre de Gramont
Partner

Dechert LLP

1900 K Street N.W.
Washington, DC 20006
+1 202 261 3320 Direct
Contact Information Redacted Mobile
+1 202 261 3082 Fax
alex.degramont@dechert.com
dechert.com [dechert.com]

----- Original Message -----

Subject: Re: [Independent Review] Afiliias' Notice Invoking the Cooperative Engagement Process

From: independentreview@icann.org

Date: Jun 20, 2018, 3:08 PM

To: "Ali, Arif" <Arif.Ali@dechert.com>, "Wong, Rosey" <Rosey.Wong@dechert.com>

Dear Mr. Ali,

This will acknowledge receipt of the email, with the attached letter, on behalf of your clients Afiliias plc and Afiliias Domains No. 3 Limited (collectively, "Afiliias") to independentreview@icann.org on 18 June 2018, whereby Afiliias initiated the Cooperative Engagement Process (CEP) regarding .WEB in advance of filing a Request for Independent Review (IRP). Pursuant to Section 3 of the CEP, ICANN has designated John Jeffrey as the Executive that will participate in the CEP that Afiliias has initiated.

As Mr. Jeffrey is currently traveling to Panama, we will be contacting you in the next few days regarding your client's availability for a conference as set forth in Section 4 of the CEP, perhaps to take place at ICANN62 in Panama (please advise if Mr. Hemphill will be attending ICANN62) or soon thereafter.

Best regards,

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

From: Independentreview <independentreview-bounces@icann.org> on behalf of "Wong, Rosey" <Rosey.Wong@dechert.com>
Date: Monday, June 18, 2018 at 12:23 PM
To: "independentreview@icann.org" <independentreview@icann.org>
Cc: "Ali, Arif" <Arif.Ali@dechert.com>, "Litwin, Ethan" <Ethan.Litwin@dechert.com>, Scott Hemphill Contact Information Redacted "de Gramont, Alexandre" <Alexandre.deGramont@dechert.com>, "Sancheti, Harsh" <Harsh.Sancheti@dechert.com>
Subject: [Independent Review] Afilias' Notice Invoking the Cooperative Engagement Process

Dear ICANN:

Please find attached a letter on behalf of Afilias plc and Afilias Domains No. 3, initiating the Cooperative Engagement Process with ICANN pursuant to Article 4, Section 4.3(e) of the ICANN Bylaws. The exhibits accompanying the letter can be downloaded at: <https://dechert.box.com/s/hquexsi6ni99bvtx4grlq7mw5ex14epq> [dechert.box.com].

We would be grateful if you acknowledge receipt.

Sincerely,
Rose Marie Wong

Rose Marie Wong
Associate

Dechert LLP
+1 215 994 2052
rosey.wong@dechert.com
dechert.com [dechert.com]

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

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Independentreview mailing list
Independentreview@icann.org
<https://mm.icann.org/mailman/listinfo/independentreview>

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Independentreview mailing list
Independentreview@icann.org
<https://mm.icann.org/mailman/listinfo/independentreview>

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This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

EXHIBIT C-55



ICANN UPDATES APPLICATION CHANGE REQUEST PROCESS

Today, 30 September 2014, ICANN published updates to the application change request process. Updates can be viewed at the [Change Request page \(en/applicants/customer-service/change-requests\)](#) of the Microsite. The major changes include:

- Certain types of changes will no longer be posted for comments for 30 days:
 - Changes to confidential portions of the application
 - Changes to primary and secondary contacts of the application
 - Changes to the applicant's contact information (address, phone, fax, web address)
 - Changes to applicant's stock symbol
 - Changes to applicant's business/tax ID
 - Changes to applicant's officers/directors
 - Changes to name of applying entity*
 - Changes to parent entity

The application will no longer be held for 30 days for the community to comment on the above changes because details of changes to confidential portions are not published, and the other changes listed above are updates to the application as a normal course of business. ICANN reserves the right to make exceptions to these practices and post changes for public comments in its discretion.

- In cases where the change request requires re-evaluation, the re-evaluation will no longer be a part of the core change request process. Spitting re-evaluations into its own process will allow ICANN to better report on SLAs for change requests and prevent applicants from gaming the process and delaying other applications in the same contention set.

ICANN will also start reporting on change request statistics on a monthly basis. These monthly statistics will be available on the [Change Request page \(en/applicants/customer-service/change-requests\)](#) of the New gTLD Microsite.

* This item refers to a simple name change of the applying entity only. It does not apply to changes in the applying entity itself such as the case of the application being assigned from a parent entity to a wholly-owned subsidiary.

EXHIBIT C-56

NEW GTLD APPLICATION CHANGE REQUEST PROCESS AND CRITERIA

[Overview](#)

[Determination Criteria](#)

[How to Submit a Change Request](#)

[Change Request Process](#)

[Change Requests That Do Not Require A 30-day Comment Window](#)

[How Change Requests Impact Other New gTLD Program Processes](#)

[Statistics](#)

[Resources](#)

News & Views

Announcement: 30 September 2014 – [ICANN Updates Application Change Request Process](http://newgtlds.icann.org/en/announcements-and-media/announcement-30sep14-en)
(<http://newgtlds.icann.org/en/announcements-and-media/announcement-30sep14-en>)

Announcement: 30 September 2014 – [Change Request Advisory](http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en) (<http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en>)

Change Request Overview

Per section 1.2.7 of the Applicant Guidebook:

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

This section of the Applicant Guidebook further states:

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

The Application Change Request ("ACR") process was created during the application window in order to allow applicants to notify ICANN of changes to application materials.

Change Request Determination Criteria

Determination of whether changes will be approved will balance the following factors:

1. **Explanation** – Is a reasonable explanation provided?
2. **Evidence that original submission was in error** – Are there indicia to support an assertion that the change merely corrects an error?
3. **Other third parties affected** – Does the change affect other third parties materially?

4. **Precedents** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. **Fairness to applicants** – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. **Materiality** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. **Timing** – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

These criteria were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants.

In evaluating each change request, all available information is considered against the seven criteria above. The weight of each criterion may vary on a case-by-case basis, depending on the facts and circumstances surrounding the change request, the application, and the string.

Explanation – This criterion requires that the applicant provide an explanation for the requested changes. If an explanation is not provided, the applicant is given an opportunity to remediate. As such, this criterion is always met and does not bear as much weight as the other criteria.

Evidence that original submission was in error – This criterion is applicable in cases where the applicant requests a change to correct an error. In this case, the criterion requires that the applicant provide adequate information to support the request. There are few cases of change requests to correct an error. However, when such a case is submitted, this criterion is heavily weighted.

Other third parties affected – This criterion evaluates whether the change request materially impacts other third parties, particularly other applicants. In cases where a change to application material has the potential to materially impact the status of another applicant's application, this criterion is heavily weighted.

Precedents – This criterion assesses whether approval of the change request would create a new precedent, or if it would be in-line with other similar requests that have been approved. At this stage of the New gTLD Program, it is unlikely that a change request that would create a new precedent would be approved.

Fairness to applicants – This criterion evaluates whether approving a change request would put the applicant in a position of advantage or disadvantage compared to other applicants. This criterion is related to the "Other third parties affected" criterion, and if a change request is found to materially impact other third parties, it will likely be found to cause issues of unfairness.

Materiality – This criterion assesses how the change request will impact the status of the application and its competing applications, the string, the contention set, and any additional Program processes that it or its competing applications must complete such as Community Priority Evaluation ("CPE"). A change that is determined to be material in and of itself will not cause a change request to be rejected. However, it will cause other criteria to weigh more when considered in conjunction with each other.

Timing – This criterion determines whether the timing of the change request impacts the materiality, fairness to applicants, and other third parties affected criteria. In cases where timing of the change request is found to impact these criteria, it will be heavily weighted.

How to Submit a Change Request

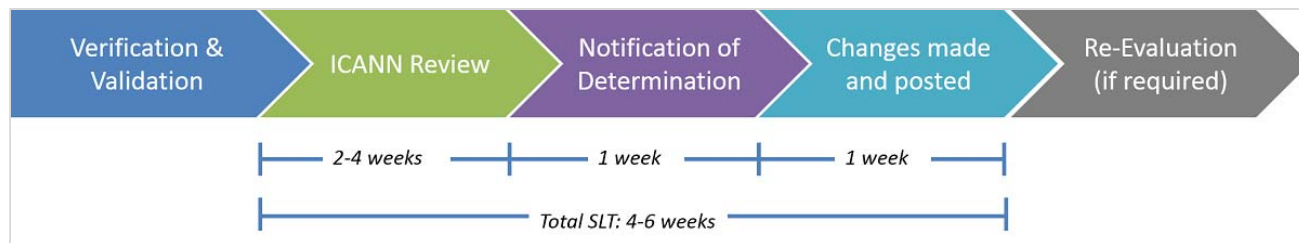
Requests for changes to application materials may be submitted to the [Naming Services Portal \(NSp\)](https://portal.icann.org/) (<https://portal.icann.org/>) by following these 2 steps:

1. Download and complete a [gTLD Application Change Request Form \(/en/applicants/customer-service/change-requests/form-12mar14-en.docx\)](https://www.icann.org/en/applicants/customer-service/change-requests/form-12mar14-en.docx) [DOCX, 564 KB].
2. Log into the NSp with the primary contact's credentials and submit the Form, along with redlines of the changes being requested. An example of a redline document can be viewed [here](#).

The standard change request process requires that any change to the application, including changes to the Primary Contact, be initiated by the Primary Contact and submitted via the appropriate login in the NSp. If the Primary Contact is no longer available to initiate the change, then the Secondary Contact may contact the GSC at newgtld@icann.org (<mailto:newgtld@icann.org>) to submit the change request.

Change Request Process

Below is a graphic depicting the change request process.



(</sites/default/files/main-images/change-request-process-900x161-11feb15-en.png>)

Verification & Validation – In this step, ICANN verifies the applicant's credentials in order to ensure that only those authorized to make changes to the application are able to do so. Additionally, ICANN reviews the change request materials submitted by the applicant to ensure that a completed Change Request Form, appropriate redline documents, as well as all relevant supporting documentations are provided. This step is not counted in the 4-6 week Service Level Target ("SLT") for change requests, because the amount of time to complete this step is highly dependent upon the applicant providing the required information. ICANN's work during this step is minimal. ICANN typically performs its work within 2 business days of receiving the requests or information from the applicant. Submission of incomplete information, and non-response to ICANN's request for required information are typical causes of delay in this step. ICANN will inform the applicant once this step is completed.

ICANN Review – Once verification and validation of the change request is completed, ICANN reviews the change request materials against the seven criteria above. In the event that additional information is required before a determination can be made, ICANN will reach out to the applicant to request the information. The SLT for this step of the process is 2-4 weeks, depending on the complexity of the change request and whether additional information is required.

Notification of Determination – Once ICANN completes its review of the change request, the applicant will be informed of the determination. Possible determinations include approval of the change request, denial of the change request, or deferral of the change request to a later time. The SLT for this step is one week to account for the drafting of denial or deferral letters if the change request is denied or deferred.

Changes Made and Posted – In this step, ICANN makes the requested and approved changes to the application. Changes that require a 30-day comment window will be posted on the [Application Status page](http://gtldresult.icann.org/application-result/applicationstatus) (<http://gtldresult.icann.org/application-result/applicationstatus>) of the New gTLD Microsite. Changes that do not require a 30-day comment window will not be posted. Refer to the "Change Requests Requiring 30-day Comment Window" section below for information on which changes will be posted for comments and which ones will not. Applicants will be notified once the changes are made. The notification will also inform applicants whether the changes are posted for comments, and whether application re-evaluation will be required.

Re-evaluation – This step is applicable to those change requests that require re-evaluation of the application. Once ICANN notifies the applicant that the changes are made and that re-evaluation is required, the change request case will be closed and a new re-evaluation case will be opened to assist the applicant through the re-evaluation process. Under the re-evaluation step, the applicant will be sent an invoice for the re-evaluation fee. Once payment is made, ICANN will proceed with the re-evaluation of the application. The re-evaluation will follow the same process and timelines as Extended Evaluation:

- 3 weeks: evaluators review the updated application, and issue Clarifying Questions if required.
- 6 weeks: applicants respond to Clarifying Questions.
- 2 weeks: evaluators review response to Clarifying Questions and deliver results to ICANN.
- 1 week: ICANN reviews and processes the results for publication. Note that if the re-evaluation results in any scoring changes, ICANN will update either the Initial or Extended Evaluation report and post it on the [Application Status page](#)

(<https://gtldresult.icann.org/application-result/applicationstatus>) of the New gTLD Microsite. If the re-evaluation does not result in any scoring changes, no updates will be made.

Change Requests That Do Not Require A 30-day Comment Window

In the interest of allowing applicants to expeditiously move forward in the New gTLD Program, effective 1 October 2014, the following types of change requests will generally not be posted for comments for 30 days:

- Changes to confidential portions of the application
- Changes to primary and secondary contacts of the application
- Changes to the applicant's contact information (address, phone, fax, web address)
- Changes to applicant's stock symbol
- Changes to applicant's business/tax ID
- Changes to applicant's officers/directors
- Changes to name of applying entity*
- Changes to parent entity

Although these types of change requests generally will not be posted for comments, ICANN reserves the right to make exceptions in ICANN's discretion.

* This item refers to a simple name change of the applying entity only. It does not apply to changes in the applying entity itself such as the case of the application being assigned from a parent entity to a wholly-owned subsidiary.

How Change Requests Impact Other New gTLD Program Processes

Contracting – If an applicant is eligible to be invited to Contracting, but there is a pending change request on the application, the applicant will not be invited until the change request completes processing. If the applicant has been invited to contracting and is progressing through the contracting process, a pending change request will cause delays and may impact the applicant's ability to execute the Registry Agreement in a timely manner. If the applicant anticipates not being able to execute the Registry Agreement by the Registry Agreement execution deadline, ICANN recommends that the applicant [submit an extension request \(/en/applicants/agb/agreement-extension-form-19may14-en.docx\)](#) [DOCX, 565 KB] in order to avoid missing the Registry Agreement execution deadline. Applicants will not receive a Registry Agreement until the change request completes processing, and the 30-comment window (if required) has concluded.

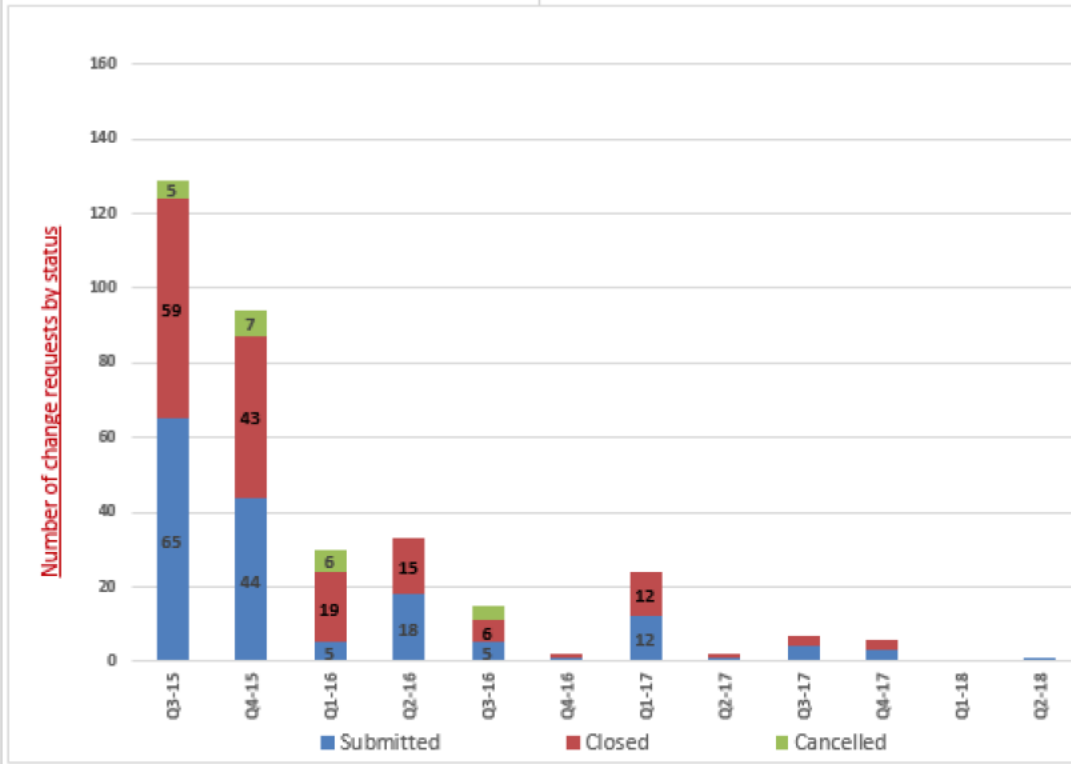
Contention Resolution – For Community Priority Evaluation, the applicant will only be invited once the change request completes processing and the 30-day comment window (if required) has concluded. For Auction, a pending change request will not prevent an Auction from being scheduled, but in some circumstances, the Auction may be delayed.

Statistics

Below are quarterly change request statistics (as of June 2018).

	Q3-15	Q4-15	Q1-16	Q2-16	Q3-16	Q4-16	Q1-17	Q2-17	Q3-17	Q4-17	Q1-18	Q2-18
Submitted	65	44	5	18	5	1	12	1	4	3	0	1
Closed	59	43	19	15	6	1	12	1	3	3	0	0
Cancelled	5	7	6	0	4	0	0	0	0	0	0	0
Total	129	94	29	33	15	2	24	2	7	6	0	1

	Q3-2015	Q4-2015	Q1-2016	Q2-2016	Q3-2016	Q4-2016	Q1-2017	Q2-2017	Q3-2017	Q4-2017	Q1-2018	Q2-2018
% ACR Processed within 6 weeks	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	n/a	n/a
Average days to process within 6 weeks	9	9	19	11	12	12	4	17	18	9	n/a	n/a



(/sites/default/files/main-

images/change-requests-543x581-16jul18-en.png)

Resources

- [Change Request Form \(/en/applicants/customer-service/change-requests/form-12mar14-en.docx\)](#) [DOCX, 564 KB]
- [Naming Services Portal \(NSp\) \(https://portal.icann.org/\)](https://portal.icann.org/)
- [Example Redline Document \(/en/applicants/customer-service/change-requests/redline-example-30sep14-en.pdf\)](#) [PDF, 50 KB]
- [Change Request Advisory \(/en/applicants/advisories/change-request-set-05sep14-en\)](#)

EXHIBIT C-57

C-57

MEMORANDUM OF UNDERSTANDING BETWEEN
THE U.S. DEPARTMENT OF COMMERCE
AND
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

I. PARTIES

This document constitutes an agreement between the U.S. Department of Commerce (DOC or USG) and the Internet Corporation for Assigned Names and Numbers (ICANN), a not-for-profit corporation.

II. PURPOSE**A. Background**

On July 1, 1997, as part of the Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize the management of the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

On June 5, 1998, the DOC published its Statement of Policy, *Management of Internet Names and Addresses*, 63 Fed. Reg. 31741(1998) (Statement of Policy). The Statement of Policy addressed the privatization of the technical management of the DNS in a manner that allows for the development of robust competition in the management of Internet names and addresses. In the Statement of Policy, the DOC stated its intent to enter an agreement with a not-for-profit entity to establish a process to transition current U.S. Government management of the DNS to such an entity based on the principles of stability, competition, bottom-up coordination, and representation.

B. Purpose

Before making a transition to private sector DNS management, the DOC requires assurances that the private sector has the capability and resources to assume the important responsibilities related to the technical management of the DNS. To secure these assurances, the Parties will collaborate on this DNS Project (DNS Project). In the DNS Project, the Parties will jointly design, develop, and test the mechanisms, methods, and procedures that should be in place and the steps necessary to transition management responsibility for DNS functions now performed by, or on behalf of, the U.S. Government to a private-sector not-for-profit entity. Once testing is successfully completed, it is contemplated that management of the DNS will be transitioned to the mechanisms, methods, and procedures designed and developed in the DNS Project.

In the DNS Project, the parties will jointly design, develop, and test the mechanisms, methods, and procedures to carry out the following DNS management functions:

- a. Establishment of policy for and direction of the allocation of IP number blocks;
- b. Oversight of the operation of the authoritative root server system;
- c. Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system;
- d. Coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet; and
- e. Other activities necessary to coordinate the specified DNS management functions, as agreed by the Parties.

The Parties will jointly design, develop, and test the mechanisms, methods, and procedures that will achieve the transition without disrupting the functional operation of the Internet. The Parties will also prepare a joint DNS Project Report that documents the conclusions of the design, development, and testing.

DOC has determined that this project can be done most effectively with the participation of ICANN. ICANN has a stated purpose to perform the described coordinating functions for Internet names and addresses and is the organization that best demonstrated that it can accommodate the broad and diverse interest groups that make up the Internet community.

C. The Principles

The Parties will abide by the following principles:

1. Stability

This Agreement promotes the stability of the Internet and allows the Parties to plan for a deliberate move from the existing structure to a private-sector structure without disruption to the functioning of the DNS. The Agreement calls for the design, development, and testing of a new management system that will not harm current functional operations.

2. Competition

This Agreement promotes the management of the DNS in a manner that will permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation, and enhance user choice and satisfaction.

3. Private, Bottom-Up Coordination

This Agreement is intended to result in the design, development, and testing of a private coordinating process that is flexible and able to move rapidly enough to meet the changing needs of the Internet and of Internet users. This Agreement is intended to foster the development of a private sector management system that, as far as possible, reflects a system of bottom-up management.

4. Representation.

This Agreement promotes the technical management of the DNS in a manner that reflects the global and functional diversity of Internet users and their needs. This Agreement is intended to promote the design, development, and testing of mechanisms to solicit public input, both domestic and international, into a private-sector decision making process. These mechanisms will promote the flexibility needed to adapt to changes in the composition of the Internet user community and their needs.

III. AUTHORITIES

A. DOC has authority to participate in the DNS Project with ICANN under the following authorities:

- (1) 15 U.S.C. § 1525, the DOC's Joint Project Authority, which provides that the DOC may enter into joint projects with nonprofit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned;
- (2) 15 U.S.C. § 1512, the DOC's authority to foster, promote, and develop foreign and domestic commerce;
- (3) 47 U.S.C. § 902, which specifically authorizes the National Telecommunications and Information Administration (NTIA) to coordinate the telecommunications activities of the Executive Branch and assist in the formulation of policies and standards for those activities including, but not limited to, considerations of interoperability, privacy, security, spectrum use, and emergency readiness;
- (4) Presidential Memorandum on Electronic Commerce, 33 Weekly Comp. Presidential Documents 1006 (July 1, 1997), which directs the Secretary of Commerce to transition DNS management to the private sector; and
- (5) Statement of Policy, *Management of Internet Names and Addresses*, (63 Fed. Reg. 31741(1998) (Attachment A), which describes the manner in which the Department of Commerce will transition DNS management to the private sector.

B. ICANN has the authority to participate in the DNS Project, as evidenced in its Articles of Incorporation (Attachment B) and Bylaws (Attachment C). Specifically, ICANN has stated that its business purpose is to:

- (i) coordinate the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet;
- (ii) perform and oversee functions related to the coordination of the Internet Protocol (IP) address space;
- (iii) perform and oversee functions related to the coordination of the Internet domain name system, including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system;
- (iv) oversee operation of the authoritative Internet DNS root server system; and

(v) engage in any other related lawful activity in furtherance of Items (i) through (iv).

IV. MUTUAL INTEREST OF THE PARTIES

Both DOC and ICANN have a mutual interest in a transition that ensures that future technical management of the DNS adheres to the principles of stability, competition, coordination, and representation as published in the Statement of Policy. ICANN has declared its commitment to these principles in its Bylaws. This Agreement is essential for the DOC to ensure continuity and stability in the performance of technical management of the DNS now performed by, or on behalf of, the U.S. Government. Together, the Parties will collaborate on the DNS Project to achieve the transition without disruption.

V. RESPONSIBILITIES OF THE PARTIES

A. General.

1. The Parties agree to jointly participate in the DNS Project for the design, development, and testing of the mechanisms, methods and procedures that should be in place for the private sector to manage the functions delineated in the Statement of Policy in a transparent, non-arbitrary, and reasonable manner.
2. The Parties agree that the mechanisms, methods, and procedures developed under the DNS Project will ensure that private-sector technical management of the DNS shall not apply standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause and will ensure sufficient appeal procedures for adversely affected members of the Internet community.
3. Before the termination of this Agreement, the Parties will collaborate on a DNS Project Report that will document ICANN's test of the policies and procedures designed and developed pursuant to this Agreement.
4. The Parties agree to execute the following responsibilities in accordance with the Principles and Purpose of this Agreement as set forth in section II.

B. DOC. The DOC agrees to perform the following activities and provide the following resources in support of the DNS Project:

1. Provide expertise and advice on existing DNS management functions.
2. Provide expertise and advice on methods and administrative procedures for conducting open, public proceedings concerning policies and procedures that address the technical management of the DNS.
3. Identify with ICANN the necessary software, databases, know-how, other equipment, and intellectual property necessary to design, develop, and test methods and procedures of the DNS Project.
4. Participate, as necessary, in the design, development, and testing of the methods and procedures of the DNS Project to ensure continuity including coordination between ICANN and Network Solutions, Inc.
5. Collaborate on a study on the design, development, and testing of a process for making the management of the root server system more robust and secure. This aspect of the DNS Project will address:
 - a. Operational requirements of root name servers, including host hardware capacities, operating system and name server software versions, network connectivity, and physical environment.
 - b. Examination of the security aspects of the root name server system and review of the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.
 - c. Development of operational procedures for the root server system, including formalization of contractual relationships under which root servers throughout the world are operated.
6. Consult with the international community on aspects of the DNS Project.
7. Provide general oversight of activities conducted pursuant to this Agreement.

8. Maintain oversight of the technical management of DNS functions currently performed either directly, or subject to agreements with the U.S. Government, until such time as further agreement(s) are arranged as necessary, for the private sector to undertake management of specific DNS technical management functions.

C. ICANN. ICANN agrees to perform the following activities and provide the following resources in support of the DNS Project and further agrees to undertake the following activities pursuant to its procedures as set forth in Attachment B (Articles of Incorporation) and Attachment C (By-Laws), as they may be revised from time to time in conformity with the DNS Project:

1. Provide expertise and advice on private sector functions related to technical management of the DNS such as the policy and direction of the allocation of IP number blocks and coordination of the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

2. Collaborate on the design, development and testing of procedures by which members of the Internet community adversely affected by decisions that are in conflict with the bylaws of the organization can seek external review of such decisions by a neutral third party.

3. Collaborate on the design, development, and testing of a plan for introduction of competition in domain name registration services, including:

a. Development of procedures to designate third parties to participate in tests conducted pursuant to this Agreement.

b. Development of an accreditation procedure for registrars and procedures that subject registrars to consistent requirements designed to promote a stable and robustly competitive DNS, as set forth in the Statement of Policy.

c. Identification of the software, databases, know-how, intellectual property, and other equipment necessary to implement the plan for competition;

4. Collaborate on written technical procedures for operation of the primary root server including procedures that permit modifications, additions or deletions to the root zone file.

5. Collaborate on a study and process for making the management of the root server system more robust and secure. This aspect of the Project will address:

a. Operational requirements of root name servers, including host hardware capacities, operating system and name server software versions, network connectivity, and physical environment.

b. Examination of the security aspects of the root name server system and review of the number, location, and distribution of root name servers considering the total system performance; robustness, and reliability.

c. Development of operational procedures for the root system, including formalization of contractual relationships under which root servers throughout the world are operated.

6. Collaborate on the design, development and testing of a process for affected parties to participate in the formulation of policies and procedures that address the technical management of the Internet. This process will include methods for soliciting, evaluating and responding to comments in the adoption of policies and procedures.

7. Collaborate on the development of additional policies and procedures designed to provide information to the public.

8. Collaborate on the design, development, and testing of appropriate membership mechanisms that foster accountability to and representation of the global and functional diversity of the Internet and its users, within the structure of private-sector DNS management organization.

9. Collaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account the following:

- a. The potential impact of new gTLDs on the Internet root server system and Internet stability.
- b. The creation and implementation of minimum criteria for new and existing gTLD registries.
- c. Potential consumer benefits/costs associated with establishing a competitive environment for gTLD registries.
- d. Recommendations regarding trademark/domain name policies set forth in the Statement of Policy; recommendations made by the World Intellectual Property Organization (WIPO) concerning: (i) the development of a uniform approach to resolving trademark/domain name disputes involving cyberpiracy; (ii) a process for protecting famous trademarks in the generic top level domains; (iii) the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders; and recommendations made by other independent organizations concerning trademark/domain name issues.

10. Collaborate on other activities as appropriate to fulfill the purpose of this Agreement, as agreed by the Parties.

D. Prohibitions.

1. ICANN shall not act as a domain name Registry or Registrar or IP Address Registry in competition with entities affected by the plan developed under this Agreement. Nothing, however, in this Agreement is intended to prevent ICANN or the USG from taking reasonable steps that are necessary to protect the operational stability of the Internet in the event of the financial failure of a Registry or Registrar or other emergency.
2. Neither Party, either in the DNS Project or in any act related to the DNS Project, shall act unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities.
3. Both Parties shall act in a non-arbitrary and reasonable manner with respect to design, development, and testing of the DNS Project and any other activity related to the DNS Project.

VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned, and each party shall bear the costs of its own activities under this Agreement. This Agreement contemplates no transfer of funds between the Parties. Each Party's estimated costs for the first six months of this Agreement are attached hereto. The Parties shall review these estimated costs in light of actual expenditures at the completion of the first six month period and will ensure costs will be equitably apportioned.

VII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This Agreement will become effective when signed by all parties. The Agreement will terminate on September 30, 2000, but may be amended at any time by mutual agreement of the parties. Either party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other party. In the event this Agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

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Wash ngton, D.C. 20230

PARTIES ESTIMATED SIX MONTH COSTS

A. ICANN

Costs to be borne by ICANN over the first six months of this Agreement include: development of Accreditation Guidelines for Registries; review of Technical Specifications for Shared Registries; formation and operation of Government, Root Server, Membership and Independent Review Advisor Committees; advice on formation of and review of applications for recognition by Supporting Organizations; promulgation of conflicts of interest policies; review and adoption of At-Large membership and elections processes and independent review procedures, etc; quarterly regular Board meetings and associated costs (including open forums, travel, staff support and communications infrastructure); travel, administrative support and infrastructure for additional open forums to be determined; internal executive, technical and administrative costs; legal and other professional services; and related other costs. The estimated six month budget (subject to change and refinement over time) is \$750,000 - 1 million.

B. DOC

Costs to be borne by DOC over the first six months of this Agreement include: maintenance of DNS technical management functions currently performed by, or subject to agreements with, the U.S. Government, expertise and advice on existing DNS management functions; expertise and advice on administrative procedures; examination and review of the security aspects of the Root Server System (including travel and technical expertise); consultations with the international community on aspects of the DNS Project (including travel and communications costs); general oversight of activities conducted pursuant to the Agreement; staff support equal to half-time dedication of 4-5 full time employees, travel, administrative support, communications and related other costs. The estimate six month budget (subject to change and refinement over time) is \$250,000 - \$350,000.

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EXHIBIT C-58

[Senate Hearing 112-394]
[From the U.S. Government Publishing Office]

S. Hrg. 112-394

ICANN'S EXPANSION OF TOP LEVEL DOMAINS

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HEARING

before the

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

DECEMBER 8, 2011

Printed for the use of the Committee on Commerce, Science, and
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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ICANN'S EXPANSION OF TOP LEVEL DOMAINS

THURSDAY, DECEMBER 8, 2011

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

The Committee met, pursuant to notice, at 10:48 a.m. in room SR-253, Russell Senate Office Building, Hon. Amy Klobuchar, presiding.

OPENING STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA

Senator Klobuchar. The Committee will come to order. We have all our witnesses here. Thank you very much. We're in a time crunch and I know that Senator Rockefeller's going to be joining us shortly, as well as some other Senators. But I wanted to get this going, in the interest of time, because we're going to have to end at 10 minutes to twelve o'clock.

This is a very important hearing and I wanted to first introduce our witnesses. We first have Ms. Fiona Alexander. She's the Associate Administrator for the Office of International Affairs in the National Telecommunications and Information Administration.

We also have Ms. Angela Williams. Ms. Williams is the General Counsel for the YMCA of the U.S.A. and is also speaking on behalf of the Not-for-Profit Operational Concerns Constituency.

We have Mr. Daniel Jaffe. Mr. Jaffe is an Executive Vice President for Government Relations for the Association of National Advertisers. He's also speaking on behalf of the Coalition for Responsible Internet Domain Oversight.

We also have Ms. Esther Dyson. Ms. Dyson was the Founding Chairman of the ICANN's board of directors. She served in that role from 1998 to 2000.

Then we also have with us Mr. Kurt Pritz. Mr. Pritz is Senior Vice President for Stakeholder Relations for the Internet Corporation for Assigned Names and Numbers, also known as ICANN.

Do you want to begin? Each witness has 5 minutes, and we will start with Ms. Alexander.

STATEMENT OF FIONA M. ALEXANDER, ASSOCIATE
ADMINISTRATOR, OFFICE OF INTERNATIONAL AFFAIRS
NATIONAL TELECOMMUNICATIONS AND INFORMATION
ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Ms. Alexander. Good morning, Senator Klobuchar. I appreciate the opportunity to talk to you today on behalf of NTIA regarding ICANN's planned expansion of the Internet's domain name system through the introduction of new generic top-level domains, or new gTLDs.

Since its inception in 1998, ICANN has been charged with promoting competition in the registration of domain names while ensuring the security and stability of the DNS. In 2000 and 2003, ICANN conducted a limited expansion of gTLDs. In 2005 it initiated the process we are discussing today. After 6 years of multi-stakeholder discussion, including input from governments through the governmental advisory committee, ICANN approved the rules for the new gTLD program in the form of an applicant guidebook.

Expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other things. This type of change to the DNS is expected to enhance consumer trust and choice and reinforce the global nature of the Internet. It is also expected that a portion of applications will either be generic words or brand-focused as part of business development, investment, and startup plans.

Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. Over the last 6 years, NTIA has actively engaged with its counterparts in the GAC in developing advice to inform this program.

In December 2010, the GAC developed a scorecard of the outstanding issues governments had with the program. Between February and June of this year, GAC representatives from around the world met with the ICANN board in extended face-to-face discussions to review the GAC scorecard and identify specific differences between GAC advice and existing versions of the applicant guidebook. These unprecedented exchanges resulted in the adoption of a significant number of changes to the program.

NTIA believes that ICANN improved the new gTLD program by incorporating a significant number of proposals from the GAC, including providing law enforcement and consumer protection authorities with significantly more tools than those available in existing gTLDs. The fact that not all of GAC's proposals were adopted as originally offered does not represent a failure of the process or a setback to governments. Rather, it reflects the reality of a multi-stakeholder model.

As a member of the GAC, NTIA will continue to actively monitor and participate in discussions related to the expansion of new gTLDs. NTIA appreciates that certain trademark owners and other stakeholders have expressed concerns regarding the program. Safeguarding the rights of trademark owners and ensuring appropriate consumer protections as this process moves forward remains a top priority. As such, NTIA is committed to working with U.S. industry and other stakeholders as the new gTLD program unfolds to mitigate any unintended consequences.

In addition, NTIA intends to continue to collaborate with U.S. Government agencies to track their experiences and to coordinate the collection of data regarding the effects on consumers and business users. In particular, NTIA, working with other agencies, will focus on ensuring that law enforcement concerns are addressed through strengthened registry and registrar accreditation agreements and enhanced contract compliance.

NTIA will also be encouraging interested parties to collaborate in the development of metrics to facilitate the review of the new gTLD program. We feel strongly that the review must be informed by fact-based, real-time experiences that can be captured by data from a variety of sources.

NTIA is dedicated to maintaining an open, global Internet that remains a valuable tool for economic growth, innovation, and the free flow of information, goods, and services on line.

We believe the best way to achieve this goal is to continue to actively support and participate in multi-stakeholder Internet governance processes such as ICANN.

Thank you again for the opportunity to testify this morning. NTIA looks forward to working with Congress, U.S. businesses, individuals, and other stakeholders to preserve and enhance the multi-stakeholder model that has been the hallmark feature of global Internet institutions that have truly been responsible for the success of the Internet.

I'll be happy to answer any questions.

[The prepared statement of Ms. Alexander follows:]

Prepared Statement of Fiona M. Alexander, Associate Administrator,
Office of International Affairs, National Telecommunications and
Information Administration, U.S. Department of Commerce
Introduction

Good morning, Chairman Rockefeller and members of the Committee. I appreciate the opportunity to talk to you today on behalf of the National Telecommunications and Information Administration (NTIA) regarding the planned expansion of the Internet's domain name system (DNS) by the Internet Corporation for Assigned Names and Numbers (ICANN). NTIA is the Executive Branch expert on issues relating to the DNS and supports a multi-stakeholder approach to the coordination of the DNS to ensure the long-term viability of the Internet as a force for innovation and economic growth. Working with other stakeholders, NTIA is developing policies to preserve an open, interconnected global Internet that supports continued innovation and economic growth, investment, and the trust of its users. This multi-stakeholder model of Internet policymaking--convening the private sector, civil society as well as governments to address issues in a timely and flexible manner--has been responsible for the past success of the Internet and is critical to its future.

I will begin today by providing context for the announced expansion of generic top level domains (gTLDs) used on the Internet, detail the specific efforts of NTIA as the U.S. Government representative to the Governmental Advisory Committee (GAC) to improve the ICANN program, and then describe the tools available to NTIA and the global community to manage any challenges that may arise.

Context for Planned Expansion of the Domain Name System

ICANN is a not-for-profit corporation based in California that is responsible for coordinating the Internet's DNS. The DNS is a critical component of the Internet infrastructure. It works like a telephone directory, allowing users to reach websites using easy-to-understand domain names (e.g., <http://www.commerce.gov>) rather than the network server addresses (e.g., <http://170.110.225.163>) necessary to retrieve information on the Internet. ICANN develops policies through a bottom-up, multi-stakeholder led process with an international community of stakeholders that mirrors the global nature of the Internet. On September 30, 2009, NTIA, on behalf of the Department of Commerce, entered into an Affirmation of Commitments (Affirmation) with ICANN that established ICANN's multi-stakeholder, private-sector led model as the long-lasting framework for the technical coordination of the Internet DNS.¹ The Affirmation completed the transition begun in 1998 by a Memorandum of Understanding (MOU) between the Department and ICANN that was amended several times.

¹ See http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf.

Since its inception in 1998, ICANN has been charged with promoting competition in the registration of domain names, while ensuring the security and stability of the DNS. The goal to establish new gTLDs beyond .com, .edu, .gov, .int, .mil, .net, and .org began over a decade ago. In 2000 and 2003, ICANN conducted a limited expansion of generic top level domain names. Resulting in the addition of .biz, .info, .name, .pro, .aero, .coop, .museum, .asia, .cat, .jobs, .mobi, .tel, and .travel gTLDs to the DNS. In 2005, it initiated a process to develop the policies and procedures necessary to introduce an unlimited number of new gTLDs. After six years of multi-stakeholder policy development and implementation planning, including input from governments through the GAC, the ICANN Board of Directors (Board) approved the rules for the new gTLD program in June 2011, publishing the rules in the form of an Applicant Guidebook.²

² See <http://newgtlds.icann.org/applicants/agb>.

Expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other

possible top level domain strings. Expansion of the new gTLD space has, since its inclusion in the original MOU with ICANN, been intended to allow new TLD operators to create and provide content in native languages and scripts, otherwise known as Internationalized Domain Names or IDN, in addition to new gTLDs in ASCII or Latin scripts. This type of change to the DNS is expected to enhance consumer trust and choice, and reinforce the global nature of the Internet. It is also expected that a portion of applications will be either generic words or brand-focused as part of business development, investment, and startup plans.

NTIA as a Member of the Governmental Advisory Committee (GAC)

The multi-stakeholder policymaking process seeks to involve all stakeholders, including governments, to achieve policy outcomes with greater speed and flexibility than traditional regulatory structures. Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. NTIA represents the U.S. Government in the GAC, which currently has over 100 members.

Over the last six years, NTIA has actively engaged with its counterparts in the GAC in developing consensus advice to inform ICANN's policy development and implementation program for the introduction of new gTLDs. This included the adoption by the GAC in March 2007 of "GAC Principles Regarding New gTLDs" that were intended to inform the on-going policy development process underway in ICANN's Generic Names Supporting Organization (GNSO).³ The GAC progressively refined its advice to the ICANN Board and community through a series of communiqués issued at the close of each of its meetings between March 2007 and December 2010. This occurred as the new gTLD program advanced from the GNSO policy recommendations that were adopted by the ICANN Board in June 2008 to the implementation proposals developed by ICANN staff and posted serially for public comment.

³ See <http://www.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>.

In December 2010, the GAC developed a "Scorecard" of these outstanding issues governments had with the pending Draft Applicant Guidebook and requested direct discussions between the GAC and the ICANN Board to resolve them.⁴ Among these issues were:

⁴ See <http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>.

objection procedures for governments,
procedures for the review of sensitive strings,
root zone scaling,
market and economic impacts,
registry-registrar separation,
protection of trademark rights and other intellectual property owners,
consumer protection issues,
post-delegation disputes with governments,
use and protection of geographic names,
legal recourse for applicants,
providing opportunities for stakeholders from developing countries,
law enforcement due diligence recommendations, and
the need for an early warning mechanism for applicants to identify whether a proposed string would be considered controversial or to raise sensitivities.

Between February 2011 and June 2011, GAC representatives from around the world met with the ICANN Board in extended face-to-face discussions to review the GAC Scorecard and to identify specific differences between GAC advice and the existing version of the Applicant Guidebook. The purposes of the sessions were to promote joint

understanding of the issues and arrive at an agreed-upon resolution of those differences wherever possible. These unprecedented GAC-ICANN Board exchanges resulted in the adoption by the ICANN Board of a significant number of GAC recommendations in the final Applicant Guidebook. Equally importantly, the GAC's advice established a solid foundation for the subsequent review of the new gTLD program by identifying markers or guideposts of government expectations that the benefits must not be outweighed by risks to users of the DNS.

NTIA believes that ICANN improved the new gTLD program by incorporating a significant number of proposals from the GAC. ICANN's new gTLD program also now provides law enforcement and consumer protection authorities with significantly more tools than those available in existing gTLDs to address malicious conduct. The fact that not all of the GAC's proposals were adopted as originally offered does not represent a failure of the process or a setback to governments; rather, it reflects the reality of a multi-stakeholder model.

Going Forward

As a member of the GAC, NTIA will continue to actively monitor and participate in discussions related to the expansion of new gTLDs within the ICANN process. NTIA appreciates that certain trademark owners and other stakeholders have expressed concerns regarding the new gTLD program. Safeguarding the rights of trademark owners and ensuring appropriate consumer protections as this process moves forward remains a priority. As applications for strings that are identifiable brands, products, or companies are introduced it will be important to ensure that trademark owners are properly protected. NTIA is committed to working with the U.S. industry and other stakeholders as the new gTLD program unfolds to mitigate any unintended consequences. The Affirmation sets up continuous multi-stakeholder review teams to evaluate ICANN's performance, including a review of the new gTLD program. This review will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of the application and evaluation process, and the safeguards put in place to mitigate issues involved in the introduction or expansion. NTIA believes the review provides an opportunity for stakeholders to further refine the new gTLD program and make adjustments, as needed.

In addition, NTIA intends to collaborate with U.S. Government agencies responsible for consumer and intellectual property protection, competition policy, and law enforcement to track their experiences and to coordinate the collection of data regarding the effects on consumers and business users of the domain name system. In particular, NTIA, working with other agencies, will focus on ensuring that law enforcement concerns are addressed through strengthened Registry and Registrar Accreditation Agreements and enhanced contract compliance. NTIA will also be encouraging all interested parties to collaborate in the development of metrics to facilitate the review of the new gTLD program to which ICANN has committed. We feel strongly that the review must be informed by fact-based, real-time experiences that can be captured by data from a variety of sources.

Conclusion

NTIA is dedicated to maintaining an open, global Internet that remains a valuable tool for economic growth, innovation, and the free flow of information, goods, and services online. We believe the best way to achieve this goal is to continue to actively support and participate in multi-stakeholder Internet governance processes such as ICANN. This is in stark contrast to some countries that are actively seeking to move Internet policy to the United Nations. If we are to combat the proposals put forward by others we need to ensure that our multi-stakeholder institutions have provided a meaningful role for governments as stakeholders. NTIA believes that the strength of the multi-stakeholder approach to Internet policy-making is that it allows for speed, flexibility, and decentralized problem-solving and stands in stark contrast to a more traditional, top-down regulatory model characterized by rigid processes, political capture by incumbents, and in so many cases, impasse or stalemate.

Thank you again, Mr. Chairman for the opportunity to testify this morning. NTIA looks forward to working with Congress, U.S. business, individuals, and other stakeholders to preserve and enhance the multistakeholder model that has been a hallmark feature of global Internet institutions that have been responsible for the success of the Internet.

I will be happy to answer any questions.

Senator Klobuchar. Thank you very much.
Mr. Pritz.

STATEMENT OF KURT PRITZ, SENIOR VICE PRESIDENT, STAKEHOLDER
RELATIONS, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

(ICANN)

Mr. Pritz. Good morning, Senator. I am Kurt Pritz, the Senior Vice President of Stakeholder Relations for ICANN, the Internet Corporation for Assigned Names and Numbers, and I'm very pleased to be testifying before you today.

After more than 7 years of policy development and implementation planning, on January 12 next year ICANN will start receiving applications for new top-level domains, known as TLDs or gTLDs. TLDs are the names to the right of the dot, such as .com or .org. ICANN carefully and cautiously developed the requirements for the new gTLD program. And by ICANN, I mean the global multi-stakeholder community made up of governments, intellectual property experts, consumers, large and small businesses, not-for-profit organizations, Internet security experts, registrants, and Internet users.

The launch of the new gTLD program was part of ICANN's founding mandate when it was formed by the U.S. Government over 12 years ago. That mandate is to introduce competition and choice into the domain name system in a stable and secure manner. There is every reason to believe that the benefits offered by competition in virtually every other market will apply to the introduction of new gTLDs.

Expanding the number of TLDs will encourage innovation and result in competition and increased choice for Internet users. The 7 years of policy work that led to the formation of the new gTLD program was based upon this principle.

In the last decade, the number of domain name registrations has increased nearly tenfold, enabling more than \$3 trillion of commerce annually. As with the introduction of any innovation, new gTLDs will generate interest, excitement, and, yes, require a period of learning. Internet users have already shown a great adaptability and they will find value wherever it is created as a result of this program.

The new TLDs that will come in under this program have significantly increased safeguards compared to TLD registries that exist today. There will be new and extensive protections to trademark holders, including a universal trademark clearinghouse, a rapid takedown process, and new methods of recourse for law enforcement agencies. These new protections, when combined with the distribution of domain names into many new registries, will sharply reduce pressure for defensive registrations.

New TLDs will also bring better consumer and security protections. Security protection experts developed specific measures to combat malicious conduct and provide law enforcement authorities with more tools to fight malfeasance. These include criminal background checks on applicants, a requirement for DNSSEC deployment, the requirement for maintenance of a thick WHOIS data base, and centralized access to all TLD data.

What are some of these potential innovations? Here are some published examples. Dot-brand type TLDs can diminish consumer confusion and develop consumer awareness around the reliability of the website. This is similar to the trust that your constituents have today when visiting a dot-gov website. Consumers know when they type in "Senate.gov" they are reaching the domain of the U.S. Senate.

Financial industry participants are considering a financial services TLD where banks and financial institutions can offer greater trust to their customers, more secure transactions, and control the data flow for those transactions. There are new jobs already created and likely more to come. In preparation for the launch of new TLDs, dozens of small businesses have sprung up to help TLD applicants understand the opportunities and potential benefits of new TLDs.

Lately, innovation has been limited to country code TLDs, such as dot-co and dot-ly, that are developing business models to meet world demand. These TLDs are not under contract with ICANN and not required to offer the protections available in the new gTLD program.

The important issues under discussion before this committee have been the subject of discussion, debate, and compromise for the past 7 years. Not-for-profit organization and trademark holders, along with the rest of the ICANN community, provide the focused and targeted input into the design of this program. Their input has yielded significant improvements through seven versions of the applicant guidebook. Consensus has been reached across the spectrum of participants and the program is better

for it. Many stakeholders not represented at this table have also participated in the program and are awaiting their opportunity to take part.

Thanks for inviting me to testify. I'd be happy to answer any questions you might have.

[The prepared statement of Mr. Pritz follows:]

Prepared Statement of Kurt Pritz, Senior Vice President, Stakeholder Relations, Internet Corporation for Assigned Names and Numbers (ICANN)

Chairman, Ranking Member and members of the Committee, thank you for the opportunity to address you today. I am here today representing the Internet Corporation for Assigned Names and Numbers (ICANN). I am Kurt Pritz, ICANN's Senior Vice President for Stakeholder Relations. Among other responsibilities at ICANN, I manage the Program to implement new Top-Level Domains (also referred to as new gTLDs), which is the subject of this hearing.

I. New gTLDs: Safely Bringing Competition and Choice to the Internet

On June 20, 2011, the ICANN Board of Directors approved the implementation of the New gTLD Program, the culmination of years of policy development by the broad Internet community.\1\

\1\ ICANN Board Resolution 2011.06.20.01, at <http://www.icann.org/en/minutes/resolutions-20jun11-en.htm>.

Now is the time for launching that program. It is the product of well thought out, thoroughly debated policies that are designed to benefit the billions of Internet users through increased competition, choice and innovation. It is also designed to provide a safer, stable marketplace through the implementation of rights protection mechanisms, malicious conduct mitigation measures and other registrant protections. ICANN extended the discussion to hear all those that wished to participate, to all geographies and all stakeholders. Each issue was thoroughly discussed, there have been no new issues raised. Now is the time to realize the benefits of an expanded and safer marketplace.

The New gTLD Program was created through input across all sectors, including Internet end users, global Fortune 500 businesses, small businesses, trade associations, governments, non-commercial interests, intellectual property experts, brand holders, Internet security experts, ICANN registries and registrars, domain name registrants, Internet service providers, technical experts, not-for-profit organizations and more.

The planning for the New gTLD Program started in 2005 within ICANN's consensus-based policy development process. Since 2008, the New gTLD Program has been shaped through:

Seven versions of the Applicant Guidebook;

At least 59 explanatory memoranda and independent reports, including 5 economic studies;

47 separate, extended public comment periods;\2\

\2\ Comments came from multiple sources, including: NGOs and not-for-profit organizations, such as the Red Cross and the International Olympic Committee (IOC); governments, through the GAC and individually; ICANN's constituencies, Supporting Organizations and Advisory Committees; brand/mark holders, such as Microsoft, Yahoo, Time Warner, AT&T, BBC, and IBM; industry associations, such as International Trademark Association (INTA), World Intellectual Property Organization (WIPO), European Communities Trademark Association (ECTA), and the American Banking Association (ABA); individuals; small businesses/entrepreneurs and many other groups.

Over 1450 pages of summary and analysis on public comments

received; and

Input from no less than ten independent expert and community working groups.

Extensive Protections Will Be Introduced

The New gTLD Program today includes significant protections beyond those that exist in current TLDs, including new mandatory intellectual property rights protection mechanisms and heightened measures to mitigate against malicious conduct. These new protections are intended to provide a safe, stable Internet, and include:

New Trademark protections:

Uniform Rapid Suspension: A rapid, inexpensive way to

take down infringing domain names

Trademark Clearinghouse: a one-stop shop so that trademark holders can protect their property rights in ALL new TLDs with one registration

Mandatory sunrise and Trademark Claims processes for all new gTLDs

The requirement to maintain thick Whois information, the provision of centralized access to zone file data, and a strong incentive to provide a searchable Whois database-- all to make it easier for rights holders to identify and locate infringing parties

A post-delegation dispute procedure under which rights holders can assert claims directly against TLD registry operators that play an active role in facilitating domain name abuse.

Measures to mitigate malicious conduct:

Background reviews of applicants, including reviews for past criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);

Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or reckless disregard under cybersquatting legislation;

A requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records;

A requirement to maintain enhanced, or "thick", WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;

A centralized zone file access system to allow for more accurate and rapid identification of key points of contact for the domains within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity;

A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities);

Requirements that New gTLD Registry Operators must:

Maintain a Continued Operations Instrument sufficient to fund basic registry operations for a period of three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.

Maintain continuity and transition plans, including regular failover testing.

Cooperate with ICANN in the event transition to a new registry operator is necessary. ICANN will identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed.

Objection Processes

The New gTLD Program includes robust processes to assure that stakeholders generally, and governments and rights holders in particular, have the opportunity to raise objections that could lead to the rejection of applications that may cause:

User Confusion;

Infringement of legal rights, particularly intellectual property rights;

Introduction of TLD strings that are contrary to generally

accepted legal norms of morality and public order as recognized under principles of international law; and

Misappropriation of community names or labels.

In addition, there will be a specialized function, an "Independent Objector" that will act solely in the best interest of the public, and may file an objection to an application that may give rise to the concerns raised above.

Rights and Protections Mitigate Costs

The existence of objection processes and enhanced rights protection mechanisms were adopted to mitigate the concerns of trademark holders regarding increased costs. With these objection rights, trademark holders have the opportunity to consider whether to apply for a new gTLD based on business needs rather than defensive considerations. These measures greatly reduce the chance that another entity will succeed in applying for the trademarked name. The new rights protections mechanisms also reduce the need for trademark holders to defensively register names across new gTLDs. Further, we've learned from prior rounds that trademark holders often do not engage defensive registrations outside of the most popular TLDs.

Additional detail on all of these new protections is provided below.

Competition and Consumer Choice

The Board's approval of a program carefully crafted by the global Internet community is consistent with ICANN's mission to increase consumer choice, competition and innovation. Organizations will now have the opportunity to apply for gTLDs in the scripts of the world's languages, to open the world's marketplace further and to welcome the next billion non-English speaking users to the Internet.

The opening of new gTLDs will be limited by round and by demand. Two prior rounds of new TLDs have been limited by size or type--and the restrictions hobbled the realization of benefits. Competition results from opening, not limiting markets, and encouraging investment and innovation.

After years of policy and implementation work, the Internet community and Board determined that the launch of the new gTLD program was necessary and important in order to increase competition and innovation in the DNS--and I strongly believe this remains the right decision.

This testimony provides information on how and why the New gTLD Program was formed and how it serves the public interest to act now.³

³ ICANN has had the opportunity to testify before the House Committee on the Judiciary, Subcommittee on Intellectual Property, Competition and the Internet in September 2009 and May 2011 regarding the New gTLD Program. Information on those proceedings are available at http://judiciary.house.gov/hearings/hear_090923.html and http://judiciary.house.gov/hearings/hear_05022011.html.

II. Introduction of New Top Level Domains Is One of ICANN's Founding Mandates

ICANN is recognized by the world community as the authoritative body for technical coordination and policy development regarding the security, stability and interoperability of the Domain Name System, or DNS, and we work to maintain a single global Internet. ICANN is organized as a California, public benefit, non-profit corporation. We serve this public benefit through a bottom-up, consensus-based, multi-stakeholder model.

A founding mandate for ICANN, included within the United States Government's "White Paper on the Management of Internet Domain Names and Addresses",⁴ is to create competition in the domain name market and specifically, to "oversee policy for determining the circumstances under which new TLDs are added to the root system."⁵ The introduction of new gTLDs "has been a longstanding goal" of the relationship between the Department of Commerce and ICANN.⁶ The relationship formed with the United States Government in 1998, and set out in the many Memoranda of Understanding between the Department of Commerce and ICANN, included a core objective to "Define and implement a predictable strategy for selecting new TLDs."⁷ This fundamental assumption that increasing the number of gTLDs will increase competition resulted in the House Committee on Energy and Commerce initiating a 2001 hearing regarding the potential detrimental effects to competition when ICANN approved only seven of 200 applied-for TLDs in an earlier application round.⁸

⁴ United States Department of Commerce, White Paper on the Management of Internet Domain Names and Addresses ("White Paper"), at http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm (June 6,

1998).

\5\ Id.

\6\ Testimony of Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, June 4, 2009, before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, United States House of Representatives, available at <http://www.ntia.doc.gov/speechtestimony/2009/testimony-associate-administrator-fiona-alexander-issues-concerning-internet-co>.

\7\ See, e.g., Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, at http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm (Sept. 16, 2003).

\8\ See Transcript of February 8, 2001 Hearing before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives, On Hundred Seventh Congress, First Session, available at <http://archives.energycommerce.house.gov/reparchives/107/hearings/02082001Hearing37/print.htm> ("some view ICANN's approval of only a limited number of names as thwarting competition").

III. The ICANN Model At Work: How ICANN Approved the Expansion of New gTLDs

A. ICANN's Multi-Stakeholder Model

ICANN's processes and policy development depend on the engagement of stakeholders around the world. Stakeholders participate in many ways, including participation in the policy development processes, in public comment processes, on advisory committees, and in ICANN's public meetings.

ICANN's model is based on the principle of reaching consensus solutions to difficult problems.\9\ Consensus within ICANN does not mean unanimous community support on every issue. The Internet community brings a wide range of viewpoints to the discussions, often with diverging interests. Reaching a thoughtful, negotiated solution that is acceptable to most, and ensures that all viewpoints are considered--that is what ICANN strives to do and has done with this program.

\9\ While my testimony today focuses on implementation of community-driven policy recommendations, the ICANN model is also used in non-policy matters.

As part of this process, ICANN brings together working groups of experts to recommend solutions for further community review. ICANN works closely with all stakeholders to form consensus-based and community-vetted solutions.

These vital discussions give all interests--including those representative of my fellow panelists--a seat at the table.

ICANN has noted the PR campaign driven by industry groups against the New gTLD Program, and the revisionist history they present.

The six-year inclusive policy development process that led to approval of this Program gave all sectors and industries ample opportunity to contribute their thoughts and convey their concerns. The concerns raised by this group of stakeholders were considered, debated and addressed along with those of many other stakeholders. The record is clear that changes have been made based upon their input.\10\

\10\ For example, the Association of National Advertisers twice provided comments on the New gTLD Program, on December 15, 2008 and April 12, 2009. In 2008, the ANA provided ICANN with a list of five specific proposals for ICANN's consideration within the program. All five of its proposals have been addressed in the current design: trademark protections have been strengthened; there will be greater transparency of applicant data and more consistent information available on registrants; registration fees have been studied; objection processes have been clarified and strengthened; and provisions have been made for attaching higher security requirements based upon the nature of the string (e.g., an applicant for a financially-related string should have high security capabilities).

They are now forum shopping and asking Congress to give them another bite at the apple. After working for years within ICANN's multistakeholder framework to obtain significant concessions for intellectual property rights holders, they now seek to upset the carefully crafted compromise which they helped create. They now want ICANN to restart the clock, at the expense of the other important participants who negotiated in good faith and who are eager for the program to launch.

B. New Generic Top Level Domains--The ICANN Model at Work

The New gTLD Program demonstrates the strength of the bottom-up, multi-stakeholder process: The New gTLD Program under discussion today is the implementation of an ICANN-community policy recommendation to achieve one of ICANN's foundational mandates.^[11] ICANN has worked closely with the community in building policy and an implementation plan.

^[11] In addition to the White Paper, the introduction of New gTLDs was consistently identified as a core objective in each of ICANN's Memoranda of Understanding with the U.S. Department of Commerce (1998--2006) and the Joint Project Agreement, calling for ICANN to "[d]efine and implement a predictable strategy for selecting new TLDs." See Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, at http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm (Sept. 16, 2003). The study and planning stages, extending back several years, include two trial rounds of top-level domain applications held in 2000 and 2003. The experience of those rounds was used to shape the current process.

The New gTLD Program: Formed through Community Engagement

From 2005-2007, business and commercial users, contracted registries and registrars, intellectual property interests, non-commercial users and the at-large Internet community conducted an intensive formal, Bylaws-defined policy development process on the addition of new gTLDs. After intensive policy discussion, all those constituency groups concluded that new gTLDs should be made available.

The principles guiding the new gTLD policy development process included that:

New gTLDs will benefit consumer choice and competition;

The implementation plan should also allow for Internationalized Domain Names (domain names that are written solely in a non-ASCII script, such as Chinese or Cyrillic) at the top level;

The introduction of new gTLDs should not cause security or stability issues;

Applications must be assessed in rounds until the scale of demand is clear; and

Protection of various appropriate interests requires objection and dispute resolution processes.

In 2008, the ICANN Board approved the policy on the introduction of new gTLDs^[12] and directed its implementation. Since October 2008, ICANN has produced all of the documentation cited above--seven versions of the Applicant Guidebook (detailing the guidelines and requirements for the evaluation process) as well as numerous report and memoranda. All have been the subject of public comment and vigorous debate. Anyone and everyone can join in; indeed, the process at times has been noisy given the numbers of contributors and divergent views.

^[12] GNSO Final Report on the Introduction of New Top Level Domains ("Final Report"), at <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm> (Aug. 8, 2007); ICANN Board resolution, <http://www.icann.org/en/minutes/resolutions-26jun08.htm> (June 26, 2008); GNSO Minutes, <http://gns0.icann.org/meetings/minutes-gns0-29oct03.html> (Oct. 29, 2003).

One of the foundational documents influencing the GNSO Final Report and the community's implementation work is the GAC Principles Regarding New gTLDs, at http://gac.icann.org/system/files/gTLD_principles_0.pdf (Mar. 28, 2007).

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues, as were representatives from all sectors of society.

The gTLD policy-making body, the Generic Names Supporting Organization, and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The Country Code Names Supporting Organization, representing ccTLD operators, was particularly active on issues relating to internationalized domain names in the New gTLD Program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, Root Server System operators and

Security and Stability Advisory Group members provided information that there is no expected significant negative impact of new gTLDs on the stability and scalability of the root server system.

Members of the At-Large Advisory Committee--the home within ICANN for individual Internet users--served on nearly every working group and team, giving the world's Internet users a voice in implementation discussions. The At-Large Advisory Committee has been an active participant in the formal public comment process.

(a) Governments Provided Advice and Engaged In Broad, Substantive Consultations on New gTLDs

ICANN's Governmental Advisory Committee, made up of over 110 of the world's governments, including the United States of America, has been deeply and effectively involved in the development of the New gTLD Program. The Governmental Advisory Committee also coordinated information exchanges between law enforcement and ICANN.

The ICANN Board and the Governmental Advisory Committee held a series of landmark consultations on the New gTLD Program.

Through accommodations made by both sides,¹³ changes were made to the New gTLD Program in each of twelve identified areas including:

¹³ The final points of discussion between the Governmental Advisory Committee and the Board are collected at <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>, beginning at page 52.

More rigorous trademark protections (making them mandatory

and transferring costs to wrongdoers),

Providing an objection path for governments to avoid delegation of sensitive TLD applications,

Agreement on a post-delegation economic study to test the results of first set of new gTLDs,

Agreement that a post-launch study should be conducted on the effectiveness of new trademark protections and any effects on root zone operations, and

Development of a process for assistance for needy applicants.

Ultimately, mutual agreement among the Board and the Governmental Advisory Committee was reached that, subject to Board approval, the New gTLD Program would proceed to launch, and the process would be self-improving through subsequent studies.¹⁴

¹⁴ The Board's Rationale regarding potential areas of difference with the Governmental Advisory Committee is available at <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>.

(b) Law Enforcement Agencies Are Active Contributors to the New gTLD Program Work

Law enforcement agencies worldwide have worked closely with ICANN in the new gTLD implementation process, with a goal of reducing domain name abuses. Representatives of U.S. law enforcement agencies played a critical role in proposing standards for background screening for applicants. Law enforcement agencies worldwide, including the FBI, the UK Serious Organized Crimes Agency (SOCA) and the Royal Canadian Mounted Police, supported proposals to aid in the prevention and disruption of efforts to exploit domain name registration procedures for criminal purposes. DNS abuse and security are regularly the subject of collaborative meetings between ICANN and the US law enforcement community, as well as representatives of international agencies.¹⁵ ICANN expects this successful collaboration to continue. To that end, there are formal DNS Abuse sessions at every ICANN public meeting where ICANN and law enforcement representatives come together to advance this important work.

¹⁵ ICANN's relationships with law enforcement are not limited to the New gTLD Program; ICANN coordinates regularly on security-related issues and to address threats to the DNS.

(c) Large and Small Businesses and Corporations Have Helped Shape the Program

Business and industry representatives have participated in the new gTLD implementation process from the beginning, through the GNSO's Business and Commercial Users Constituency, through trade organizations

and individually, and remain involved today. Participation cuts across business size and geography. Many global trade associations and corporations have participated in the online comment forums, either individually or through coordinated responses; similarly, great numbers of small businesses have been active. And the involvement continues.

For example, representatives of Microsoft, Google, Time Warner and the BBC are active members of a current community group working to refine the implementation of the Trademark Clearinghouse, one of the new rights protection mechanisms being launched. Representatives of large and small business have been integral in forming the heightened rights protection mechanisms described above, and have contributed to the development of other portions of the program, including participation in many community working groups.

(d) Intellectual Property Owners/Brandholder Experts have been Involved at Every Step

Members of ICANN's Intellectual Property Constituency actively participated in the policy development concerning the introduction of new gTLDs, including the recommendation that new gTLD strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law" that was included in the 2007 Final Report approved by the Board.

In March 2009 ICANN formed a team of 18 intellectual property experts from around the world representing the interests of trademark holders, business and trade associations --the Implementation Recommendation Team (IRT).¹⁶ The IRT's work led to the identification of specific rights protection mechanisms that are now included in the Applicant Guidebook based on the community and the Governmental Advisory Committee's further input and guidance.

¹⁶ IRT Membership Directory, at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf.

¹⁷ IRT Resolution, at <http://www.icann.org/en/minutes/resolutions-06mar09.htm#07> (Mar. 6, 2009).

(e) Additional Subject Matter Experts Formed Teams to Combat Malicious Conduct and Strengthen Registrant Protections

In addition to the regular participants in its processes, the ICANN model affords opportunities for experts to provide assistance on particularly challenging topics. ICANN has access to and the ability to form world-class expert groups, for example:

The Implementation Recommendation Team and Special Trademark Issues team created rights protection mechanisms;

A Zone File Access Advisory group set out standardized access zone file information to simplify access for those investigating abuses;¹⁸

¹⁸ Zone File Access Advisory Group information and documents are available at <http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm>.

The Security and Stability Advisory Committee discussed tools to mitigate the potential for malicious conduct. Its

report provided guidance into the management of glue records;

A High-Security Zone TLD Advisory Group was formed within ICANN in response to requests from governments and the financial services sector to create higher security requirements for TLDs where users have expectations of higher security;

The Joint Applicant Support Working Group addressed support for needy applicants, and ICANN is currently considering how to implement the recommendations into the first round of the New gTLD Program;

The Joint ccNSO-GNSO IDN Working Team discussed issues related to Internationalized Domain Names;

The Vertical Integration Working Group addressed community solutions to the issue of Registry-Registrar cross ownership;

The Temporary Drafting Group recommended enhancements to the new gTLD Registry Agreement and post-delegation dispute resolution procedures; and

The Implementation Assistance Group, comprised of over 50 members representing various perspectives such as intellectual property interests and Registry Operations, are assisting ICANN in implementing specified Clearinghouse processes.

Each group worked openly and transparently, and produced reports available for public comment.

Importantly, ICANN listened to and acted on all work produced by the experts and the more general community and modified Applicant Guidebook sections to implement the results of this work.

(f) Economic Studies Confirm Overall Benefits of Opening the DNS; Further Studies Would Offer No Benefit

Several expert economic studies have recognized that the fundamental benefits of increased competition (that apply in almost all markets) will also benefit Internet users through enhanced service offerings, competition, innovation and consumer choice in the domain name market.

As the new gTLDs moved closer to launch, there were calls for economic studies to better document the fundamental assumption that increasing the number of gTLDs will increase competition. In response, ICANN commissioned five economic studies that examined anticipated benefits and costs of the New gTLD Program, the effects of price constraints, and the benefits of vertical integration. All support a conclusion that Internet users stand to benefit from the introduction of new gTLDs.

Those studies are:

Dr. Dennis Carlton, Report Regarding ICANN's Proposed Mechanism for Introducing New gTLDs, at <http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf> ("Carlton I");

Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries, at <http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf> ("Carlton II");

CRA International, Revisiting Vertical Separation of Registries and Registrars, at <http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf>;

Michael Katz, Gregory Rosston and Theresa Sullivan, An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf> ("Katz/Rosston Phase I"); and

Michael Katz, Gregory Rosston and Theresa Sullivan, Economic Considerations in the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf> (Katz/Rosston Phase II).

The two Katz/Rosston reports were commissioned by ICANN to directly address remaining community questions on the potential costs and benefits of the expansion of the gTLD space. Performed in two phases, Phase I provided a survey of published studies and resources on the potential impacts of new gTLD introduction and examined theoretical arguments on the benefits and costs of increased numbers of TLDs. Phase II provided reports of empirical studies proposed in Phase I, to help assess costs and benefits of new gTLDs.

Katz's and Rosston's work was consistent with the basic findings of the three previous reports, and supported an open approach in which new gTLDs are added to the root, subject to appropriate restrictions and mechanisms (such as rights protection mechanisms) designed to minimize potential costs to trademark holders and others. As discussed above-- and as referenced in Katz's and Rosston's work--ICANN has adopted these restrictions, as seen in the inclusion of significant rights protection mechanisms.

What remains clear, as stated by Dr. Carlton, a noted economics professor and former Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice, from October 2006 through January 2008, is that any resultant delay of the launch of the New gTLD Program "is likely inconsistent with consumer interests" and could "substantially reduce [consumer] welfare." [Emphasis added.] \19\

\19\ Carlton I, paragraphs 23, 39 passim.

Dr. Carlton explained, "ICANN's plan to introduce new gTLDs is

likely to benefit consumers by facilitating entry which would be expected both to bring new services to consumers and mitigate market power associated with .com and other major TLDs and to increase innovation." \20\ Delay will inhibit competition in the use of generic, non-trademarked terms, and runs counter to the generally accepted view that market entry benefits consumers by expanding output and lowering price. Potential innovations in the new gTLD namespace will be stifled if limitations to entry are imposed, which would ``essentially freeze the number of TLDs fifteen years after the first commercial development of the Internet." \21\

\20\ Id. at paragraph 23.

\21\ Id.

Calling for a delay in the entry of new gTLDs serves to perpetuate existing market conditions: concentration within some existing registries, most generic strings unavailable, and those that trade on the value of the current marketplace holding portfolios based upon the value of current .COM names.\22\

\22\ Katz/Rosston Phase II, at paragraphs 75-76.

ICANN's Board and the Governmental Advisory Committee agreed that further economic study would not be beneficial.\23\ Instead, the focus turned to the collection of information that will inform the analysis of the effects of the introduction of new gTLDs after the first round. The Applicant Guidebook now includes application questions to collect information relating to the stated purposes and anticipated outcomes of each application, for use in later studies.

\23\ Rationale for the Board's decision that no further economic studies would be beneficial at this time is available at <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>.

IV. The Protections In the New gTLD Program are Substantial

The implementation of the community's policy for the New gTLD Program looks entirely different today than in October 2008. The many revisions to the Applicant Guidebook incorporated recommendations and addressed concerns raised by intellectual property holders, governments, law enforcement and security experts, technical experts, business interests, non-commercial interests, individual Internet users, and others.

Below are highlights of the results of the community's work.

A. Trademark Protection: New gTLDs Will Have Robust Rights Protection Mechanisms (RPMs) to Protect Marks and Combat Cybersquatting
New gTLDs will have significant RPMs that don't exist in current gTLDs.

The RPMs will help rights holders protect trademarks efficiently, in terms of both time and money. When new gTLDs launch, trademark holders will have the opportunity to register their trademarks in a single repository that will serve all new gTLDs, the Trademark Clearinghouse. (Currently, trademark holders go through similar rights authentication processes for each separate top-level domain that launches.)

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a ``sunrise" period--a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders (``Trademark Claims") of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

The Trademark Clearinghouse will increase protections, as well as reduce costs for trademark holders and start-up registries.

Also with new gTLDs comes the advent of the Uniform Rapid Suspension system (URS), a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, allowing trademark holders a quicker and simpler process through which clear-cut cases of infringing registrations can be ``taken down." The URS and the current UDRP will remain mandatory within new gTLDs.

New gTLDs offer protections to trademark holders in the event a registry is actively involved in domain name abuse. The Post-Delegation Dispute Resolution Procedure (PDDRP) provides a mechanism to make claims directly against registries affirmatively involved in abuses involving domain name registrations.

These RPMs are contemplated to address the issues raised in the economic studies as a means of reducing the potential costs associated with the introduction of new gTLDs.\24\ Opponents of the new gTLD process have mischaracterized the fact that economists identified specific areas of risk that could be mitigated (such as intellectual

property protection costs) as a conclusion that the New gTLD Program will result in net economic harm. As ICANN has explained previously, that is an unsupported reading of the economic studies. The economists noted the benefits of innovation, competition and choice, and concluded that risks and costs could be mitigated through the implementation of RPMs and other mechanisms such as malicious conduct mitigation measures.

\24\ See, e.g., Katz/Rosston Phase II at paras 64-65, 120.

The rights protection mechanisms in the Applicant Guidebook provide trademark holders with an alternative to engaging in defensive registrations.\25\ The provision of effective rights protection mechanisms is shown to reduce the need for trademark holders to engage in defensive registrations--but the rights protection mechanisms cannot be too strict, or the growth of a new TLD may be impaired.\26\ Unsubstantiated fear of forced defensive registrations is not sufficient reason to stall new gTLDs and delay the benefits of introducing competition into the DNS.

\25\ See Dr. Dennis Carlton, "Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing", at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/tld_demand_and_economic_analysis:20091007232802-2-13939/original/carlton-re-kende-assessment-05jun09-en.pdf (June 5, 2009).

\26\ Katz/Rosston Phase II, at page 52.

In addition, Economic studies refuted the claims that costs of defensive registrations in new gTLDs will be prohibitive. Independent studies support the conclusion that as defensive registrations are made in proportion to the popularity of the gTLD, the large majority of defensive registrations are in .COM and .NET.\27\ Only if a new gTLD is very popular will there be a significant need for defensive registrations. But, it also follows that if a new gTLD is popular, then it likely is delivering high benefits. Thus, the dual claims of low benefits and high defensive registration costs are unlikely to be simultaneously true.

\27\ See http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/.

B. Consumers Will Be Protected Through Efforts to Mitigate Malicious Conduct

The expert and community work to address the potential for increased malicious conduct in new gTLDs has generated many enhanced protections in the Applicant Guidebook. With the assistance and involvement of external experts such as the Anti-Phishing Working Group, the Registry Internet Safety Group, members of the Forum of Incident Response and Security Teams (FIRST), and others from the Internet security first responder community, nine specific mechanisms were developed that will improve consumer protection \28\ and enhance the public interest. They include:

\28\ While not related to mitigating malicious conduct, consumers and registrants will also be protected due to the work done on registry continuity and the creation of new transition procedures for use in the event of registry failure.

Prospective registry operators will be appropriately reviewed for criminal history according to established criteria, including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, violation of the UN Convention against Transnational Organized Crime and others. Where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or with reckless disregard under the US Anti-cybersquatting Consumer Protection Act (ACPA) or equivalent legislation, applications will be rejected.

Each new gTLD will be required to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records.

Enhanced, or "thick" WHOIS records at the registry level will allow more rapid search capabilities to facilitate efficient resolution of malicious conduct activities.

A centralized zone file access system allows for easier dissemination of registrant data, reducing the time necessary to take corrective action against registrants.

All new gTLD operators are required to establish a single point of contact responsible for the handling of abuse complaints. This requirement is a fundamental step in successfully combating malicious conduct within new gTLDs.

Mitigating malicious conduct is and will continue to be an overarching issue within the new gTLD space. The participation of experts has produced mechanisms to benefit all Internet users, providing means for safer online interactions. The contributions of the Governmental Advisory Committee and law enforcement representatives broadened the scope of these protections.

C. Registrant Protections Regarding Registry Operator Continuity and Compliance

In addition to the protections in existing gTLDs, such as data escrow provisions, and participation in Contractual Compliance investigations, there are notable new protections in the New gTLD Program regarding the activities of Registry Operators. New gTLD Registry Operators must:

Maintain a Continued Operations Instrument sufficient to fund basic registry operations for three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.

Maintain continuity and transition plans, including regular failover testing. In the event transition to a new registry operator is necessary, the registrar is obligated to cooperate with ICANN. ICANN is working to identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed. The continuity and transition planning mitigates the potential risk of consumer losses due to registry failure raised within the economic studies.²⁹

²⁹ As a companion protection for registry operators that maintain exclusive use over all registrations within a TLD--such as brand holder--in the event of registry failure, ICANN may not transfer registry operations without the consent of the registry operator.

D. Objection Processes Empower the Public and Governments

After the application round closes, information on applied-for gTLDs will be made public. At that time, entities and individuals can review the list of strings and consider if they wish to object to any individual application.

The New gTLD Program allows the Governmental Advisory Committee to inform ICANN that there are concerns with an application. Depending on the level of support within the GAC, the advice may result in a presumption that the Board should not approve the application.

There are also four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider and protecting against:

Internet User Confusion;

Infringement of legal rights, particularly intellectual property rights;

Approval of new TLDs that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and

Misappropriation of community names or labels

In addition, an Independent Objector will be appointed with the ability to file objections in certain cases where an objection has not already been made to an application that will infringe the interests listed above. The Independent Objector will act solely in the best interest of the public.

V. ICANN is Committed to an Orderly Implementation of the First Round of the New gTLD Program

ICANN's role in the New gTLD Program is to ensure that the program is fairly, objectively and successfully implemented.

A. ICANN Is Operationally Ready to Administer the New gTLD Program

ICANN's New gTLD Program Office: ICANN will operate a timely,

predictable, transparent, consistent program. ICANN is working to ensure operational readiness for an orderly implementation, including enhanced security for the application and evaluation systems to prevent inappropriate access to the infrastructure or data.

Evaluation service providers have been selected: Each has the global and technical knowledge and resources to accomplish the planned work. The gTLD Program Office includes separate quality assurance, governance, systems and customer service functions. Evaluation service providers are completing training to normalize scoring procedures.

ICANN-Provided Services: ICANN has developed detailed staffing plans for all services to ensure adequate administration and enforcement of its agreements, and for addressing needs the new environment. Particular focus is being paid to contractual compliance, IANA and other functions that formally interface with gTLD registries and registrars.

Creation of new systems: ICANN is creating new business systems that will contribute to its ability to administer this program. Examples include the TLD Application System, contractual compliance tracking, and root zone management automation.

B. The First Round is Limited in Delegation Rate And Incorporates Other Measures to Assure Root Zone Security and Stability

ICANN's paramount mission is to ensure the security, stability and resiliency of the Domain Name System. ICANN's technical community has reported that new gTLDs, in the numbers contemplated, represent no risk to the safe, stable operation of the Internet's root zone. In furtherance of its mission, ICANN has made commitments regarding the size and staging of the first round. \30\ ICANN also makes the following commitments:

\30\ While rates of 215-240 new gTLDs are expected over a one-to-two year period, it has been determined that the root zone servers can readily accommodate maximum rates of 1000 delegations per year. See October 2010 Root Zone Scaling reports are available at <http://www.icann.org/en/announcements/announcement-2-06oct10-en.htm>, and the public comment fora can be accessed from there as well. See also Letter from Jun Murai, Chair of RSSAC, <http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf> (25 November 2010).

The impact of first round delegations on root zone stability

will be studied.

Although extremely unlikely, if the root server system shows signs of stress, the process can quickly be halted to preserve stability, using dedicated communications and monitoring systems.

C. ICANN is Committed to a Second Round of the New gTLD Program, Taking into Account Community Comment

One of the initial policy recommendations arising out of the Generic Names Supporting Organization is that, "[t]his policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. [Emphasis added.]" \31\

\31\ GNSO Summary of Policy Recommendations, at <http://gns0.icann.org/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>.

The application round opening on January 12, 2012 is for those entities that are ready to participate in the expansion of choice and innovation in the DNS. There are many who may not be ready, or want to view the progress of the first round prior to taking a decision. They should not feel compelled to participate in the first round--future opportunities will exist.

ICANN is working to identify a clearer timeline for the second round. We have heard the calls from many in the community that certainty in the timing of the second round will reduce some of the pressure to apply in the first. ICANN has agreed with governments and trademarks holders that a second round should occur only after:

Studying the impact of first round delegations on root zone stability.

Conducting a post-first round study on whether new trademark protections should be adjusted.

The first new gTLDs are expected to be operational in early 2013

and ICANN will undertake these studies at the earliest opportunity as is practicable--as soon as meaningful data is available.

D. Innovation and Jobs are Waiting

Many new businesses have been formed based on progress in implementing this Internet community-developed program. Some are potential applicants; some will "provision" applicants. For at least the past two years, future applicants have attended ICANN meetings, passing out marketing materials with their ".NEWDOMAIN" prominently displayed. Consulting businesses to advise applicants have arisen. Over 120 persons or entities have publicly announced their intention to apply for new gTLDs. Nearly 90 declared applicants have active websites marketing their new gTLD idea proposing all types of gTLDs--city names, community ideas, branding opportunities for internationally known corporations and others. American jobs are already being created, and more will be when the program becomes a reality.

We will never know the opportunities and creativity that will come through the introduction of new gTLDs will produce until we move forward. When ICANN was in its infancy, who could have predicted the online possibilities we take for granted today? Since 1999, the Internet has generated new companies and innovative ideas including marketplaces for commerce, communications and social networking: Facebook, Google and Twitter. New gTLDs hold that same potential for innovation.

VI. ICANN Is a Reliable Steward of the DNS

ICANN continues to accomplish much for the benefit of the global Internet community beyond the New gTLD Program. Recent achievements include:

A. Fulfilling the Affirmation of Commitments

On September 30, 2009, ICANN and the US Department of Commerce executed the Affirmation of Commitments, a landmark agreement. The Affirmation institutionalizes ICANN's technical coordination role and the US Government's commitment to the multi-stakeholder model. The Affirmation also sets out specific commitments on accountability, transparency and the interests of global Internet users; preservation of DNS security, stability and resiliency; promotion of competition, consumer trust and consumer choice; and enforcement of Whois policies. These commitments are woven into ICANN's ongoing work.

ICANN dedicates significant time and resources to meeting its commitments under the Affirmation and continues to build on the significant progress it has already made. The Affirmation is not just a reflection of the Department of Commerce's commitment to the multi-stakeholder model; it is ICANN's commitment to the global Internet community to operate with greater accountability and transparency.

What has ICANN achieved to date?

In coordination with the community, ICANN has initiated the three reviews called for in the Affirmation: Accountability and Transparency; Security and Stability; and Whois.

Within weeks of completion of the public comment period on the Final Report of the Accountability and Transparency Review Team (ATRT),^{\32\} staff completed detailed implementation plans to meet the recommendations. The Board has decided that all recommendations should proceed to implementation, and the committees of the Board have been active in oversight of ATRT implementation.

^{\32\} The ATRT Report is available at <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>.

ICANN is now:

Publishing translations of Approved Resolutions for all Board meetings and of the Minutes of Board meetings.

Developing and posting the rationale for Board actions. This includes rationales for all new gTLD-related actions in 2011, including the Board's decisions on Registry-Registrar Cross Ownership, and the Completion of Economic Studies, and eight additional rationale papers produced to accompany approval of the New gTLD Program.

Posting Board Briefing Materials along with the Minutes of each Board meeting, as well as Guidelines for the Posting of Board Briefing Materials to better explain the redaction process.

Using a standardized public comment template to allow for easier understanding and identification of the items posted for comment.

Refining the public comment process to allow for comment and reply cycles.

Consulting with the Governmental Advisory Committee on implementation of GAC-related ATRT recommendations, including work to create a publicly-accessible registry of GAC advice.

Including a template for the submission of Reconsideration Requests, as well as maintaining clearer status of Reconsideration Request ICANN's website.

Continuing to evaluate the work of an Independent Valuation Expert regarding Board-member compensation (an ATRT recommendation).

Designing the appropriate scope of an independent expert review of ICANN's accountability mechanisms.

ICANN is committed to meeting all of its commitments under the Affirmation of Commitments, and will continue to report on the status of that work through the ICANN website.

B. Conflicts of Interest Policy Refinements and Enhancing ICANN's Ethical Culture--Towards a Gold Standard

ICANN maintains a strong policy regarding the identification and handling of Board member conflicts of interest, as well as a Code of Conduct setting out the ethical standards to which Board members are expected to adhere.^{\33\} In addition, all ICANN staff are bound by a conflicts of interest policy. Prior to the June 2011 approval of the New gTLD Program, ICANN's President and CEO issued a public call that the era of New gTLDs requires ICANN to be even more vigilant in addressing conflict of interest issues.

^{\33\} For an example of the application of the Conflict of Interest policy within the New gTLD Program deliberations, Board members and Liaisons regularly identify particular areas of interest that require the members to refrain from voting on issues, or refrain from participating in deliberations, as reported at <http://www.icann.org/en/minutes/minutes-25sep10-en.htm>.

Work is now well underway with towards strengthening conflicts and ethics practices. ICANN intends to meet or create a gold standard for not-for-profit organizations. This work includes: (1) review of Conflicts of Interest Policy and Code of Conduct by one of ICANN's main outside counsel, to identify proposed revisions; (2) a review of ICANN's Conflicts of Interest Policy, Code of Conduct and other governance documents by new counsel who are expert in governance issues; and (3) compiling a panel of international ethics experts to recommend enhancements to ICANN's ethical culture after a review of standards from similar organizations from around the world.

The ICANN Board is also voluntarily adopting a stricter conflicts of interest practice for New gTLD-related decisions, and staff are subject to restrictions regarding contact with potential New gTLD applicants. They are prohibited from accepting any gifts, meals or entertainment from potential New gTLD applicants.

C. Registrar Accreditation Agreement Amendments

ICANN and its accredited registrars are currently negotiating a series of amendments, many addressing concerns raised by law enforcement authorities from around the world. The negotiation team has agreed to a demanding schedule to achieve a set of amendments for consideration at ICANN's next public meeting in March 2012. The team has already agreed in principle to the incorporation of some of the heightened protections that will be imposed on registry operators within the New gTLD Program, such as the maintenance of an abuse point of contact. All of the newly adopted and heightened consumer and law enforcement protections will be in place in time for the launch of the first new gTLDs.

The negotiations team is providing regular updates on the status of negotiations, available at <https://community.icann.org/display/RAA/Home>.

D. Internationalized Domain Names

In October 2009, ICANN approved the IDN ccTLD Fast Track Process through which countries and territories around the world can apply for TLDs in character sets other than Latin-based script.^{\34\} Through this

process, 30 IDN ccTLDs are now available on the Internet with more on the way. This has opened the Internet to additional billions in China and India alone.

\34\ The IDN ccTLD Process was created after consultation and planning with the ccNSO (Country Code Names Supporting Organization) and the GAC.

\35\ These IDN ccTLDs represent 20 countries and territories. Due to language difference in country, for example, India has IDN ccTLDs delegated in seven separate scripts.

E. DNSSEC

The Internet is becoming more secure. Following years of development and testing, on July 15, 2010, ICANN, in partnership with VeriSign and the US Department of Commerce, published the root zone trust anchor and a signed root zone became available.\36\ The implementation of DNSSEC (or DNS Security Extensions) will allow Internet users to know with certainty that they have been directed to the website they intended. This technology will help eliminate a whole class of security threats to the Internet.

\36\ Information on DNSSEC deployment can be found at <http://www.root-dnssec.org/>.

ICANN is in active engagement with all registry operators to encourage adoption. As a result, over 75 gTLDs and ccTLDs now deploy DNSSEC; most significantly, the .COM registry adopted DNSSEC on March 31, 2011. DNSSEC will be mandatory in all new gTLDs.

ICANN's work as the DNSSEC Root Zone Key Signing Key (RZ KSK) Manager recently achieved an unqualified SysTrust Certification following an audit to ensure appropriate internal controls are in place to meet the availability, processing integrity and security objectives for the RZ KSK System. ICANN will renew its certification annually.

F. Root Zone Management Automation

In performance of the IANA Function Contract, ICANN has partnered with VeriSign and the Department of Commerce to automate changes to the root zone. The root zone holds the authoritative directory of top-level domains. This automation will make the processing of change requests more efficient, and will enable all who participate in the change process to be better prepared for the increase in root zone changes that will occur through the New gTLD Program.

G. Continued Enforcement of Registrant Protections

Another achievement for the benefit of the global Internet community is the continuous improvement in contractual compliance work. ICANN remains vigilant in its contractually-based consumer protection work and has strengthened the compliance team. The contractual compliance team is now comprised of 8 members, proficient in multiple languages, which has increased capacity as well as ICANN's ability to communicate with its diverse group of contracted parties on compliance-related matters.

Since 2008, ICANN has either terminated or denied renewal of 43 accredited registrars, and issued thousands of compliance notices.

Other significant progress includes the relatively recent implementation of registrar data escrow where all registrar data is escrowed by ICANN so that in the event of a registrar failure or termination, the data can be transferred to a successor registrar in order to protect registrants and their web sites. Over 99% of gTLD registrations are covered by ICANN's registrar data escrow agreements.

ICANN continues to explore ways to identify registrar noncompliance early, take action swiftly to bring registrars back into compliance and terminate those that undermine the domain name registration process. This compliance activity helps ensure a healthy Internet ecosystem.

In early 2011, ICANN enhanced its Whois Data Problem Report System (WDPRS), a system that contributes to Whois accuracy.

VII. Conclusion

The ICANN community has worked tirelessly to create a New gTLD Program that will introduce competition and innovation at the top level of the DNS. Thousands of pages have been carefully written, balancing expert analyses, independent study, and thousands of comments. Governments have provided advice; professionals have weighed in. The new gTLD implementation program represents opportunities for innovation and enhanced competition, with a future of stronger rights protections, stronger consumer protections, and measured paths forward to future rounds.

Thank you for the opportunity to address this Committee. I look forward to answering any questions that you have during the hearing.

Senator Klobuchar. Thank you very much.
Ms. Williams.

STATEMENT OF ANGELA F. WILLIAMS, GENERAL COUNSEL, YMCA OF THE USA

Ms. Williams. Good morning, Senator Klobuchar. Thank you so much for having us testify this morning. I'm Angela Williams, General Counsel of YMCA of the USA. As you know, the YMCA is the nation's leading nonprofit committed to strengthening communities through youth development, healthy living, and social responsibility. Last year, in 10,000 communities our Ys served 21 million people, of whom 9 million were young people, and we serve them in every Congressional district in this great country. Thank you all for your many years of support to our local Ys.

I'm here today to speak on behalf of the Not-for-Profit Operational Concerns Constituency, known as NPOC, which is the newest constituency formed under ICANN to give not-for-profits and NGO's a voice in Internet governance. Our diverse membership includes groups within the United States, such as American Red Cross, St. Jude's Children's Hospital, Church of God in Christ, World Wildlife Federation, Human Rights Campaign, and Goodwill Industries International. Internationally, our members range from the Association of NGO's in Gambia to the International Baccalaureate Organization in Switzerland and many others.

The NPOC members, like most not-for-profits, increasingly rely on the Internet to fulfil our missions as well as to raise funds. We share a growing concern that our ability to carry out our collective missions due to the enormous cost and financial burdens of the proposed structure of the new Generic Top-Level Domain Name Program will pose severe hardship and burdens on each of us.

The new gTLD program compromises use of the Internet by increasing the risk of fraud, cybersquatting, and trademark infringement, and by significantly escalating the cost to protect against such unlawful activities. I know firsthand at the Y that our local organizations have been hit hard by the economy. Our name and reputation is priceless. Yet these additional costs to protect them are now out of financial reach.

It is the goal of our organizations to educate all those responsible for implementation of the new gTLD program about unintended consequences. There is no doubt it will have a crippling effect upon my organization and most other not-for-profit organizations here and around the globe in its current form.

Let me speak to our budgetary concerns. The ultimate cost in proceeding through the entire application process alone could reach several hundred thousands of dollars. Currently the ICANN website quotes costs for one new gTLD application to be approximately \$185,000, with an annual cost thereafter of at least \$25,000 for a required 10-year term. This does not include the legal fees required to prepare the application and certain amounts required to be in escrow.

If the Y or another NPOC member chooses not to participate in the new gTLD program, it runs the risk that another entity will apply for use of its name or one that is confusingly similar. The costs for filing an objection are expected to be approximately \$30,000 to \$50,000.

ICANN's new gTLD program does not provide special or discounted protection measures for not-for-profit organizations to protect their brands and avoid the public confusion that results from their unauthorized use. YMCA of the USA currently employs 1.5 full-time employees at a cost of \$225,000 annually, in addition to external legal expertise at a cost of over \$100,000 just this year, in an effort to monitor and protect the use of its trademarks. Many other not-for-profit organizations cannot afford this expense to protect their name and goodwill. The increase of new gTLDs will further exacerbate this problem.

If not-for-profit organizations cannot afford to register the domain names in the first place, they certainly will not have the means to take legal action, nor should they, as their funds are better served fulfilling their mission. Our country's diverse 1.5 million not-for-profits share one central commitment: improving lives. I ask each of you to think about the small and large not-for-profits that work alongside government, our work on most, if not all, of our nation's greatest problems. I ask you to look at this issue through the lens of the not-for-profit organizations who are using limited

resources to do much good.

Thank you.

[The prepared statement of Ms. Williams follows:]

Prepared Statement of Angela F. Williams, General Counsel,
YMCA of the USA

Good morning Chairman Rockefeller and Ranking Member Hutchison and Committee Members. I'm Angela Williams, General Counsel for the YMCA of the USA. As each of you know, the YMCA is the Nation's leading nonprofit committed to strengthening communities through youth development, healthy living and social responsibility. We work side-by-side with our neighbors in more than 10,000 communities to make sure that everyone, regardless of age, income or background, has the opportunity to learn, grow and thrive. Last year, our Ys served 21 million people--about 9 million were youth--and we serve them in every congressional district in this great country. Thank you all for your many years of support of local Ys in your district. I know you all have a long history with the Y!

I'm here today to speak on behalf of the Not-for-Profit Operational Concerns Constituency known as NPOC, which is the newest constituency formed under ICANN to give not-for-profits and NGOs a voice in Internet governance. Our diverse membership includes groups within the United States such as American Red Cross, St. Jude's Children's Research Hospital, World Wildlife Federation, Church of God in Christ, Human Rights Campaign and Goodwill Industries International. Internationally, our members range from the Association of NGOs in Gambia to the International Baccalaureate Organization in Switzerland and many others.

The NPOC members, like most not-for-profits, increasingly rely on the Internet to fulfill our missions as well as to raise funds. We share a growing concern that our ability to carry out our collective missions due to the enormous cost and financial burdens of the proposed structure of the new Generic Top-Level Domain Name Program ("new gTLD Program") will pose severe hardship and burdens on each of us. We also share concern about the increased risk of public confusion, often unique to not-for-profit organizations, resulting from unauthorized use of organizational trademarks. I know firsthand at the Y that our local organizations have been hit hard in this economy. Our name and reputation are priceless, yet these additional costs to protect them are now out of financial reach.

The new gTLD Program compromises use of the Internet by increasing the risk of fraud, cybersquatting, and trademark infringement and by significantly escalating the cost to protect against such unlawful activities. The following are areas of particular concern:

domain name registration

the introduction of new top level and second level domain names into the DNS (Domain Name System)

fraud and abuse, and

using the Internet platform to distribute and collect mission-related information for our members and the communities we serve.

It is the goal of our organizations to educate all those responsible for implementation of the new gTLD program about unintended consequences. There is no doubt it will have a crippling effect upon my organization and most other not-for-profit organizations here and around the globe in its current form.

Budgetary Concerns

I'd like to begin with our budgetary concerns.

The ultimate cost in proceeding through the entire application process alone could reach several hundred thousands of dollars. Currently, the ICANN website quotes costs for one new gTLD to be approximately \$185,000 to file an application, with an annual cost thereafter of at least \$25,000 for a required ten-year term. This does not include the legal fees required to prepare the application and certain amounts required to be in escrow. Moreover, there are many additional potential costs. For example, if an application is filed and then placed into an extended evaluation by ICANN, the applicant may have to pay an additional \$50,000. An applicant may be required to defend its application against objections, which range from \$1,000 to \$5,000 in filing fees per party per proceeding, and an additional \$3,000 to \$20,000 in costs per proceeding, which must be paid up front.

If the Y or another NPOC member chooses not to participate in the new gTLD program, it runs the risk that another entity will apply for use of its name or one that is confusingly similar. In the event

another entity applies for a top-level domain that contains the organization's name, the costs for filing an objection are expected to be approximately \$30,000-\$50,000.

While processes such as these may be useful in the commercial space, not-for-profits simply do not have the resources to participate, and will certainly not be able to compete against for-profit organizations with large budgets and reserves for intellectual property protection. Our sector not only prefers to, but must, use our monies to provide critical services to our communities. We simply cannot afford thousands of dollars to become a domain name registry solely to ensure brand protection. Becoming a domain name registry is not part of the mission of any not-for-profit organization, yet protection of its reputation is critical. ICANN's new gTLD Program does not provide special or discounted protection measures for not-for-profit organizations to protect their brands and avoid the public confusion that results from their unauthorized use. YMCA of the USA currently employs 1.5 full-time employees at a cost of \$225,000 annually, in addition to external legal expertise at a cost of over \$100,000 this year alone, in an effort to monitor and protect the use of its trademarks. Many other not-for-profits cannot afford this expense to protect their name and goodwill. The increase of new gTLDs will further exacerbate this problem.

The primary enforcement mechanism of the new gTLD Program is the Trademark Clearinghouse, where trademark owners can protect their registered trademark rights. The new gTLD Program is due to be rolled out in less than 40 days. At this point, the cost of listing marks in the Clearinghouse has not been set, creating more uncertainty about the actual costs associated with the new gTLD Program.

This process will only apply to exact matches of trademarks, rather than common misspellings, etc. that fraudsters and cybersquatters often use to deceive and confuse Internet users attempting to locate a particular not-for-profit. Not-for-profits are not in a financial position to register their marks using hundreds of additional gTLDs, particularly at premium prices. Trademark owners will not be allowed to preemptively register marks that are nearly identical.

If not-for-profit organizations cannot afford to register the domain names in the first place, they certainly will not have the means to take legal action, nor should they, as these funds are better served fulfilling their humanitarian, philanthropic, education, academic, religious, community-based, promotion of the arts, public interest policy advocacy, health-related services and social inclusion missions. Public Confusion and Cybersquatting Concerns

Our ability to ensure that the public knows and trusts the public face of the Internet for all of our organizations is paramount. The public trusts the high-quality, reliable services they have come to associate with these organizations.

Bad actors in the domain name space such as cybersquatters, fraudsters, and others, who register and use domain names in bad faith to profit off of the goodwill of well-known entities, have existed for many years in the existing domain name space. Recently one of our organizations, a large and historic organization, learned that an unauthorized entity was using its name to fundraise online and in the community. The result was confusion by potential funders about which organization was seeking donations. This is a common example of how our organizations are impacted by trademark infringement.

The likely increased public confusion and fraud that will occur in the new gTLD space will be particularly devastating for not-for-profit organizations. If not-for-profit organizations are not able to adequately protect their names and trademarks in the new gTLDs, bad-faith domain name registrants will be able to register and make use of hundreds of domain names that are identical or similar, and to disseminate dangerously false information to

Internet users. This will greatly increase the likelihood that the public will be misled in a manner that is both financially devastating and dangerous to the reputation of those organizations--making it difficult for them to achieve their worthy missions.

Our country's diverse 1.5 million not-for-profits share one central commitment: improving lives. The ability to fund and focus on this important work will be diverted, and the public will suffer as a result of the new gTLD Program. Current protection mechanisms built into the new gTLD Program are not adequate and are expensive for those not-for-profits that wish to take advantage of them. The NPOC is understandably concerned about the impact on not-for-profit organizations that do not have the budget to enforce their rights in the current space, much less if that space were to increase ten-fold. The expense of the new gTLD Program would greatly divert funds from our central commitment to improve lives.

Recommendations

Our fears are not alone. There has been a ground-swell of Internet

stakeholders, including the largest for-profit companies that have repeatedly expressed concerns about the program beginning in January 2012 when so many vital issues remain unresolved.

Therefore, we ask that there continue to be input from stakeholders, and careful consideration of the impact of this program on the Internet, and particularly on not-for-profits. Among the numerous requests the NPOC has made to ICANN, we bring the following to your attention:

That verified not-for-profit organizations be permitted to exempt their trademarks from any other applicant in the new gTLD Program at no cost, or if that is not possible, then at a drastically reduced fee;

That the mechanisms for trademark protection be significantly strengthened, with the ability to proactively protect trademark owners before any application is accepted; and

That the costs to participate in the new gTLD Program for verified not-for-profit organizations be eliminated, or if not possible, then at a drastically reduced fee.

In summary, thank you for your time and attention. I know that in Health Care Reform you heard the concerns of small not-for-profits and provided the same "claw back" for health insurance premiums for small not-for-profits as you have for small business. Time and again this committee has shown interest and common sense in protecting our precious not-for-profit sector from tremendous financial burden that will inhibit our ability to achieve our missions. I ask each of you to think about all the small and large not-for-profits that make our country and our world a better place to call home; our work alongside government; our work on most, if not all, of our nation's greatest problems. I ask you to look at this issue through the lens of the not-for-profit organizations in this country who are using limited resources to do much good.

Chairman Rockefeller. You're still Chairman.
Senator Klobuchar. Mr. Jaffe.

STATEMENT OF DANIEL L. JAFFE, EXECUTIVE VICE
PRESIDENT, GOVERNMENT RELATIONS,
ASSOCIATION OF NATIONAL ADVERTISERS (ANA)

Mr. Jaffe. Mr. Chairman, Senator Klobuchar: I am Dan Jaffe and I am Executive Vice President, Government Relations, for the Association of National Advertisers, and we very much appreciate the opportunity to testify on behalf of ANA and CRIDO, the Coalition for Responsible Internet Domain Oversight. CRIDO is a coalition of 152 major national and international companies and trade associations united in opposing the virtually unlimited rollout of ICANN's new generic Top-Level Domain name (gTLD) program.

The members of the coalition, CRIDO, include many of the world's largest companies, with thousands of brands that consumers know and trust. They represent virtually every sector of the American and international economies. These are the companies which provide the economic foundation for the global marketplace we all use and enjoy.

ICANN's decision to embark on an explosive expansion of top-level domains is a very significant and fundamental decision, with implications for everyone in the entire Internet ecosystem, from marketers, to consumers, to charities, NGO's, law enforcement agencies, even politicians, and in fact anyone who has brand names to protect.

The ICANN program is not merely a bad policy choice, but a serious threat to the legitimate interests of both companies and consumers on the Internet. We believe both the decision and the process ICANN followed are fundamentally flawed, and here are the reasons.

First, the immediate costs imposed on business is likely to be in the multi billions of dollars. Some of that is estimated that for a typical company the cost of acquiring a single new gTLD and managing it could easily exceed \$2 million. Companies that are forced into an auction with another interested applicant will potentially face far higher costs. As many companies have hundreds or even thousands of brands to defend,

it's easy to see how these costs will spiral upward.

Even ICANN's own economists recognize that an unlimited expansion of gTLDs could cause serious economic harm to marketers. For example, ICANN's own Phase Two Report noted that brand owners may be compelled to file, "numerous defensive registrations to protect trademarks or intellectual property rights from misuse." These resources could be far more effectively used for job creation and productive capital investment.

Second, ICANN's protections for consumers in the gTLDs program are woefully inadequate. Again, ICANN's own economic experts know that one of the most serious and costly challenges to the unlimited expansion of gTLDs was the harm to consumers from increased cybersquatting and related malware, phishing, and the unknowing purchase of counterfeit goods. In 2009 a coalition of law enforcement agencies including the U.S. Department of Justice and the FBI issued a set of law enforcement due diligence recommendations for ICANN. These recommendations were intended to help prevent against cyber security threats. However, according to a communique from ICANN's own governmental advisory committee dated October 27, 2011, not one of law enforcement's 12 recommendations has been adopted. And yesterday FTC Chairman Jon Leibowitz, testifying before a House Judiciary subcommittee, stated that the unlimited gTLDs rollout could be a "disaster for business and consumers," and could dramatically increase problems for law enforcement.

Third, we have serious concerns about the potential major conflicts of interest involving both the board and staff of ICANN. It is very troubling that many of the same individuals who approved the unlimited rollout of the gTLD program, including ICANN's former chairman, now stand to benefit substantially from the expansion program.

These are not just our concerns. The full European Commission and ICANN's own governmental advisory committee have expressed, "extreme concern about the inadequacy of the existing rules of ethics and conflicts of interest."

We believe that the Affirmation of Commitments that ICANN agreed to in order to obtain the freedom to manage major functions of the Internet from the Department of Commerce are real commitments. They must not be allowed to become merely meaningless high-sounding platitudes. This means that all Internet participants, and in particular the Department of Commerce, must take whatever steps are necessary to assure that the Top-Level Domain policy is fully justified on a cost-benefit basis and provides strong and adequate protections for businesses, NGO's, and consumers, thereby furthering the public interest. That is simply not the case today.

We hope that this hearing places a spotlight on these issues and will help to begin the process of careful reevaluation of this misguided ICANN Top-Level Domain initiative.

Thank you very much for your attention.

[The prepared statement of Mr. Jaffe follows:]

Prepared Statement of Daniel L. Jaffe, Executive Vice President,
Government Relations, Association of National Advertisers (ANA)

The Association of National Advertisers (ANA) appreciates the opportunity to present our serious concerns about the new generic Top-Level Domain Name (gTLD) Program that was approved last June by the Internet Corporation for Assigned Names and Numbers (ICANN).

ANA is the advertising industry's oldest trade association, founded in 1910. Our membership includes 400 companies with 10,000 brands that collectively spend over \$250 billion in marketing communications and advertising. More information about our association is available at <http://www.ana.net>.

I am also appearing on behalf of CRIDO, the Coalition for Responsible Internet Domain Oversight. CRIDO represents 152 major national and international companies and trade associations that have joined together to oppose the roll-out of ICANN's new gTLD Program. A list of all of the members of CRIDO, which represent virtually every sector of the American economy and many important international companies, associations and federations, is attached to this statement. CRIDO members represent some 90 percent of global marketing communications spending, equivalent to \$700 billion annually. While CRIDO members may follow different approaches to domain name activity, they are all united in the belief that the proposed unfettered expansion of generic Top Level Domains is both dangerous and misguided. This proposed ICANN initiative is not merely a bad policy

choice but a serious threat to the legitimate interests of business and consumers on the Internet.

\1\ See Exhibit A.

On November 10, 2011, ANA and the other members of CRIDO sent a Petition to Commerce Secretary John Bryson outlining our serious concerns about the new gTLD Program approved last June by ICANN despite significant objections from many global Internet stakeholder groups. The CRIDO Petition called on the Department of Commerce, and specifically the National Telecommunications and Information Administration (NTIA), ``to use its best efforts to persuade ICANN to stop or postpone the opening of the gTLD application window," which is currently scheduled to begin on January 12, 2012.\2\

\2\ The Petition is attached as Exhibit B.

Other important groups have also independently spoken out against ICANN's gTLD Program, including the National Retail Federation (NRF), the Screen Actors Guild (SAG) and the American Federation of Television and Radio Actors (AFTRA). Their letters to the Secretary are available at <http://www.ana.net/getfile/16997> (NRF), <http://www.ana.net/getfile/16998> (SAG) and <http://www.ana.net/getfile/17000> (AFTRA).

We commend the Committee for holding this hearing on this critical issue which could impact the shape of the Internet for decades, and perhaps in perpetuity. In the past twenty years, the Internet has grown from being used by a limited number of engineering and academic elite to being relied on every day by over 2 billion people worldwide. According to a May 2011 report from the McKinsey Global Institute, nearly \$8 trillion are exchanged annually through e-commerce. The former Secretary of Commerce, Gary Locke, emphasized that ``[t]he Internet is becoming the central nervous system of our information economy and society." \3\ Since the Internet serves as a recognized catalyst for global economic growth, there is far too much at stake, particularly in today's economic climate, not to ensure that ICANN's policies are fair and impartial. This is in keeping with the promises that ICANN made in the Affirmation of Commitments between ICANN and the NTIA, in exchange for the considerable power to oversee the Internet that was delegated to ICANN by the U.S. government.

\3\ Commercial Data Privacy and Innovation in the Internet Economy: a Dynamic Policy Framework, Department of Commerce (2010), Message from Secretary of Commerce Gary Locke at 1, available at: <http://www.commerce.gov/sites/default/files/documents/2010/december/iptf-privacy-green-paper.pdf>.

We believe the new gTLD Program is bad for marketers, consumers and the entire online marketplace. Consistent with the Affirmation of Commitments, ICANN has a responsibility to ensure that its actions further the public interest, promote consumer trust and the burgeoning Internet domain.\4\

\4\ See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. (In relevant part,

Section 3(a) requires ICANN to ``ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent";

Section 3(c) requires ICANN to ``promote . . . consumer trust . . . in the DNS marketplace" and Section 8(c) commits ICANN to operating ``as a multi-stakeholder, private sector led organization with

input from the public, for whose benefit ICANN shall in all events act.").

We strongly believe that ICANN's new gTLD Program fails all of these standards.

This Program in aggregate has multi-billion dollar implications for all marketers, both in the commercial and the nonprofit sectors, and their brands. It would cause irreparable harm and damage to the entire online business community. It would throw the domain name universe into substantial confusion for both marketers and consumers.

ICANN has been considering this Program for several years. ANA objected to these proposals as did many other industry groups and companies. Even important governmental entities, including international law enforcement organizations,\5\ expressed deep misgivings about ICANN's proposed gTLD Program. Unfortunately these

strong objections have largely fallen on deaf ears.

\5\ In 2009, a coalition of law enforcement agencies including the Australian Federal Police; the U.S. Department of Justice; the U.S. Federal Bureau of Investigation; the New Zealand Police; the Royal Canadian Mounted Police and the United Kingdom's Serious Organized Crime Agency issued "Law Enforcement Due Diligence Recommendations for ICANN." It is our understanding from the GAC Communiqué at Dakar, dated October 27, 2011, that none of law enforcement's recommendations has been adopted; in fact of the 12 recommendations registrars were only able to report on their consideration of three of the twelve law enforcement recommendations. GAC Communiqué--Dakar attached hereto as Exhibit C.

ICANN consistently states that it is a multi-sectoral, bottom-up policy development organization. However, the creation of a massive bureaucratic labyrinth and process does not mean that ICANN is, in fact, representing the views of the majority of the Internet community. There clearly is not "consensus" support for the ICANN gTLD proposals. We cannot let the repetitive mantra that ICANN is a "multi-sectoral organization" camouflage or mask ICANN's lack of responsiveness to the real concerns of a very broad cross-section of the business community, and a growing group of non-governmental organizations, consumer groups and other Internet users.

Key Reasons Why the ICANN Program Must Be Stopped or Delayed

For a variety of reasons, we believe it is critical that the roll-out of the new gTLD Program be delayed.

Flawed Justification: ICANN justifies the Program on grounds that it: "might" or "may" (1) spur competition, (2) relieve scarcity in domain name space and (3) support differentiated services and new products. Yet evidence is sorely lacking that the introduction of new TLDs will actually achieve any of these goals. The very reports relied upon by ICANN to buttress its gTLD proposal prove that such justifications are unsupportable.

Competition. Regarding competition, in the December 2010 report commissioned by ICANN, entitled "Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Report: Case Studies" ("Phase II Report"),⁶ the authors of the Phase II Report clearly conclude that the introduction of new undifferentiated gTLDs is not likely to have a "significant competitive impact" in the market for registry services (Phase II Report, para. 12).

\6\ Michael L. Katz et al., Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2010) <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>. See also, Michael L. Katz et al., An Economic Framework for the Analysis of Expansion of Generic Top-Level Domain Names (2010), <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>; Michael L. Katz et al., Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names (2010 [sic]) <http://www.icann.org/en/topics/new-gtlds/analysis-response-economic-framework-21feb11-en.pdf>; Michael L. Katz et al., Reply to Comments on Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2011) <http://www.icann.org/en/topics/new-gtlds/analysis-response-phase-ii-report-21feb11-en.pdf>.

Scarcity. It is equally clear that scarcity is not a current problem. As the Phase II Report concludes, ". . . [T]he relief of name scarcity is unlikely to be the principal source of social benefits derived from new gTLDs" (Phase II Report,

para. 20).

Differentiated Services and New Products. The Phase II Report notes new domain uses that are possible with TLDs, comparing such prospects to existing TLDs, e.g., domains that are restricted to particular functions or applications (such as existing TLD .mobi), domains that restrict second level registration to a particular class of owners (such as existing TLDs .museum, and .aero), and domains that restrict second-level registration to presenting a certain type of content (such as current domains relating to a specific geographic area). However, in each case, the experts conclude that the benefits were little more than speculative and that many of the TLDs adopted by ICANN in the last expansion round have been practical failures (Phase II Report, para. 39, 50, 58, 59,

62).

There is no demonstrable need to increase generic Top Level Domain names on an unlimited basis, and no likely benefit that would result from such an unrestricted increase.

A wide array of 22 suffixes such as ".biz," ".info," ".jobs," ".travel" and ".museum" currently exist, not including the country codes. Most of those gTLD names are minimally used, but nonetheless actively policed by brand owners concerned about trademark dilution, cybersquatting and the online sale of pirated or counterfeited products.⁷ The gains assumed by ICANN are completely unsubstantiated. In contrast, the new Program will throw the domain name universe into widespread confusion, impose major costs on marketers and cause harm to consumers. If there is no scarcity of space within the existing domain name system, the ICANN Program appears to be a solution in search of a problem. Even more seriously, the "solution" proposed by ICANN is likely to impose enormous costs on the Internet and divert productive resources at a time where these dollars could be far more effectively used for job creation and productive capital investment.

⁷ For further background on the online piracy and counterfeiting arguments, see Mark Monitor, Traffic Report: Online Piracy and Counterfeiting (January 2011) (The study used only 22 brands and found that for those brands online distribution of pirated digital content and e-commerce sales of counterfeit goods were rampant).

Serious Economic Impact if the Program is Adopted

These are not just our views. The studies ICANN initiated itself recognize that the Program may cause several severe economic harms. As set forth in Paragraph 63 of the Phase II Report, the costs of the Program may include the following:

Misappropriation of Intellectual Property. The experts cite a key concern of misappropriation of intellectual property rights, including the "costs of domain watching, defensive registrations, litigation or other measures to end misappropriation, and costs due to misappropriation that is not blocked (e.g., lost profits due to sales of counterfeit goods or brand dilution)."⁸

⁸ Michael L. Katz et al., Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2010) at para. 63, <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>.

Defensive Registrations. As noted, brand owners may be compelled to file defensive registrations, i.e., "registrations undertaken to protect legitimate trademark or intellectual property rights from misuse, not registrations undertaken as the 'defense' of one's business against increased competition on the merits."⁹ This cost alone could be in the hundreds of thousands of dollars per brand name, creating a multi-million dollar liability for major corporations and a multi-billion dollar cost to the industry.

⁹ Id.

Several Internet Domain name sellers have estimated the range of costs for gTLD applications alone. For example, in an article entitled, "Sweeping Away Confusion Regarding gTLD's," Gretchen Olive stated that, "Those applying will need a minimum of \$800,000 to \$1 million to not only submit the application, but also to defend it against objections lodged by third parties and to get through the contract process with ICANN and set up the registry technical infrastructure (emphasis added)."¹⁰ The article further noted that, "Monitoring for infringement and submission of objections will likely run most organizations between \$25,000 and \$50,000 in 2012."¹¹

¹⁰ Gretchen Olive, Sweeping Away Confusion Regarding gTLDs, ADOTAS (Nov. 8, 2011) available at: <http://www.adotas.com/2011/11/sweeping-away-confusion-regarding-gtlds/>.

¹¹ Id.

Domain Navigation Dilution because Consumers have More Places to Look. The experts note that the "introduction of additional gTLDs may increase the costs of Internet navigation by increasing the number of potential domains over which a user

may search. To the extent that such effects arise, they can dilute the value of existing domain names as navigation devices. The costs associated with such dilution include the costs of defensive registrations. . .and the costs due to dilution that cannot be mitigated." \12\

\12\ Id. at note 6, supra (Phase II Report).

Harm to Internet Users from Increased Cybersquatting. One of the most incipient and costly challenges to the adoption of any new gTLD is the prospect of cybersquatting and the substantial costs associated with preventing and policing it, which are already well into the billions of dollars. With respect to cybersquatting, the experts note, "In addition to harm in the form of increased search costs consumers may suffer more direct harm from increased cybersquatting. This direct harm may result from malware, phishing, and the unknowing purchase of counterfeit goods." \13\ While the experts opine that such a result "may" occur, history proves that cybersquatting will occur, just as it has with every TLD that has ever been administered by ICANN.

\13\ Id.

Reduced Investment by Intellectual Property Owners. The protection and development of intellectual property is a core value for the global economy, particularly given the world's reliance on technology. As ICANN's own experts conclude, the Program seriously undermines intellectual property rights-- "There may also be indirect harms from the loss of intellectual property owners' incentives to invest in that intellectual property due to concerns that some of the benefits of that investment would be misappropriated." \14\

\14\ Id.

Losses from Failed TLDs. History itself discredits ICANN's position that the introduction of new TLDs will increase innovation and competition. One need only look at the dismal financial registration and track record of TLDs like .museum and .aero to prove the point. Such failures are very disruptive and costly to companies that have registered. This reality is borne out by the authors of the Phase II Report, who conclude that "[i]f a new gTLD failed and ceased operation, external costs might be imposed on the Internet community. Registrants in a failed gTLD might be stranded, unable easily to move their websites (on which they may have based their business) to other TLDs due to embedded links. More generally, Internet users might face increased clutter on the Internet if links fail to resolve." \15\ Clearly, these types of dangers are likely to be substantially magnified by allowing an unrestricted proliferation and explosive growth of domains.

\15\ Id.

ICANN has in effect dismissed these concerns in reliance on what its own experts have noted as "speculative" competitive benefits of the Program. However, is it really credible that the broad group represented by the CRIDO membership--that includes some of the largest national and international advertisers, brand holders and associations in the world, with representation cutting across a vast range of industry sectors--can all be unable to foresee what are their true competitive interests?

ICANN's Deliberation Process is Flawed

Nevertheless, ICANN is now moving forward with the Program. ICANN justifies ignoring these studies in its report entitled, "Rationale for Board Decision on Economic Studies Associated with the New gTLD Program." \16\ With all due respect, the "Rationale" is nothing short of a nullification of ICANN's own mandate to conduct economic studies. Rather than calling for further expert analysis, ICANN dismisses the very economic evidence derived from the studies and opts for a default justification of "competition" in which any TLDs may be adopted. Furthermore, ICANN minimizes the Phase II Report's conclusion that registry competition will not be significantly affected by the Program; ICANN says its real interest is competition in business generally, and claims that any additional economic study on that subject would be futile.\17\ We understand that ICANN contemplates further studies once the new gTLD Program is underway,\18\ but at that point, the damage will have been done. Once new gTLDs are deployed, there is no turning back.

\16\ Available at www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf. See also ICANN Board Rationales for the Approval of the Launch of the New gTLD Program, available at www.icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf. Even in its final rationales, ICANN acknowledges that no determination could be made that the benefits of the new gTLD program will outweigh the costs.

\17\ See ICANN, Minutes of Board Meeting 25 January 2011, Economic Studies--<http://www.icann.org/en/minutes/minutes-25jan11-en.htm> ("[T]he Board has determined that no further commissioned economic studies could better inform the Board's decision." Id. at 8). See also ICANN, Rationale for Resolution 2011.01.25.22 (2011) at 1, <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>; see also Anthony Van Couvering, ICANN's Economic Study--It Depends, Minds + Machines Blog (Jul 21, 2010) (Commenting on the June 2010 Katz economic study Mr. Van Couvering said, "Should observers of ICANN lend any credence to this study? If your goal is to advocate a position without any empirical evidence, it is an excellent tool. If your goal is to understand what the new gTLD program will produce, it will, if printed out and bound, make a splendid paperweight").

\18\ <http://www.icann.org/en/minutes/minutes-25jan11-en.htm>.

If this Program, in fact, were likely to enhance competition and the Internet marketplace, one would expect broad statements of support for it. This support would come from many Internet and governmental sources. Instead, the voices that are speaking in favor of the Program appear to come almost exclusively from registrars, registries and others who will directly profit from facilitating the gTLD roll out--not those whom ICANN says will benefit. The broader Internet business community is clearly rejecting the proposal.

This scant and conflicting economic analysis is one of many examples in which ICANN has disregarded its own requirements and unilaterally issued an edict. ICANN's own Code of Conduct \19\ mandates that ICANN will "[w]ork to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus driven approach to policy development." Its undertakings with the U.S. Department of Commerce additionally require that ICANN act rationally and transparently.\20\ Clearly, the legal and due diligence requirements of ICANN's own mandates have not been met here. An effort to foist on the world community and markets a change of this magnitude is not the measured "bottom up" approach described in the Code of Conduct. Moreover, it is impossible to describe the decision to adopt the Program as a decision based upon consensus where the research, comments and reports submitted to ICANN clearly show that there was and still is no consensus on the purported benefits of the Program.

\19\ <http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf>.

\20\ ICANN's Code of Conduct at <http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf>; see also, Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers (September 30, 2009) at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> ("ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decisionmaking will reflect the public interest and be accountable to all stakeholders by: . . . (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development").

Excessive Costs and Harms to Brands

The immediate cost imposed on businesses is likely to be in the billions of dollars. Applying for a new Top Level Domain name will require an extraordinarily expensive registration fee of \$185,000 as well as a minimum cost of \$25,000 paid annually to ICANN over the ten-year contractual commitment that successful applicants must make. Costs will further escalate at the second level of naming--the word to the left of the ".dot"--as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes.

Some have estimated that, for a typical company, the cost of

acquiring a single gTLD and managing it over the initial commitment of ten years could easily exceed \$2 million, including expenses for the application process, operations, disputes, and related legal services. The costs associated with trademark monitoring and protection in all the new gTLD spaces will run even higher. Some CRIDO members spend over \$1 million a year today to enforce against cybersquatting and fraud in the existing 22 gTLD spaces. These numbers will clearly escalate if ICANN's proposal goes forward. In addition, many companies may face an auction for a generic Topic Level Domain, which will result in higher costs to ICANN's benefit. Many companies have hundreds or even thousands of brands to defend. Brand owners will face a Hobson's choice of either being compelled to spend substantial resources to acquire and manage new gTLDs or risk the harm to their brands that could occur if they take no action. This has certainly been the message spoken loud and clear to us from our members and the many groups within CRIDO.

Following the Money

Existing and prospective Internet registries and registrars stand to be the primary beneficiaries of the new gTLD Program. Just examining ICANN's own financial statements, it would appear that registries and registrars pay fees that comprise the lion's share of ICANN's budget. According to ICANN's own audit reports for the Fiscal Year 2011, ICANN's primary source of revenue comes from Internet registries and registrars. In fact, of ICANN's \$69.3 million in revenue for Fiscal Year 2011, \$64.5 million came from fees paid by registries and registrars.²¹ That is 93 percent of ICANN's 2011 revenue. In 2010, that same figure was 94 percent.²² Looking ahead to this new gTLD program, more TLDs mean new business for registries and registrars and greater numbers of registries and registrars, which in turn creates more fees for ICANN.

²¹ See Report of Independent Auditors and Financial Statements for the Internet Corporation for Assigned Names and Numbers, prepared by Moss-Adams LLP June 30, 2011 and 2010, available at: <http://www.icann.org/en/financials/financial-report-fye-30jun11-en.pdf>.

²² Id at 2.

However, ICANN's budget incentive for new gTLDs will be more than increased registry and registrar fees. The initial application fees expected in FY 2012 and 2013 will provide the organization with a considerable boost to its budget--a \$92.5 million dollar boost in fact (which could be quite conservative because it only projects 500 applications; in some of ICANN's earlier delegation scenarios they have projected 1,000 or more applications as the high end).²³ In the Fiscal Year 2012 budget projections for new gTLD revenues are expected to add another \$27.8 million to ICANN's revenue--or adding another 40 percent to its budget.²⁴ Likewise, in draft Fiscal Year 2013 new gTLD revenues are expected to add another \$64.8 million--that is nearly a 94 percent increase in revenues above the 2011 Fiscal Year figures mentioned above.²⁵

²³ New gTLD Program Cash Flow and P&L by Fiscal Year, ICANN.org, (September 9, 2011) (showing the gTLD financial projections) available at: <http://www.icann.org/en/financials/new-gtld-program-cash-flow-09sep11-en.pdf> ("gTLD Cash Flows Projections"); Delegation Rate Scenarios for New gTLDs, ICANN.org, (Oct. 2010) at p 6 (showing 1000 applications as extremely high activity and 1000s of applications as the maximum throughput) available at: <http://www.icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf>.

²⁴ gTLD Cash Flow Projections at 2.

²⁵ Id.

ICANN says that it will use these revenues for intensive application review processes, but we would be remiss if we did not add that \$30 million or nearly one-third of all expected gTLD application revenues will be earmarked for a litigation risk fund. ICANN is clearly expecting many problems with this application window given the large litigation budget anticipated.²⁶

²⁶ Id.

Lack of Consensus

It is true that ICANN spent a number of years considering this Program at meetings around the world. However, the 152 members of CRIDO, representing major global companies and business groups, are living proof that the objections of industry sectors most affected by this Program have not been adequately considered or addressed by ICANN. A number of CRIDO members have actively voiced objections to the new gTLD process and the lack of adequate trademark protection mechanisms, yet their concerns have fallen on deaf ears. This entire constituency--

the one required to fund the new names and maintain the Internet's economic model--has been largely ignored. On the other hand, we do not hear any clamor for the Program. ICANN has failed to reach stakeholder consensus, a specific requirement of its contract with the NTIA.

Conflict of Interest Concerns

We are very concerned about potential conflicts of interest that may be present in this expansion proposal, for both the Board and staff of ICANN. It is very troubling that many of the same individuals who approved this expansion, including ICANN's former Chairman, now stand to benefit substantially from companies that will register applicants and manage the expansion. For example, within one month after the vote of the ICANN Board to approve the new gTLD expansion, former ICANN Chairman Peter Dengate Thrush had joined a London company called Top Level Domain Holdings, a company that will directly profit from the decision.

These events have cast a serious cloud over the legitimacy of the vote to approve the new gTLD Program. ICANN serves as a quasi-governing body for the day-to-day operations of the Internet. It is absolutely critical that all decisions are made in the public interest, not in the best interest of the closely-knit ICANN family.

We believe that ICANN can reclaim its legitimacy as an Internet governance body only by conducting a thorough and proactive review of both the gTLD expansion and the broader conflict of interest and ethics policies for the organization. We expressed these concerns in a letter to ICANN on October 2, 2011, which is available at <http://www.ana.net/getfile/16766>. Our letter notes that serious concerns about the inadequacy of the ICANN conflict of interest policies have been expressed by Senator Ron Wyden (D-OR), by Lawrence Strickling, Assistant Secretary for Communications and Information at the U.S. Department of Commerce, and by the full European Commission.

At its October meeting in Dakar, ICANN's Governmental Advisory Committee (GAC) expressed "extreme concern about the inadequacy of the existing rules of ethics and conflict of interest" in ICANN.²⁷ The conflict of interest issues threaten to undermine confidence in ICANN's decision-making. Obviously, if ICANN merely adopts prospective conflict of interest corrections they will not undo harms that have already occurred. Attention must be paid to the effects of conflicts on ICANN's deliberations and the legitimacy of the gTLD roll out proposal.

²⁷ GAC Communique--Dakar, October 27, 2011 (attached as Exhibit D).

Exemptions to the Program

Three groups were exempted or exempted themselves from the new gTLD Program: the Red Cross, the Olympics and ICANN itself. In letters to ICANN, both the Red Cross and the Olympics stated that they needed this type of protection to assure that the public who trust their brand identities would not fall victim to typosquatting, cybersquatting and phishing. The Red Cross noted that a substantial portion of their resources are used to counteract "fraudulent websites containing Red Cross names to solicit donations routinely after virtually every newsworthy disaster."²⁸

²⁸ David Meltzer, Senior Vice President International Services, Peggy Dyer, Chief Marketing Officer and Mary S. Elcano, General Counsel and Corporate Secretary, American Red Cross, to Kurt Pritz, Senior Vice President, Stakeholder Relations and Amy Stathos, Deputy General Counsel, ICANN, June 16, 2011, page 2.

While these exemptions may be appropriate, no other exemptions were extended to the thousands of other charities and foundations that similarly use the Internet to foster their public interest activities--yet they surely face the same kinds of harms.

The fact that ICANN exempted itself is even more informative. ICANN not only exempted its own name from the gTLD process, but several other names as well. But the protections for ICANN will not end at the top level. ICANN will have the opportunity to negotiate more protections for itself at the second level once new gTLD registries are selected. Take for example, the many reservations that ICANN made for itself on the new .xxx domain. In the .xxx registry, ICANN was even able to protect names of some of its leadership.²⁹ No other groups received the same protection. Major universities across the country, for example, have recently found it necessary to purchase multiple .xxx domain names to protect against links of their names to porn sites. The Ohio State University purchased a total of 19 domains, including buckeyeblitz.xxx and goldpants.xxx.³⁰ The cost for each of these domain name purchases was \$200 for a purely defensive purpose. These costs could be substantially higher if an auction is required to protect a name.

[29] Kevin Murphy, RodBeckstrom.xxx Will Never See the Light of Day, Domain Incite (Sept. 14, 2011) available at: <http://domainincite.com/rodbeckstrom-xxx-will-never-see-the-light-of-day/>.

[30] FoxNews.com, Penn State Bought Adult .XXX Domain Names to Block Usage Prior to Sex Abuse Scandal (Nov. 30, 2011) available at <http://www.foxnews.com/us/2011/11/30/penn-state-buys-adult-domain-names-to-block-usage/>.

These exemptions explode the argument that ICANN makes that it has developed adequate protections against cybersquatting, typosquatting and phishing. These charitable and other NGO groups will face the same dangers that the Red Cross and the Olympics highlighted, and many of them will not have the financial wherewithal to defend and protect their good name in the Internet marketplace.

Not All TLDs Are Alike

Our concerns primarily focus on generic Top Level Domains (gTLDs). These concerns do not generally extend to so-called ccTLDs dealing with country designators such as .co, .cn, .eu, and .de. Nor are we opposed to the use of other languages and character sets in the Domain system, although we believe that the public interest requires that all Top Level Domains be cost beneficial and not impose undue burdens on the Internet or undermine consumer trust. Neither do we believe that there is something sacrosanct about maintaining the existing 22 gTLD system unaltered. However, all of our companies, associations and groups believe the unrestricted and unlimited expansion of gTLDs is a reckless experiment that needs to be halted and reassessed before it damages the very positive growth of consumer trust that is fundamental to the Internet marketplace.

Conclusion

We commend the Committee for holding this important hearing. Examining the membership list of CRIDO demonstrates that the concerns of the worldwide business community are extraordinarily widespread. The issues that we raise will fall even harder on consumer groups, charities, foundations, and myriad other entities that have even less financial ability to protect their institutional interests and that will be impacted by the rapid, unlimited opening of the generic Top Level Domain space.

We reject the argument of those who say that it is too late for ICANN to step back and reevaluate or for NTIA, the Governmental Advisory Committee and other key Internet participants to try to make one last major effort to forestall this potentially severely damaging initiative. There is absolutely nothing sacred about the January 2012 implementation date. Given the serious concerns expressed by a broad and growing cross-section of the entire American and global business community, the companies which provide the economic foundation of the Internet, and the potential dangers to consumers, we believe it would be irresponsible for ICANN to proceed full-speed ahead with the roll-out next month.

We are sensitive to the U.S. government's concern that by acting, in any capacity, it could fracture the voluntary domain name system, which is embedded in the authoritative root. Or, alternatively, that control of the ICANN Internet governance function could be relinquished to the International Telecommunications Union. However, given the potential harms that we have identified from this Program: consumer harm, cybersquatting, typosquatting, Internet piracy and product counterfeiting, inaction could be far more destabilizing to ICANN as a governance body. If the new gTLDs launch and such problems occur en masse, then foreign governments will have no choice other than to call for the dismantling of ICANN. No one here at this hearing wants to see ICANN dismantled. We would like to buttress its authority by ensuring that the gTLD Program is maintained and developed appropriately in the public interest and promotes consumer trust.

We very much appreciate this opportunity to testify and the careful consideration of our and the other members of CRIDO's views.

Exhibit A

Association Signatories to the ICANN Petition

AAF-Amarillo
AAF-Dallas
AAF-Fort Worth
AAF Hampton Roads
AdClub Cincinnati
Advertisers Association of Guatemala (Guatemala)
Advertisers Association of Nigeria (Nigeria)
Advertisers Association of Turkey (Turkey)
Advertisers Business Group (United Arab Emirates)
Agrupacion Nacional de Anunciantes de Mexico (Mexico)
American Advertising Federation (AAF)
American Advertising Federation Baltimore, Inc.

American Advertising Federation of Des Moines
 American Apparel & Footwear Association (AAFA)
 American Association of Advertising Agencies (4As)
 American Beverage Association (ABA)
 American Council of Life Insurers (ACLI)
 American Health Care Association (AHCA)
 American Insurance Association (AIA)
 American Intellectual Property Law Association (AIPLA)
 American Society of Association Executives (ASAE)
 Asociacion Espanola de Anunciantes (Spain)
 Asociacion Nacional de Anunciantes de Colombia (Colombia)
 Asociacion Nacional de Anunciantes Peru (Peru)
 Asociacion Nacional de Anunciantes Venezuela (Venezuela)
 Asociacion Nacional de Avisadores Chile (Chile)
 Associacao Brasileira de Anunciantes (Brazil)
 Associacao Portuguesa de Anunciantes (Portugal)
 Association of Advertisers in Ireland (Ireland)
 Association of Canadian Advertisers (Canada)
 Association of National Advertisers (ANA)
 Association of New Zealand Advertisers (New Zealand)
 Association of Swiss Advertisers (Switzerland)
 Austin Advertising Federation
 Australian Association of National Advertisers (Australia)
 Boise Advertising Federation
 Bond van Adverteerders (The Netherlands)
 Bulgarian Association of Advertisers (Bulgaria)
 Cable Advertising Bureau (CAB)
 Camara Argentina de Anunciantes (Argentina)
 Camara de Anunciantes del Paraguay (Paraguay)
 Camara de Anunciantes de Uruguay (Uruguay)
 China Association of National Advertisers (China)
 Consumer Electronics Association (CEA)
 Czech Association for Branded Products (Czech Republic)
 Cyprus Advertisers Association (Cyprus)
 Dansk Annoncoerforening (Denmark)
 Direct Marketing Association (DMA)
 European Association of Communications Agencies (EACA)
 European Publishers Council (EPC)
 Food Marketing Institute (FMI)
 Grocery Manufacturers Association (GMA)
 Groupement des Annonceurs du Maroc (Morocco)
 Hellenic Advertisers Association (Greece)
 Hungarian Branded Goods Association (Hungary)
 Idaho Advertising Federation
 Idaho Falls Advertising Federation
 Incorporated Society of British Advertisers (United Kingdom)
 Indian Society of Advertisers (India)
 Indonesia Advertisers Association (Indonesia)
 Intellectual Property Owners Association (IPO)
 Interactive Advertising Bureau (IAB)
 IAB Europe
 The Israel Marketing Association (Israel)
 Japan Advertisers Association (Japan)
 Lebanese Association of Advertisers (Lebanon)
 Lewis-Clark Valley Advertising Federation
 Magic Valley Advertising Federation
 Mainostajien Liitto (Finland)
 Malaysian Advertisers Association (Malaysia)
 The Marketing Association of South Africa (South Africa)
 Mobile Marketing Association (MMA)
 MPA--the Association of Magazine Media
 National Association of Broadcasters (NAB)
 National Association of Manufacturers (NAM)
 National Confectioners Association
 National Council of Chain Restaurants (NCCR)
 National Restaurant Association (NRA)
 Norwegian Association of Advertisers (Norway)
 Organisation Werbungtreibende im Markenverband (Germany)
 Pakistan Advertisers Society (Pakistan)
 Philippine Association of National Advertisers (The Philippines)
 Pocatello Advertising Federation
 Promotion Marketing Association (PMA)
 Property Casualty Insurers Association of America
 Radio Advertising Bureau (RAB)
 Retail Industry Leaders Association (RILA)
 Russian Association of Advertisers (Russia)
 Singapore Advertisers Association (Singapore)
 Slovak Association for Branded Products (Slovakia)
 Slovenian Advertising Chamber (Slovenia)

Sveriges Annonserer (Sweden)
Television Bureau of Advertising (TVB)
Union Belge des Annonceurs (Belgium)
Union des Annonceurs (France)
U.S. Chamber of Commerce
Utenti Pubblicita Associati (Italy)
World Federation of Advertisers (WFA)
Company Signatories to the ICANN Petition

Acxiom
adidas
Adobe Systems Incorporated
Allstate Insurance Company
American Express
Autodesk, Inc.
Brinker International
Burger King Corporation
The Coca-Cola Company
Chrysler Group LLC
Church's Chicken
Combe Incorporated
ConAgra Foods
Costco Wholesale Corporation
Darden Restaurants, Inc.
Dell Inc.
Dunkin' Brands, Inc.
Educational Testing Service (ETS)
Fidelity Investments
Ford Motor Company
General Electric Company
GroupM
Hack Creative
Havas
Hewlett-Packard Company
Hunter Douglas NA
J.C. Penney Company, Inc.
Johnson & Johnson
Kellogg Company
Kraft Foods
La Quinta
Liberty Mutual
MillerCoors
Money Mailer of Amarillo
Nationwide Mutual Insurance Company
Neon Sun Tanning Salon
Nestle USA
ORCI
OSI Restaurant Partners, LLC
Papa John's
Procter & Gamble
Publicis Groupe
Pulte Group
Reebok
Rollins, Inc.
Samsung
Siemens AG
Siemens Corporation
The J.M. Smucker Company
Toyota
US Bank
Vanguard
Verge
Walmart

Exhibit B
Coalition for Responsible Domain Oversight
November 10, 2011

Hon. John Bryson,
Secretary,
U.S. Department of Commerce,
Washington, DC.

Dear Secretary Bryson:

We, the undersigned, representing large and small business, in virtually every industry sector, in the United States and around the world, are writing to express our strong concern with respect to the June 2011 decision by the Internet Corporation for Assigned Names and Numbers (ICANN) to approve the top-level domain (gTLD) Applicant Guidebook and to move forward with plans to open the new gTLD application window on January 12, 2012 (the ICANN plan, decision or

ICANN Proposal) on a virtually unlimited basis.

ICANN's action was taken despite widespread and significant objections raised throughout the process by many in the global community of Internet users. ICANN's decision was not made in the public interest, does not promote consumer trust, and does not benefit the public, as required in the Affirmation of Commitments between ICANN and the National Telecommunications and Information Administration (NTIA).

Moreover, additional facts have come to light since ICANN announced the most recent iteration of the Applicant Guidebook--including rounds of troubling conflict of interest questions--which cast a shadow over the entire process leading up to ICANN's decision. Those facts, combined with the current state of the global economy, raise substantial issues regarding the wisdom of moving forward with ICANN's plan, given its undisputed costs and its merely putative benefits.

The ICANN Proposal would unduly burden a diverse range of public and private brand holders, as they would be forced to spend ever-greater amounts of time and resources simply to protect their brands. In addition, there is an unacceptably high risk that the ICANN plan would confuse consumers, increase the already unacceptable level of fraud and identity theft on the Internet, create new opportunities for Internet crime, and jeopardize cyber security. Businesses and not-for-profits alike have repeatedly raised these issues with ICANN over the last four years, with no acceptable resolution.

For these reasons, we respectfully call on the Department of Commerce and, specifically the NTIA, to persuade ICANN to postpone the opening of the top-level domain application window unless or until such time as ICANN convincingly demonstrates that unlimited TLD name expansion would:

Promote consumer trust;

Enhance Internet security;

Promote widespread economic benefits across diverse economic sectors and stakeholders; and

Demonstrate that these benefits will exceed the costs that such gTLD expansion would inevitably impose on the global Internet community.

Respectfully submitted,

Organizations

AdClub Cincinnati

American Advertising Federation (AAF)

AAF-Amarillo

AAF-Dallas

AAF-Fort Worth

AAF Hampton Roads

American Advertising Federation Baltimore, Inc.

American Advertising Federation of Des Moines

American Apparel & Footwear Association (AAFA)

American Association of Advertising Agencies (4As)

American Beverage Association (ABA)

American Council of Life Insurers (ACLI)

American Health Care Association (AHCA)

American Insurance Association (AIA)

American Intellectual Property Law Association (AIPLA)

American Society of Association Executives (ASAE)

Association of Canadian Advertisers (ACA)

Association of National Advertisers (ANA)

Austin Advertising Federation

Boise Advertising Federation

Cable Advertising Bureau (CAB)

Consumer Electronics Association (CEA)

Direct Marketing Association (DMA)

European Association of Communications Agencies (EACA)

European Publishers Council (EPC)

Food Marketing Institute (FMI)

Grocery Manufacturers Association (GMA)

Idaho Advertising Federation

Idaho Falls Advertising Federation

Intellectual Property Owners Association (IPO)

Interactive Advertising Bureau (IAB)

IAB Europe

Lewis-Clark Valley Advertising Federation

Magic Valley Advertising Federation

Mobile Marketing Association (MMA)

MPA--the Association of Magazine Media

National Association of Broadcasters (NAB)
National Association of Manufacturers (NAM)
National Confectioners Association
National Council of Chain Restaurants (NCCR)
National Restaurant Association (NRA)
Pocatello Advertising Federation
Promotion Marketing Association (PMA)
Radio Advertising Bureau (RAB)
Retail Industry Leaders Association (RILA)
Television Bureau of Advertising (TVB)
U.S. Chamber of Commerce
World Federation of Advertisers (WFA)
Corporations
Acxiom
Adobe Systems Incorporated
Allstate Insurance Company
American Express
Brinker International
Burger King Corporation
The Coca-Cola Company
Combe Incorporated
ConAgra Foods
Costco Wholesale Corporation
Darden Restaurants, Inc.
Dell Inc.
Dunkin' Brands, Inc.
Educational Testing Service (ETS)
Fidelity Investments
Ford Motor Company
General Electric Company
Hack Creative
Hewlett-Packard Company
Hunter Douglas NA
J.C. Penney Company, Inc.
Johnson & Johnson
Kellogg Company
La Quinta
Liberty Mutual
MillerCoors
Money Mailer of Amarillo
Nationwide Mutual Insurance Company
Neon Sun Tanning Salon
Nestle USA
ORCI
OSI Restaurant Partners, LLC
Papa John's
Procter & Gamble
Publicis Groupe
Pulte Group
Samsung
US Bank
Vanguard
Verge

cc: Lawrence E. Strickling, Assistant Secretary for Communications
and Information and Administrator, National Telecommunications and
Information Administration, U.S. Department of Commerce

Fiona Alexander, Associate Administrator, National
Telecommunications and Information Administration, U.S. Department of
Commerce

Vernita Harris, Deputy Associate Administrator of the Office of
International Affairs, National Telecommunications and Information
Administration, U.S. Department of Commerce

Suzanne Murray Radell, Senior Policy Advisor, National
Telecommunications and Information Administration, U.S. Department of
Commerce

Elizabeth Bacon, Telecommunications Policy Specialist, National
Telecommunications and Information Administration, U.S. Department of
Commerce

Cameron F. Kerry, General Counsel, U.S. Department of Commerce

Daniel K. Inouye, Chairman, Committee on Appropriations, U.S.
Senate

John D. Rockefeller IV, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate

Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate

Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate

Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate

Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate

Barbara Mikulski, Chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. Senate

Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate

Harold Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives

Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives

Lamar Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives

Norm Dicks, Ranking Member, Committee on Appropriations, U.S. House of Representatives

Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Exhibit C
Governmental Advisory Committee
Dakar, 27 October 2011
GAC Communique--Dakar

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Dakar, Senegal during the week of October 22-27, 2011. Forty-nine Governments participated in the meeting: 46 present and 3 by remote participation and six Observers. The GAC expresses warm thanks to the local hosts, The Ministry of Communication, Telecommunications and Information Technology (MICOMTELTIC) and the Regulatory Authority for Telecommunications and Post (ARTP) for their hospitality in organizing the meeting and ICANN for supporting the GAC during the meeting.

II. New gTLDs

The GAC further discussed and decided on the formulation of GAC advice for inclusion in Module 3 of the Applicant Guidebook [Annex I].

During the discussion ICANN Staff underlined their understanding that advice regarding the definition of Geographic Names should be adopted by the GAC.

The GAC congratulates the JAS working group on the final report and recommendations, which are consistent with GAC advice. The GAC looks forward to the Board providing clear timelines for implementation of the recommendations to enable needy applicants to join in full and meaningfully in the first round.

The GAC raised concern about the unpredictability of the actual number of applications that governments would have to digest to proceed after the end of the application period. The GAC made clear, that if the number of applications published by ICANN significantly exceeds 500, GAC members might not be able to process a very large number of applications in the very short early warning procedure and in the limited time for issuing GAC advice on all these strings.

Further, the GAC asked ICANN for clarification about its intention to process these applications in batches of 500, in the case that there are more than SOD applications. The GAC urges ICANN to clarify the procedures and implications for applicants being processed in different batches, as this might have implications for competition and applicants' business models.

Following presentations by the ICANN staff and the Security and Stability Advisory Committee, the GAC took note of the SSAC consideration of the combined impact of new gTLDs and other changes such as the introduction of IPv6, DNSSEC and IDNs to the root. The GAC welcomes the confirmation of the commitment by the ICANN Board to provide a full report with a complete analysis, including all underlying data, of the root system scalability well before the opening of the new gTLDs application round. The GAC further welcomes the confirmation of the commitment by the Board to evaluate the impact on the system after the 1st round, with the understanding that the launch of a second round is contingent on the outcome of this evaluation, in particular the absence of negative effects on the root system. The GAC believes that in order for this evaluation to be effective, an appropriate and trustable monitoring system needs to be in place.

In its discussions with the Board regarding the Communication Plan for new gTLDs, the GAC emphasised the importance of promoting the gTLDs application round in all countries, including developing countries. The GAC suggested that levels of awareness be continually assessed and reviewed, and priorities and target areas under the Plan be adjusted accordingly in the run up to the launch of the round.

The GAC welcomed the assurances received from the Board and staff that the evaluation of applications will ensure a level playing field for applicants and that any conflicts of interest will be identified and avoided accordingly.

III. Law Enforcement (LEA) Recommendations

In recent years, the Internet has grown to have over two billion users and be a significant contributor to the global economy.

Cyber-crime is a growing threat to the security and stability of the Internet, with broad and direct public policy impacts. Recent estimates suggest that the direct financial impact of cyber-crime is extremely significant.

Law enforcement agencies have identified a series of specific problems which are limiting their ability to address this growing problem.

As part of this, law enforcement agencies have identified specific areas of concern in the ICANN context, relating to contractual weaknesses and a lack of necessary due diligence.

To address these urgent problems, in 2009 law enforcement agencies made 12 concrete recommendations to reduce the risk of criminal abuse of the domain name system.

These recommendations were informally socialized with the registrar community, the GAC, and with ICANN compliance staff over the course of several months, before the GAC advised the Board in its Brussels communique that it formally endorsed the recommendations.

Direct exchanges between law enforcement agencies and registrars continued in September 2010 in Washington D.C., in February 2011 in Brussels, and during the March and June 2011 ICANN meetings.

As a complement to the June exchanges in Singapore, the GAC urged the Board to support actions necessary to implement those recommendations as a matter of urgency.

To date, none of the recommendations have been implemented, and the risks remain. The GAC therefore advises the ICANN Board to take the necessary steps to ensure that ICANN's multistakeholder process effectively addresses these GAC-endorsed proposals as a matter of extreme urgency.

IV. Accountability and Transparency Review Team Recommendations (ATRT)

The GAC welcomes the update provided by ICANN staff on the ATRT Recommendations progress and the suggestions presented with regards to the implementation of recommendations 9 through 14 on the GAC role, effectiveness and interaction with the Board.

The GAC looks forward to an expedited implementation of the Joint

Working Group and ATRT recommendations and is keen to continue working with the Board on the Recommendations related to the GAC.

V. Conflict of interest

The GAC expresses extreme concern about the inadequacy of the existing rules of ethics and conflict of interest in the light of recent events and therefore welcomes the approval of the motion by the Board Governance Committee on 15 September 2011 concerning "ethics and conflicts of interest". The GAC looks forward to the publication of a timeline with clear and effective actions as a conclusion of the Dakar meeting or shortly thereafter. In order to ensure the legitimacy and sustainability of the multi stakeholder model as enshrined in ICANN, the GAC underlines the extreme urgency of putting in place effective and enforceable rules on conflicts of interest.

The GAC will keep this important issue under review and may come forward with further advice before the Costa Rica GAC meetings.

VI. Meeting with the Generic Names Supporting Organisation (GNSO)

The GAC and the GNSO exchanged views on a number of issues, beginning with an overview by ICANN staff of the GNSO policy development process. Consistent with the recommendations of the Accountability and Transparency Review Team and the related GAC-Board Joint Working Group, the GAC stressed its interest in ensuring that GAC views are provided and taken into account at early stages in the policy development process.

The meeting also discussed the implementation of the Law Enforcement Agency (LEA) recommendations to mitigate Domain Name System abuse, which were endorsed by the GAC in June 2010. The GAC expressed its disappointment that registrars were only able to report on their consideration of three of the twelve LEA Recommendations. Further, the reported progress fell substantially short of what GAC members believed had been achieved during its meetings with registrars in Singapore in June 2011. The GAC also expressed concern that there was no clarity on how the other nine recommendations were being progressed, despite the registrars' agreement at the Singapore meeting to provide regular status

reports. The GAC informed the GNSO Council of its intention to request the ICANN Board to take prompt and concrete action to implement the GAC/LEA recommendations.

The meeting also addressed the GAC's proposal to the GNSO on the protection mechanism for the International Olympic Committee and Red Cross/Red Crescent names at the top and second levels. The GAC requested feedback from the GNSO on the proposal as a first step in collaborating on advice for the ICANN Board in this regard, consistent with the ICANN Board Resolution in Singapore.

The GAC looks forward to further engagement with the GNSO to work more effectively within the ICANN processes and reinforce the sustainability of the multi-stakeholder model.

VII. Meeting with the At-Large Advisory Group (ALAC)

The GAC met with the ALAC to discuss Conflict of Interest issues within the ICANN Board and staff. The GAC agrees that this is a critical matter that needs to be addressed as a high priority within the community.

The GAC and ALAC also discussed the Joint Applicant Support (JAS) Working Group as well as the ALAC and GAC Joint Statement. The GAC expects a decision to be taken for implementation in time for the opening of the first new gTLD round.

In light of the common interest of advancing improvements in the ICANN model, the GAC and ALAC also discussed the ongoing work of the Accountability and Transparency Review Team (ATRT). The GAC shared the areas identified as a priority in the framework of the ATRT and the Joint Working Group recommendations, looking forward to an expedited implementation.

VIII. GAC Operating Principles

The GAC amended Principle 47 of its Operating Principles clarifying its understanding of consensus. The definition now introduced derives from United Nations practice and understands consensus as adopting decisions by general agreement in the absence of formal objections. The GAC noted that according to UN practice individual members may make reservations, declarations, statements of interpretation and/or statements of position regarding a consensus decision, provided such texts do not represent an objection to the consensus [Annex II].

IX. Joint session with the Country Code Names Supporting Organization (ccNSO)

The GAC met with the ccNSO to discuss the progress and ongoing work of the Framework of Interpretation cross-community Working Group (Fol) on delegation and redelegation, and the mechanisms for the GAC to provide feedback and contribute to this work within a timeline that the ccNSO has provided. In addition, the ccNSO shared an update of its current work areas and its organisational structure.

The GAC is eager to further engage with the ccNSO to provide timely

inputs on the different stages of the Fol work.

X. Meeting with the Security and Stability Advisory Committee (SSAC)

The GAC thanks the SSAC for providing an update on its work including blocking and reputation systems, WHOIS matters and single label domain names. Further, the GAC thanks the SSAC Chair for discussions on Root Zone Scaling and Resource Public Key Infrastructure (RPKI).

The GAC looks forward to receiving further updates on DNS blocking matters and other relevant security and stability related matters.

XI. Meeting with the Nominating Committee (NomCom)

The GAC met with the Nominating Committee and discussed the skill-sets needed of an ICANN Director, as outlined in the Accountability and Transparency Review Team (ATRT) recommendations to improve the selection process. The NomCom invited individual GAC members to provide further inputs.

XII. Election of Vice-Chairs

The GAC has reelected the current vice-chairs, Choon-Sai Lim (Singapore), Maria Hall (Sweden) and Alice

Munyua (Kenya) to continue their mandate for another year.

* * *

The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Dakar.

The GAC will meet during the period of the 43rd ICANN meeting in San Jose, Costa Rica.

Annex I

Applicant Guidebook Module 3.1: GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

II. The GAC advises ICANN that there are concerns about a particular application ``dot-example''. The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

III. The GAC advises ICANN that a particular application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing one or more government's approval) that is implemented by the applicant.

Annex II

Operating Principles Article XII Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice,¹ consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

¹ Statements by GAC members related to such advice will be posted on the GAC website.

Senator Klobuchar. Thank you, Mr. Chairman.
Ms. Dyson.

STATEMENT OF ESTHER DYSON, FOUNDING CHAIRMAN OF ICANN, 1998-2000; CURRENTLY AN INDEPENDENT ANGEL INVESTOR

Ms. Dyson. Good morning, Chairman, Senator Klobuchar, Senator Cantwell. I'm Esther Dyson. I'm honored to be here.

I was the founding chairman of ICANN from 1998 to 2000. In fact, the first and only time I testified previously in Congress I was defending ICANN against charges that it was imposing a tax on the Internet. At the time, I believe, those charges weren't true. We were charging sensible, realistic costs to maintain a system that already existed.

At that time, I also believed that adding new TLDs to the domain name system would be a good idea. However, over time and in the face of continuing disappointments with what ICANN did and became, I've changed my mind, and that's why I'm here today.

First of all, ICANN's process of consulting with the public hasn't really worked. I'm the only person here talking on behalf of the real public, not on behalf of large trademark owners, not on behalf of big businesses, not on behalf of governments, not on behalf of nonprofits, but actually on behalf of the users, who I think stand to be extremely confused if there's a proliferation of top-level domain names.

Either marriott.com and marriott.hotel are the same, in which case marriott.hotel is simply redundant; or they're different, in which case it's simply confusing. Then add dot-hotel, and then hotel.marriott, residenceinn.marriott, and so on. Now multiply that by hundreds or thousands of different top-level domains. It will create a profusion of new names for Marriott to protect without creating any additional value, because there remains only one Marriott.

That's why I think this whole idea is fundamentally misguided. It's akin to derivatives, which also create great complexity and new opportunities for transactions and, yes, both derivatives and domain names create opportunities for entrepreneurs. But they don't really create any value for the economy. That's my problem with this. I don't think any particular domain name is evil or should be illegal, but it's a big waste.

Finally, you could ask, what should ICANN do and what will happen if we have a lot of new domain names? I studied economics in college and I didn't learn a whole lot there, to be honest, but I did learn how to think. Fundamentally, economics is about math and common sense. Right now what we have is an artificially restricted scarcity of domain names. We can enlarge the group of domain names, in which case it will be artificial and somewhat enlarged, but the same issues will happen. Or we can say: We really believe in no scarcity at all; let's have as many domain names as anybody wants. And then you don't really need ICANN because there's nothing to protect. Or we can stick with the current situation and perhaps some measured expansion to accommodate non-Latin alphabets and the like.

In the long run, probably people will start looking for everything through the search engines and so domain names won't matter. But with ICANN's current plan, there's going to be a period of great confusion in the meantime. I don't think it makes sense to go through a period of several years where there's a profusion of domain names, a proliferation of the kinds of costs and abuse Angela Williams and Dan Jaffe talked about. It just doesn't make sense.

I understand ICANN is not responsible to Congress. I'm not suggesting that you in this room do much, other than what you are doing here, which is to raise the public's awareness of this issue. And then I hope that ICANN will go back and reconsider and somehow figure out how to actually get real consumers involved and maybe just stick to the international domain names which do make sense and which with luck will be properly regulated, largely by other governments.

But in general, I don't see the point of this program.

Thank you very much.

[The prepared statement of Ms. Dyson follows:]

Prepared Statement of Esther Dyson, Founding Chairman of ICANN, 1998-2000; Currently an Independent Angel Investor

Thank you, Chairman Rockefeller, Ranking Member Hutchison, esteemed Senators, Committee staff and others, for your attention to this important issue. As a private citizen with a variety of affiliations but beholden to no single employer or institution, I am honored to be here today.

My name is Esther Dyson. I assume that I was invited to testify before this Committee primarily because I was the founding chairman of ICANN's board, from its inception in September 1998 until late in 2000. I continued as a member of the ICANN At-Large Advisory Committee for a

year or two after that, and subsequently went on with the rest of my life. I am a casual user of domain names; I have a couple registered that I don't use, and then I have owned and used edventure.com since before my ICANN tenure. As an investor, a board member of non-profit and for-profit companies and as a user of the Internet, I do have a substantial interest in freedom of speech and freedom to innovate.

Other than that, I have no particular business interests in the domain name system, and I paid my own way here today. Moreover, unlike most of the public, I have the private resources, the time and the insider knowledge to come here to give you what I hope you will find to be an informed and useful perspective.

I come as a loving critic to improve ICANN, not to bury it.
Some Brief History

When I joined the board of ICANN back in 1998, the majority of its members had almost no experience with the Internet and attempted to serve the interests of a broad public. At the time, our primary mission was to break the monopoly of Network Solutions (which managed .com among other registries), first by separating the functions of registry (which manages the list of names in a particular top-level domain) and registrar (which resells second-level domain names to the public).

We succeeded in that, and we also managed to launch a few new TLDs, including .biz, .info, .museum and .coop. Of those, only .biz and .info have had much success. Separately, a number of creative people--whose initiative I sincerely applaud--made special-purpose TLDs out of country codes (ccTLDs) such as .tv (Tuvalu), .md (Moldova), .ly (Libya) and most recently .co (Colombia).

At the same time, it's fair to say that .com retained its first-mover advantage as by far the leading TLD. Users instinctively type COMPANYNAME.com into their browsers.

I myself was a big fan of the concept of new TLDs. I believed that it would broaden the market, encourage innovation (as with the repurposed ccTLDs I mentioned above). . .and besides, why should ICANN enforce artificial scarcity?

But I have since changed my mind. Now I would like to explain why, and finally to suggest some paths forward.

Why I Changed My Mind--Confusing to the Public

After my two-year term as chairman of ICANN expired in 2000, I joined the At-Large Advisory Committee. Our mission was to make sure the voice of the ultimate users--not just the sellers, resellers and buyers of domain names--was heard. That turned out to be an almost impossible task. Naturally enough, normal members of the public did not have the time or interest (or funds) to involve themselves in ICANN's business. Despite numerous attempts, we failed to attract more than a few thousand people at best to our various meetings, online conversations, requests for comment and the like. Our online message board was mostly painful to read. When I finally resigned from the ALAC, I too found ICANN too removed from my daily interests to pay much attention to its activities.

Why I Changed My Mind--Lack of Oversight

Our premise for new TLDs was that we would select registry managers who would add value to their TLDs and monitor the behavior of their registrars, who would in turn make sure that the registrants followed whatever requirements the registries imposed. In fact, the business overall has become one of sleazy marketing practices, front-running (where registrars or related parties buy names for their own accounts, competing unfairly with their customers) and a high proportion of spammy domains. Unfortunately, the ease and lack of accountability with which someone can buy a domain name has led to a profusion of spam, phishing and other nefarious sites. There's no reason to think the situation would be any better with the next set of new TLDs; there would simply be more of them.

And as the case of .xxx shows, many of the second-level domain-name purchasers who do have honest intentions will probably be more interested in defensive registrations rather than adding value to the system. (One such case is that of Meetup.com, out of whose office I work and on whose board I sit. Meetup has attempted to register Meetup.xxx, but has been told the name has been reserved on the "premium queue" to be auctioned off to the highest bidder. Even more perversely, Meetup cannot even bid at auction for its own trademarked name unless it somehow becomes registered as a member of the "adult community," which is at odds with the very nature of its business and the very reason it sought to reserve the name. Meetup's only remedy ultimately will be to file an expensive and time-consuming trademark lawsuit.)

Why I Changed My Mind--Misallocation of Resources

Our initial assumption was that new TLDs would be relatively cheap. But ICANN's current plan envisions an expensive application process and expensive registrations.

The amount of money likely to be spent on these new TLDs--both by

new applicants and registrants, and by incumbents protecting their names--is huge, at a time when businesses and consumers are just scraping by. I believe in innovation, but only if it adds value. In this case, most of the new domains would simply add friction.

As with .xxx, where many of the registrants are actually companies who want to make sure their name is not used in .xxx, I predict that many or most of the new registrations will be defensive. Marriott.com, for example, works fine; why do they need marriott.hotels except defensively? (Or why do they need to own .marriott?)

The rationale is that there's a shortage of domain names . . . but actually, there's a shortage of space in people's heads. When you add, for example, .hotel, you are not creating new space; you are carving up the «hotel» space in people's heads into .com and .hotel. So was that Marriott.com or Marriott.hotel? or dyson.com or dyson.hotel? if I decide to rent out my apartment. Consumers will inevitably be confused, and the primary beneficiaries will be Google, trademark lawyers. . . and of course the registries and registrars.

In short, it's as if you owned a field, and you paid a border guard. Now the border guards want you to pay separately for each little chunk in your field; it's still the same field, but now it's carved into ever-smaller pieces. To use my own small field as an example, the field was originally called edventure.com. Now the new chunks could be labeled edventure.angel, edventure.blog, edventure.nyc, edventure.post, edventure.fin . . . and perhaps I'll also be solicited to buy the TLD .edventure so that some educational or editorial group won't get hold of it.

In the end, new domain names are somewhat like derivatives: They add complexity and transactions and lots of rights and obligations without actually creating anything of value.

Context: Innovation Can Happen Without New TLDs

I have heard from people who say that the new TLDs will lead to great innovation. I once thought so too. I had visions of .fin for For example, there are people who want to launch .eco and .green as the foundation of a «green» marketing campaign that would purportedly do untold good for the world at large. But what's wrong with edventure.com/green?

Meanwhile, there is innovation in namespaces, but it comes with overall innovation. One of the best and simplest examples I can think of is twitter, where I am @edyson or <http://twitter.com/#!/edyson>--a fine use of an existing TLD.

Remedies . . .

Of course, my task here does not end with complaining. What should be done? First of all, it is not the role of Congress to tell ICANN what to do. ICANN is accountable to the worldwide public, not to the U.S. Government (except through one limited contract). But it is the role of Congress to shed light on issues of public interest, and to suggest politely that ICANN follow through more fully on its acknowledged obligation to solicit public feedback. As I discovered during my time at ICANN, it's hard to get the public interested in these matters. (In that respect too, domain names are like derivatives.)

As I mentioned, ICANN has indeed followed the process of soliciting public opinion, but I do not believe they have obtained «informed consent,» in the sense that people actually understand the issues.

Much Broader Consultation With the Public

Therefore, although personally I would like to see ICANN simply abandon this program, I have been told again and again that this is not «realistic.» If that is indeed the case, I would recommend that ICANN rapidly re-launch its consultation process with much broader outreach. Perhaps these hearings and the subsequent press coverage will help to inform the broader public and shade ICANN's approach to new TLDs.

Much Stronger Front-End Protection

At the same time, ICANN could offer much broader and easier protection (from similar-sounding TLDs) to existing registrants, akin to what ICANN itself has and what the Red Cross is asking for. Of course, this would obviate much of the interest in the new domain names, but it is a proper obligation for ICANN to undertake, in my opinion.

Conclusion

The current domain name system in some ways is an accident of history. ICANN was created to regulate it, independently of any government and on behalf of the Internet--and world--community as a whole. Just as with fishing rights, communications spectra, taxi medallions and other «commons,» there's a delicate balance between too few and too many domain names, which this new initiative may well upset if it goes forward without more serious study. As the old saying goes: If it ain't broke, don't fix it!

I would welcome any questions.

Senator Klobuchar. Thank you very much.
We'll now turn it over to Chairman Rockefeller.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA

Senator Rockefeller. I went to college and I didn't learn very much either, so don't feel badly about it.

This hearing is interesting because--and I missed the first part and I have to leave after I make a couple of remarks, because I have the worst schedule in the history of the whole week.

[Laughter.]

Economists I think are not entirely in agreement as to whether this is a good thing or a bad thing. So to declare it a bad thing--trying to be a neutral chair as we look at this whole thing--is a point of view, but it's a point of view which I also recognize has some people on the other side of it.

Cybersquatters are an abomination. So are people who abuse children through websites on Facebook and all the rest of it. Lots of abominable people around. But the question is are we going to have hundreds, are we going to have thousands of new names? If you look at dot-com, dot-net, dot-org, and then you sort of go to dot-hotel, dot-baseball, dot whatever it is, how long does that extend out? How much actual difference does that actually make?

I have to be very sensitive to the question of the money that you feel you're going to have to spend to protect yourself against cybersquatters, and I think they're going to be endless. They will go on as long as the Internet goes on. Hopefully they won't blow us up altogether on a worldwide basis, because they can do that, they can shut us down, the Internet can. But that's not the point.

I think we have to get used to dot-hotels, I think we have to get used to dot-auto. I start from that position, but I listen. And I think a surge of new names and addresses can create opportunities. Whether they will or not or whether they will at such a cost-inefficient ratio, I do not yet know. And that's part of what we're discussing today.

If ICANN is determined to move forward, it surely better do so slowly and cautiously, not try to do this in a tranche or two. The potential for fraud, the potential for consumer confusion can lead to fraud without a knowing act, cybersquatting, all of these are massive. Scaling back the initial round of top new-level domains introduced in 2013 may be a prudent approach if that's the way we're going to go.

Companies, nonprofit organizations, and others are rightly concerned that this new landscape will require them to spend money. You have said that. I didn't hear the first three, but karma told me you said that.

So it is my hope that we can phase this expansion over time. If we're going to do it, we should phase it over time, not be regretful after the fact that it was done too hastily. That's the point. If we can make sure that we don't have to look back with regret, then we will have not been too hasty.

You know, that said, there are exciting new possibilities out there. This is intriguing in many ways. Companies and others will be able to place their name. You can get dot-search, dot-banks. I mentioned dot-baseball. I care about that more than I should. And with the current plan, the sky is the limit. That's both the challenge and the threat, from your point of view, and maybe mine.

So as the Senate committee tasked with examining issues related to the Internet, we have to understand what this really will mean for the people you purport to represent, but we all feel that we represent, too, for the millions of Americans who use the Internet on a daily basis and the thousands of businesses and organizations who do exactly the same.

So the matter of unintended consequences strikes me as a very important subject for today. One cannot--if they're unintended, by sort of definition one can assume that they will happen, but one cannot predict absolutely they will happen. An unintended consequence is something which has not yet happened, and it could be a good consequence, it could be a bad consequence, usually bad.

I know ICANN has undergone a very lengthy process on the top-level domain expansion. The decisions will hopefully spur

additional competition and innovation on the Internet. I tend to look upon that as a good thing. However, many in the Internet community--witness what you were saying--don't like the unintended consequences and the manner in which this expansion is being conducted.

So today what we're going to do is discuss those opportunities. It's important to remember that ICANN is nonprofit, and it was established in 1998 at the behest of Department of Commerce. The U.S. Government rightly decided that a private entity representing the interests of the entire Internet community should administer the critical infrastructure of the Internet.

So let us go forward. The multi-stakeholder approach will not work without all of you and without us. We need to have a constructive attitude within ICANN, within NTIA, and the Internet community. So here we are launching on something new. Those who are satisfied with what is the current situation are almost necessarily nervous about a different future. Is it necessary to be nervous about an unknown future when economists cannot agree whether it will be a good thing or a bad thing? I think it's a natural thing, and that's the way you feel and therefore that's what counts. That's what we have to hear.

I remain open to the discussion and grateful to Senator Klobuchar.

Senator Klobuchar. Chairman Rockefeller, in light of time do you want to do your questions now?

Senator Rockefeller. No, thank you.

Senator Klobuchar. OK, very good. And I know Senator Boozman's going to make a few comments here.

STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM ARKANSAS

Senator Boozman. Thank you, Senator. I think, in the interest of time, as the Chairman mentioned there's just so much going on, that I will hold off for now.

Senator Klobuchar. OK, very good. And if my other two colleagues don't mind, I think we'll just get started with the questions, and if there is time remaining before we have to end at ten minutes to twelve o'clock, then we'll do some statements at that time, and there may be.

I'm going to get started here. Mr. Pritz, I have some questions about the funds that ICANN will generate through this proposed program for expanding top-level domains. As I understand it, ICANN is charging \$185,000 for each top-level domain application; is that right?

Mr. Pritz. That's correct.

Senator Klobuchar. OK. And then how many applications do you expect to receive? I've heard there could be hundreds. Is that right?

Mr. Pritz. That's right. That number is a matter of great speculation. When we first started making estimates, the number was thought to be 300 to 500. Over time and as interest is generated, I think the number is greater than that now. But that's sort of rumor. We're kind of---

Senator Klobuchar. You thought it was going to be 3 to 5 and it went up to hundreds?

Mr. Pritz. No. We thought it was going to be 300 to 500. I'm sorry.

Senator Klobuchar. 300 to 500. And now---

Mr. Pritz. Now it's greater than that.

Senator Klobuchar. You think it might be thousands now?

Mr. Pritz. Not thousands, but 500 to 1,000 or maybe slightly over 1,000. And that's based on hearsay. A lot of companies that are planning for this are keeping their plans close to the vest, which makes a lot of sense because it's a business strategy. But I know that a lot of large corporations are developing different strategies for taking advantage of the opportunities, and that other segments that are interested are small communities. There is interest in internationalized domain names, which are names in other languages than English to the right of the dot, which will open up some additional opportunities; and also there is---

Senator Klobuchar. What if more than one entity bids for one of these? Then what are you going to do? Like one hotel chain wants to be dot-hotel and another hotel chain wants to be dot-hotel?

Mr. Pritz. That's a really interesting question. It was the matter of a great amount of work. There's really three steps in

what we call a contention resolution process, if two entities apply for the same name. First, the entities are encouraged to work it out between themselves. So rather than other arenas, we encourage them to get together and try to come to some solution, either by combining their efforts or having some other sort of accommodation.

There's also an accommodation for certain types of TLDs that are labeled community TLDs. So recognizing the value that communities bring to the DNS, the policy is to encourage the development of community-type TLDs. TLD applicants that can establish that they are in fact community TLDs by being weighed against certain criteria will be given a preference. So a community TLD would be awarded the TLD before a non-community TLD. And then finally---

Senator Klobuchar. Are you talking like NYC or something like that?

Mr. Pritz. It could. There's criteria in the guidebook that says you have to be part of a longstanding community, that the name you are applying for is really closely related to the community, that you have the support of the community, that there's not--there's not any contradiction from that community. So it's a set of criteria that are really scored.

Senator Klobuchar. What about Ms. Williams' concerns about nonprofits and how difficult it would be for them to compete in this auction process?

Mr. Pritz. So one answer to that is if YMCA qualifies as a community then they would get a preference.

Senator Klobuchar. But do they still have to pay that much money?

Mr. Pritz. Yes, so the \$185,000 is--well, there's two answers to that question. One is the \$185,000 is a cost-based fee, and we've been public about our calculations for how much it costs to receive a top-level domain. They're not to be awarded lightly. You have to meet financial and technical criteria and show you have the wherewithal to actually operate a registry, which is a piece of Internet infrastructure.

But also, ICANN has a support program that the board just recently approved, that for certain deserving candidates the application fee will be lowered from \$185,000 to \$47,000. But admittedly there's a limited amount of funding for this and we're trying to generate more funding, and that's another avenue.

Senator Klobuchar. So if you have these auctions, it could go above \$185,000 if different companies are vying for this name?

Mr. Pritz. So---

Senator Klobuchar. And then what happens with that money if you end up having a big surplus?

Mr. Pritz. So the answer to the first question is, yes. There's a market theory that funds flow to the most efficient use in the market and so the company that bids the highest in the auction would pay a higher price. But we also recognize that by encouraging the entities to negotiate it's more economical for them to arrive at an accommodation than pay an auction fee.

Second, ICANN's been very public about any fees received from auction will be put into a separate fund and the whole Internet community gets to discuss the use to which those funds are put. So ICANN's a not-for-profit, right, so it's a zero-sum game. So those funds might go to fund Internet security projects or combat cybersquatting or other crime or fund other needy applicants, something like that. Those are the things that have been discussed.

Senator Klobuchar. Last question I have. I'm sure you're aware there's been a lot of discussion over the past few months related to potential conflict of interest at ICANN with the departure of a former chair, not Ms. Dyson. What are you doing to respond to those concerns?

Mr. Pritz. Well, first, again two things--and I usually speak in threes. First, ICANN has a very robust conflicts policy. I sit in board meetings. Board members that are conflicted must make a statement of interest and they're often excused from the room in the instances of many discussions. There's a training class for all board members and officers to go through regarding conflicts of interest. So if you were to read the conflicts of interest policy ICANN has, you would find it to be very robust.

Additionally, the ICANN board recently approved an enhancement to that policy where any board member who votes on

or discusses a potential new gTLD application cannot be hired by that gTLD for a period of 12 months after leaving the board. There's also new rules around declaring interest and being excused from conversations and votes.

So in my opinion we're already at a gold standard, but I was recently hired by the board recognizing the concern over that issue.

Senator Klobuchar. And---

Mr. Pritz. Just--I'm really sorry. I also want to say--I'll talk in threes--that there's no evidence that the former chairman had discussions about future employment before he left ICANN. That's sort of the test, that he was exploring that while he was undertaking this policy discussion.

Senator Klobuchar. OK. Well, I want to turn it over next to Senator Boozman, and then I will go to maybe some follow up with the rest of the witnesses. Thank you.

Senator Boozman. Thank you, Madam Chair. With your permission, I would like to defer to Senator Ayotte.

Senator Klobuchar. OK. Senator Cantwell was actually next and I was trying to defer to you as the Co-Chair.

But do you have a time conflict?

Senator Boozman. No, no. Go to her and then come back.

Senator Klobuchar. OK, all right. Then we'll go to Senator Cantwell and Senator Ayotte.

Senator Boozman. I'm sorry. I was just doing time and time.

STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON

Senator Cantwell. Thank you, Madam Chair, and thank you for holding this important hearing.

I guess my questions are a little bit broader than just the subject at hand, although I certainly appreciate everyone's testimony this morning and the policy issues that are at discussion. But I have a broader question about authentication and integrity, because that to me is the issue that we're dealing with at the broadest level, and the new DNS security system and the implementation of that security system seems to me to be a pretty big priority if we want to continue to protect and identify authentication in ways that will help the Internet continue to be the robust vehicle that it is.

Yet some of our colleagues over on the--over on the--it's not "the other side"--maybe it is from the Commerce perspective--on the Judiciary Committee side are looking at Protect IP. So I wanted to ask, Mr. Jaffe, do you believe that the objectives of Protect IP--or maybe even Ms. Dyson. The problem is is that the objectives of Protect IP are counter to the objectives of the DNS security system. And it seems to me if we're always playing whack-a-mole at trying to find out who's doing what, then if you have more domain names you're going to be playing whack-a-mole even more greatly, and the objective here should be enforcing security and implementation.

Is that right, Ms. Dyson? Do I have that right?

Ms. Dyson. Well, fundamentally, there's a bunch of issues here. One is simply for any particular domain name can you find the person or entity who has the economic interest in it and controls it. If the records are not kept properly--and in many cases they're not, and there's no reason to suspect they'd be kept better and a lot of reasons to suspect they'd be kept worse if the system got enlarged--you can't find that person, whether it's a question of fraud and misrepresentation or IP stuff or pedophiles or whatever.

Whatever your opinions on SOPA, these are just orthogonal issues. The challenge with new domain names is there's probably going to be even laxer oversight, because ICANN's resources are already stretched. You've heard that. And in this case this, we really are talking about a tax on the Internet, a tax to support protections against a whole bunch of so-called attractive nuisances that can be created at will.

We have some domain names because it's valuable to have a registration system for the Internet. But creating a whole new set of redundant names isn't useful and leads to people coming in who are not in fact redundant, but are just stealing brand value, trademarks, and all kinds of other value from the rightful owners.

Mr. Jaffe. Senator Cantwell, if I could also interject. Yesterday, as I mentioned, the chairman of the FTC said that this program would be a disaster both for business and consumers. That's a very much stronger statement than he

usually makes in these areas. One of the reasons that he was so concerned is just because of the subject that we're talking about, which is the whole question of authentication.

I'd like to put a chart up just to show you some of the problems that this causes, because there are some technical issues here that need to be understood, but once understood you get the clear view as to why law enforcement groups are truly deeply concerned.

The papers were handed to the staff earlier; if they could provide them to the Senators so that they can actually see, just in case. This is an eye chart and if you could put that up. Yes.

What happens is there's something called the thicker WHOIS program, and that is to let you know who is lying behind the IP addresses. So somebody may be doing things that are causing harm. This certainly happens to many of the companies that we represent, and they spend millions of dollars now to fight this problem.

But when they go to the thicker WHOIS they often find that the names that are there don't lead you anywhere, and therefore, you cannot really resolve the problem. What I'm showing here is not just a picture of Mickey Mouse and Donald Duck, but those are the actual names that as you dug into the thicker WHOIS, you would find. We don't believe that Donald Duck and Mickey Mouse are the ones who are causing the cybercrimes, the cybersquatting, typo squatting, phishing.

So if you don't know that it's somebody other than Mickey Mouse or Donald Duck, then you can't really solve this problem. Despite the fact that ICANN claims that it is going to be tightening up all of these restrictions, as I mentioned in my testimony, of the 12 specific recommendations of the law enforcement community that were given to them to make sure that the registrars and registries were operating appropriately, only three were being even considered and none of them have been acted on.

This is a really serious issue that is going to multiply enormously. You're talking about an exponential increase. You have a terrible problem right now with 22 domains. There are millions, hundreds of millions, of secondary domains. Once you start going to 300 or 500--now we're hearing that it may go much higher. I don't know whether it's going to be a thousand. But whatever that number is, it is an extraordinary increase. If they can't take care of it under the existing situation, why would anybody be able to think that they would?

This is putting an enormous cost on the business community, on the not-for-profit community, and at a terrible time in our economy, where this money should be better used for jobs. That's why we are saying that there should be a pause, that there is not, there is not a consensus. They are supposed to under the Affirmation of Commitments to have a consensus of agreement. If so many people in the business community feel so strongly, the not-for-profit community feel so strongly, if the FTC and other law enforcement groups all feel so strongly, where is this consensus? Who is it that's calling for this?

There is nothing sacrosanct about this January 12 date. We should not leap out at this time in the economy's situation to take this kind of experiment with no reason to believe--their own economists say that the benefits are speculative. But I can tell you from talking to hundreds of our members, hundreds of our members, that they're saying that there's no value here for them.

So there are billions of dollars that are going to be spent and it's not going to be providing a use for the economy.

Senator Cantwell. Thank you, Mr. Jaffe. I know my time has expired, Mr. Jaffe's time, on that question. But I hope that we do make this issue of authentication and the DNS security the number one priority here, because that is what's really, the integrity of the Internet, we need to continue to protect.

So I do look at it in the lens that you just described.

So thank you, Madam Chair.

Senator Klobuchar. Thank you very much, Senator Cantwell.

STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE

Senator Ayotte. Thank you, Madam Chair.

I want to follow up with what Senator Cantwell asked about, because I think this is a real deep concern. Mr. Pritz, how do you respond to Chairman Leibowitz's comments he made yesterday

that it would be a disaster for the business and consumer. From my background as the Attorney General of our state, I know what a challenge it is for law enforcement to investigate these types of crimes. It really makes me concerned when I hear things like 12 recommendations made by the law enforcement community to address concerns related to the action you're about to take and only 3 were even considered.

So can you please address these deep concerns that we all have?

Mr. Pritz. Certainly, because we share the same concerns and want to launch this program and create an Internet that's safe, stable, and secure. So there's really several answers. I'm going to just start at the last one. There are 12 law enforcement recommendations that they developed in consultation with ICANN-accredited registrars and right now ICANN is renegotiating the contract it has with registrars to adopt as many of those recommendations as possible.

In fact, since I'm in Washington, D.C., I'm going to leave here and this afternoon the ICANN staff is meeting with registrars, and have our third meeting to discuss not only the 12 law enforcement recommendations, but also recommendations from ICANN's policymaking body for improving registrant protections by changing the contract we have with registrars.

So the number of three is sort of incorrect. Our GNSO is considering three of those recommendations, but in fact in a face-to-face bilateral negotiation ICANN is working with registrars to adopt as many as possible.

Senator Ayotte. One thing that leaps out at me is that we are talking about a January rollout and you're negotiating things that are incredibly important when we think about protecting consumers from fraudulent actions. The Internet is a wonderful tool, but also has been used by predators and other bad actors with ill intent.

So when I hear "negotiations ongoing" for something that's a January rollout, I am concerned why are we rushing into this. So how do you respond to that? And then also I would like to hear you respond to Chairman Leibowitz's comments.

Mr. Pritz. And I will. So the negotiations are targeted at delivering a new registrar accreditation agreement by the springtime. I forget when the ICANN meeting is, but I think it's in March or April. So the timetable for delivering a set of amendments for that is then.

I think the job of improving the safety and security of the DNS, the domain name system, never stops. It's ongoing. Part of what's in our testimony is that many new protections for registrants and for Internet users are embedded in the new gTLD process. So there's a series of trademark protection mechanisms that have been developed by--the great thing about ICANN is if you have a hard problem to solve you can get world-class experts to sit around the table.

So for trademark protections, we sat with 18 well-recognized IP attorneys and developed trademark protections. We also developed a set of malicious conduct mitigation measures that each new TLD will be required to adopt. How did we develop them? We get Internet security experts from the anti-phishing working group and other groups called the Registry Internet Security Group, and FIRST is another one.

So we called experts together, and embedded in this process are substantial protections for trademark holders and then measures to mitigate malicious conduct. Some of those measures are the requirement to adopt this DNSSEC that we talked about earlier, stringent criminal background checks, checks to determine if a new gTLD applicant has had a history with UDRP where he's been taken to arbitration over domain name abuse.

There's an elective security program for institutions, such as maybe a dot-bank that wants to provide higher security. There's a strong incentive for registries to provide searchable WHOIS and a requirement to provide a centralized zone access and I say those two things together because that makes it easier for law enforcement to search data bases and hook up criminal activity.

So all these were meant to provide protections and provide new tools for law enforcement. So that was a great big of work. But I agree with you that the work is ongoing, and that's why we've accelerated. We have these recommendations from law enforcement and we're accelerating this negotiation with registrars and want to bring to you and the rest of the Internet community some results on it.

Senator Ayotte. Well, appreciate results on that, except it

seems to me that these are inherently very, very important issues and it doesn't make sense to me that you'd have a January 12 rollout with outstanding issues that are as important as you describe with respect to the negotiations that will impact important protections for consumers and the law enforcement community.

I would just say it is very challenging for a member of law enforcement to investigate these kinds of cases. As I hear your testimony, you're not even sure how many applications you will have at the end of the day when you open this up. So that is really going to be a challenge when you go from 22 to, who knows, a thousand. And it seems to me that that in and of itself is going to be a huge challenge for law enforcement. It seems to me that caution should be used to make sure that we don't rush into this.

So I appreciate you all coming to testify today on this very important issue.

Mr. Pritz. I didn't answer your last question.

Senator Ayotte. Well, my time is up.

Senator Klobuchar. If you want to, that's fine, if you want to answer it.

Mr. Pritz. Sorry. So we take the comments of Mr. Leibowitz very, very seriously. We've received--as we developed this program, we received comments from representatives from other governments along the same line, and have worked very closely with governments to develop the protections that are here, and intend to monitor.

There's an automatic break in the process. It's slowed down after the first round so that we can measure the effectiveness of the trademark protection mechanisms and the sorts of things that Mr. Leibowitz was talking about. Particularly I know he's talking about improving the accuracy of the WHOIS data, and ICANN has a four-pronged approach to that.

So anyway, we take his comments very seriously. We've heard them from others throughout the development of the program and we pledged to him, and want to have further conversations with him, but to everyone, to monitor this program as it goes to make sure that improvement for law enforcement and for everybody is a continual improvement process and not a one-step process.

Senator Klobuchar. Thank you very much, Senator Ayotte.

I think you've heard today, Mr. Pritz, from--and I have some additional questions--from someone, Senator Cantwell, who spent her life working on protecting the Internet, and now you have two prosecutors up here, who focused very much on consumer issues and crimes. I think you've heard some of our concerns.

I know we don't have--Congress may not be able to stop this, but I think that there are some concerns with this process and what's happened here that are worth listening to.

I wanted to follow up, and I also realize that the three of us also have had the experience--I can say I have--where people try to register your own name, as elected officials. Right now, I don't know how much it costs to get those. It costs us something. This is everything to the left of dot-com. If we had to start paying \$185,000 and get in an auction, Senator Ayotte and me, that would be a whole other problem.

So I think you're hearing some of the concerns that you are going to hear from the public. One of these is this defensive registration idea. Companies, universities, and nonprofit organizations, as I've mentioned, have spent a lot of time and money over the last decade on so-called defensive registrations, registering their names in top-level domains that they never have any intention of using, but because they don't want someone who's committing fraud or someone who's trying to use their name in any way to use it.

For example, Indiana University recently said they are buying 11 names. These include hoosiers.xxx, Indiana University, just to give you a few of them.

I'll start with you, Ms. Williams. Ms. Williams, have the YMCA and other nonprofits felt the need to engage in defensive registration?

Ms. Williams. Yes, Senator, we have. And the question is can we really afford it? When you look at cost and capacity, there is just not a connection in how we can defensively maintain the value of our brand. Our brand is everything. There's the issue of public confusion. In fact, one of our large not-for-profits was recently involved in an issue where another organization registered with their same name, received an Internet domain name, and began raising funds under that

large not-for-profit's name. There was public confusion.

Imagine when this new gTLD program goes into effect, how that could really impact us. So there is absolutely some concern.

The YMCA, we did register ymca.xxx to protect ourselves. But we can't afford to continue to keep trying to do this in order to protect our brand. And when I mentioned capacity, when you think that there are over 1.5 million nonprofits in the United States alone and most of those nonprofits are very, very small, do not have the expertise or the intellectual capacity to even address an exponential growth in the Internet, it's just incredible and, quite frankly, scary.

Senator Klobuchar. Mr. Jaffe, have your companies--I know I've heard from a few, so I think they have. But have they felt forced to make defensive registrations like Ms. Williams mentioned in the nonprofit sector, like we have seen in the government sector?

Mr. Jaffe. Absolutely. And this will, as I said before, will be exponentially increased over time. It just never ends, because we're now hearing that this may be a thousand names. Every time there's a new top-level domain, it generates thousands and thousands and thousands, and maybe even hundreds of thousands of secondary domains. There's 22 top-level domains. There are more than 100 million secondary domains. So if you start to multiply this up, just start to imagine what this means, what do you think this is going to mean for consumers?

I would like to at least respond to something that Mr. Pritz said. The whole effort in regard to these legal issues has been going on for years. Chairman Leibowitz had asked for better WHOIS data since 2003. The GAC proposals have been pending for more than 2 years. Nothing has happened. Why do we think that suddenly we are going to get all of these problems resolved?

I'd like to put up, if I could, one more chart that just shows you how defensive domains work.

Mr. Jaffe. I would put up the pictures. I'm sorry that I don't have a picture of the Senators who are here, but you can be assured that you also are honored by those who have----

Senator Klobuchar. I see you have more senior Senators up there, yes. Senator Ayotte and I note that.

[Laughter.]

Mr. Jaffe. You are also honored by this same effort.

Senator Ayotte. I can assure you we've been subject to it.

Mr. Jaffe. There are people who are out there buying names on the hope that you will be in campaigns or otherwise will want to have the ability to buy your name back, just as companies are going to have to buy their name back. That's what we're talking about here. To protect themselves, they're going to have to take the brands that they have spent billions of dollars to develop and then, so that somebody else will not take those from them, they're going to have to register them, they're going to have to pursue across the whole of the Internet, or they're going to have to buy a Top-Level Domain.

I have been told by a number of companies that they absolutely do not want to do this, they see no value in it, but that they may be forced to do it. And when we're talking about billions of dollars here, when we're talking about companies with 3,000 or more brands, even big companies will be facing really large expenses.

So this is a very, very significant economic issue for this country and for the world. And as you can see----

Senator Klobuchar. And that's FrankLautenberg.com waiting to be adopted? They're just suggesting this could be bought by anyone?

Mr. Jaffe. Yes. It exists, but they're offering it for sale to anybody who wants it, and that doesn't have to be Frank Lautenberg. That doesn't have to be Senator Klobuchar, or that doesn't have to be Senator Ayotte.

Senator Klobuchar. I understand that. That didn't look like Frank Lautenberg.

Mr. Jaffe. Whoever has it, if you want it back I'm sure they'll be willing to sell it to you for a very high price.

Senator Klobuchar. Yes.

Mr. Pritz--do you have any other questions, Senator Ayotte?

Senator Ayotte. No, thank you.

Senator Klobuchar. Mr. Pritz, do you want to respond to this cost of defensive registrations, what this could mean if you start opening up the right side of the dot to even more

names, and the multiple names that you may have to buy to defend yourself?

Mr. Pritz. Surely. It's a very, very important issue and it's taken up a lot of time over the last several years. There's--and we've undertaken economic studies and those studies indicate and all the evidence indicates that there's not going to be a dramatic increase in the need for defensive registrations, and I'll try to explain why.

First--again, it's two-pronged. First, there's a set of trademark protections that have been developed by IP experts, all targeted at providing relief for people that have an interest or a property right in a name, making it possible for them to protect their name without a defensive registration. So there is a notice to anybody who tries to register a registered trademark. There is a rapid takedown system that's cheaper and faster than the current UDRP system for taking down trademarks. There's a post-delegation, it's called, post-delegation dispute resolution process, where property owners can go directly after registries, not after the registrants, if the registries are actively involved in cybersquatting or some other crime.

And there's others. So there's a set of trademark protections that, again the beauty of ICANN, developed by experts, to target this problem.

The other part of it, though, really is the architecture of the Internet. Where does this abuse take place? It takes place in the very largest registries, because that's where the abuse pays off. Typo squatting occurs because people type in--people still type in addresses into their browser, and they type in "ymcaboys.com" or "ymcacamp.com," and so those are names registered by typo squatters. But that occurs only in common.

Historically, property owners, property rights owners, have not registered those types of defensive registrations in smaller new TLDs or new TLDs simply because it doesn't pay off.

Senator Klobuchar. OK. I'm just trying to picture this. Maybe if you're a Hilton or Marriott or you're 3M and you get this notice that someone's using your name-dot, you're going to be able to respond. But I'm picturing--my fear on those domain names, when we bought a bunch of them defensively, was that somehow we'd miss them in the post office box. And I'm just trying to picture small businesses or nonprofits that wouldn't get this notice and someone just buys the name for \$185,000.

Ms. Dyson.

Ms. Dyson. So I'd like to tell very briefly the story of meetup.com. We have about 60 employees. We tried to register meetup.xxx for precisely all these reasons. We were told that "meetup" was such an attractive name for dot-xxx that it was on some kind of reserved list, so we can't even register it defensively. We can wait for someone to buy it and then we can file a trademark lawsuit. That to me is not a satisfactory approach, and that's for the existing dot-xxx, not even for the new ones.

Senator Klobuchar. All right. In June of 2010 three economists from Berkeley, Stanford, and the private sector submitted a study to ICANN--we've been talking about studies here--that a slower rollout of Top-Level Domains would help address concerns about this new application window. They said, in their words: "By proceeding with multiple rounds of application, the biggest likely cost, consumer confusion, and trademark protection can be evaluated in the earlier rounds to make more accurate prediction about later rounds."

I think Senator Ayotte was talking about waiting until some of these, at least these law enforcement and other things, resolve. But what about this idea of doing this in rounds or trying as you've expanded? I think my staff told me in the year 2000 and the year 2004 to get to your total of 22--to seem to go up to thousands of names before you have even these agreements worked out--you can understand why you're hearing concerns from these Senators.

Mr. Pritz, what is ICANN's response to the analysis from 2010?

Mr. Pritz. We fully commit to evaluating the effectiveness of trademark protections after an initial round, and in fact have committed to that with our governmental advisory committee.

Senator Klobuchar. What would the initial round be when you're talking about over a thousand now?

Mr. Pritz. No. So the initial round--so the new gTLD introduction is limited by rounds. So we will have--and it's also limited by demand. So an application window will open on

January 12 and it will close on March 12. During that time period we will receive applications for which there is demand.

Then after that we'll process those applications, do studies, and feed that back.

Senator Klobuchar. So you don't have a number limit on it?

Mr. Pritz. That's correct. So we did a round in 2000 and in 2004. The 2000 round was limited by number. We chose 7 out of 200 applications. The round in 2004 was limited by type. They were limited to like a community type of TLD.

Senator Klobuchar. What's this limited by?

Mr. Pritz. In those two rounds, we found that the benefits expected were not realized because those rounds were curtailed. It also put ICANN in the position of being a decisionmaker, making it sort of a beauty contest and ICANN deciding between winners or losers.

So this time we want to allow all TLD applicants who apply that meet very stringent criteria. So our limitation is a very high bar. They have to meet stringent technical and financial criteria to show, like I said before, the wherewithal to run a registry. So it's a significant undertaking. And we've sought, through this big fat applicant guidebook, to educate potential applicants into all the requirements that they have to meet, in addition to the new--in addition to the new protections.

Senator Klobuchar. Do you want to respond to this idea, Mr. Jaffe, Ms. Dyson, Ms. Alexander, about the rounds?

Mr. Jaffe. I would just like to draw the Committee's attention to a letter that was sent last night to the Department of Commerce. It was from the renowned economist Dr. Robert E. Hall, who's the Joint Professor of Economics at Stanford University and Senior Fellow at Stanford's Hoover Institution, and he was the 2010 President of the American Economic Association. He did this in conjunction with Michael A. Flynn, another expert economist.

This is what their conclusion was: "An unlimited expansion of gTLDs would not add anything material to product variety facing Internet users. It would merely create a costly nuisance for those users. ICANN is sponsoring a perversion of the economic analysis that it commissioned by even suggesting that this nuisance has net benefits for the Internet community."

Doctors Hall and Flynn then go on to urge the Secretary of Commerce, "to take action to block the unlimited expansion of gTLDs" unless and until ICANN can demonstrate, "that any such expansion or a limited expansion on a case by case basis would be in the public interest and that the benefits to any expansion would exceed the clear costs that the expansion would impose on the global multi-stakeholder community that ICANN serves."

[The material referred to follows:]

AFE Consulting
Oakland, CA, December 7, 2011

Hon. John Bryson,
Secretary,
U.S. Department of Commerce,
Washington, DC.

Dear Secretary Bryson:

AFE Consulting, at the request of the Association of National Advertisers (ANA), is carrying out an economic analysis of ICANN's announced intention to allow and encourage a virtually unlimited expansion of the Domain Name System (DNS) by adding many hundreds of new generic Top Level Domains (gTLDs) to the 22 already in existence and to continue to expand the number of gTLDs by the thousands in later years. The authors of this letter are professional economists leading the AFE study. We have reached the conclusion that this dramatic alteration in the landscape of the Internet would be contrary to the interests of both consumers and businesses. Our brief biographies are attached at the end of this letter.

ICANN's authority to consider the possible expansion of the number of gTLDs dates back to the November 25, 1998 Joint Memorandum of Understanding between the U.S. Department of Commerce and ICANN. We believe it is critical to keep in mind this foundational document, which, among other provisions, requires ICANN to:

Collaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account . . . potential consumer

benefits/costs associated with establishing a competitive environment for gTLD registries.\1\

\1\ Memorandum of Understanding Between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers, November 25, 1998.

In December 2008, as ICANN proceeded with its plans for the introduction of new gTLDs, the U.S. Department of Commerce wrote to

ICANN's Chairman Peter Dengate Thrush:

[I]t is unclear that the threshold question of whether the potential consumer benefits outweigh the potential costs has been adequately addressed and determined. In that regard, we would like to call to your attention a decision of the ICANN Board on October 18, 2006, that called for an economic study to address [this and related questions] . . . ICANN needs to complete this economic study and the results should be considered by the community before new gTLDs are introduced.\2\

\2\ Letter to Peter Dengate-Thrush from Meredith A. Baker, December 18, 2008.

Following its receipt of that December 2008 letter, ICANN acknowledged that:

[S]everal members of the ICANN community requested that ICANN commission economic studies that would specifically address the possible economic consequences of new gTLDs. . . Accordingly, ICANN retained the services of economist Dennis Carlton, who recently had served as the chief economist to the United States Department of Justice Antitrust Division.\3\

\3\ ICANN, Rationale for Board Decision on Economic Studies Associated with the New gTLD Program, March 21, 2011, at page 3.

Thereafter, in March 2009, Carlton issued a report in which he concluded, generally, that:

ICANN's proposed framework for introducing new TLDs is likely to improve consumer welfare by facilitating entry and creating new competition to the major gTLDs such as .com, .net, and .org. Like other actions that remove artificial restrictions on entry, the likely effect of ICANN's proposal is to increase output, lower price and increase innovation. This conclusion is based on the fundamental principles that competition promotes consumer welfare and restrictions on entry impede competition.\4\

\4\ Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare, March 2009, at pages 2-3, available at <http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf>.

But in his series of reports, Carlton never squarely addressed or analyzed whether or not the potential future benefits of ICANN's gTLD expansion would outweigh the future costs.

To remedy this shortcoming (of which many took notice), ICANN turned to Michael Katz \5\ and Gregory Rosston for additional economic analyses. They submitted a series of three reports in June 2010, December 2010 and February 2011. In their third report--the final economic analysis of the new gTLDs received by ICANN--Katz and Rosston conceded:

\5\ Katz had also served as the chief economist of the Justice Department's Antitrust Division.

[O]ur report does not conclude that benefits will exceed costs for new gTLDs as a whole. . . . The purpose of [our report] is to lay out a structure within which to think about the benefits and costs of new gTLDs.\6\

\6\ Michael L. Katz, Gregory L. Rosston and Theresa Sullivan, Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, February 21, 2011, at page 3 (emphasis added), available at <http://www.icann.org/en/topics/new->

They added:

[Our report] summarized prior studies on issues relevant to the introduction of new gTLDs. The report identified shortcomings of specific studies and concluded that existing studies were incomplete. The central finding was that additional information should be collected.\7\

\7\ Id. at page 4 (emphasis added).

At the end of this series of economic reports that ICANN itself had commissioned, ICANN reported:

Ultimately, ICANN obtained reports from several economists, including some of the world's leading economists who specialize in competition issues. . . [T]he studies made clear that the economists did not anticipate that the costs that might be associated with new gTLDs would outweigh the overall benefits of their introduction, and determined that it was too difficult to predict. . . As a result, ICANN's Board has concluded that there is no economic basis that would justify stopping the New gTLD Program from proceeding and no further economic analysis will prove to be any more informative in that regard than those that have already been conducted.\8\

\8\ ICANN Rationale at page 1.

The Carlton and Katz-Rosston reports reflect almost no actual investigation of the practical effects of the huge expansion of gTLDs that ICANN plans. It is an axiom of competition analysis that any such analysis must rest on a factual background. Moreover, these reports do nothing to demonstrate that general principles that apply in many markets actually apply to the unique nature of gTLDs and the scale of ICANN's planned increase in their number. A new gTLD is not a product in the sense that a new electric car is a product.

Domain names like NYTimes.com are essentially trademarks. They are small fragments of text that consumers associate with the products and services of businesses and organizations on the Internet. By convention, Internet domain names ("trademarks") have two parts separated by a period. On the left is a brief version of a product or business name and on the right is the gTLD (or non-generic TLDs such as country codes that are not at issue today).

From the perspective of the consumer, a second-level domain, such as NYTimes, connected to a given gTLD, such as .com, is essentially the same as NYTimes.info or NYTimes.biz. Competition based on differentiation of only the gTLD is expressly prohibited by trademark law and by the rules of ICANN, which has procedures that can lead to cancellation of such registrations by a non-owner of the left side of a domain name, but only after the owner successfully brings a legal action against the registrant of the infringing domain name. This key, undisputed principle of the Internet--essential to its usefulness to Internet users--refutes the simplistic Carlton claim that adding gTLDs, ipso facto, increases competition, improves product variety and provides more choice to consumers.

As the ICANN economists noted, the gTLDs added by ICANN in the last decade have attracted relatively few registrations, and the overwhelming majority of these merely duplicate second-level domain names already registered under .com. They add little or nothing to the benefits that brand owners and consumer achieve from the Internet. Today, many Internet users find desired websites by running searches on Bing, Google, or other search engines. They don't type in NYTimes.com, they just type in "NYTimes", or "New York Times" or "NY times" or even just "times" (try it--on Google, NYTimes.com is the second search result for a search on "times"). It adds absolutely nothing if the search engine then offers them a choice between NYTimes.com and NYTimes.biz.

An analogy to printed brand names may be useful in explaining why the extreme proliferation of gTLDs is contrary to the interests of Internet users. Under existing trademark law, a registration of a brand name, say "Tide", also protects the name in other type fonts, such as "Tide" and "Tide" and "TIDE" and "Tide". The differences in type fonts are analogous to the gTLD name after the dot in a domain name. They are differentiating markers that do not alter the sense of the brand name and mean almost nothing to the consumer.

The addition of gTLDs is as if a company other than Procter &

Gamble could register "Tide" as a trademark and use it until Procter & Gamble discovered the misuse and filed a legal proceeding against it. Under ICANN's plan to expand the number of gTLDs, Procter & Gamble would either need to preempt such misuse by paying to register "Tide" defensively under these new gTLDs, or it could elect to spend the time and resources needed to detect such registrations after the fact and then incur the expense of dealing with them individually as they are discovered. And even this assumes that it is possible to determine ultimately who the registrant is, something that is not always possible with the Who-Is databases available today.

Of course, it is true, as ICANN has said, that both trademark law and ICANN's procedures for dealing with cybersquatting would be available to domain-name registrants. But the proliferation of gTLDs would raise the monitoring costs of domain-name owners. ICANN has acknowledged that such proliferation would raise costs, but nevertheless maintains--without any quantification of either costs or user benefits--that the benefits would exceed these costs.

In fact, the benefits, as we have demonstrated above, are negligible. The costs are not. Of course, the proliferation of gTLDs will create profit opportunities for companies that offer domain name registration and consulting services as they process defensive registrations under the additional gTLDs. The revenue these companies will derive from either defensive or infringing domain registrations--and the motivation behind these registrations would appear to be a matter of indifference to such companies--is a cost to legitimate domain-name owners.

Our analysis to date shows that an unlimited expansion of gTLDs would not add anything material to the product variety facing Internet users. It would merely create a costly nuisance for those users. ICANN is sponsoring a perversion of the economic analyses that it commissioned by even suggesting that this nuisance has net benefits for the Internet community. We therefore urge you to take action to block the unlimited expansion of gTLDs unless it is satisfactorily and transparently demonstrated that any such expansion--or a limited expansion on a case-by-case basis--would be in the public interest and that the benefits to any expansion would exceed the clear costs that the expansion would impose on the global multi-stakeholder community that ICANN serves.

Respectfully submitted,

Robert E. Hall
Michael A. Flynn

cc: Lawrence E. Strickling, Assistant Secretary for Communications and Information and Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Vernita Harris, Deputy Associate Administrator of the Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce

Suzanne Murray Radell, Senior Policy Advisor, National Telecommunications and Information Administration, U.S. Department of Commerce

Elizabeth Bacon, Telecommunications Policy Specialist, National Telecommunications and Information Administration, U.S. Department of Commerce

Cameron F. Kerry, General Counsel, U.S. Department of Commerce

John D. Rockefeller IV, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate

Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate

Amy Klobuchar, Chair, Subcommittee on Competitiveness, Innovation and Export Promotion, Committee on Commerce, Science and Transportation, U.S. Senate

Daniel K. Inouye, Chairman, Committee on Appropriations, U.S. Senate

Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate

Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate

Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate

Barbara Mikulski, Chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. Senate

Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate

Harold Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives

Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives

Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

Greg Walden, Chairman, Subcommittee on Communications and Technology, and Technology, Committee on Energy and Commerce, U.S. House of Representatives

Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives

Lamar Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives

Norm Dicks, Ranking Member, Committee on Appropriations, U.S. House of Representatives

John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Robert E. Hall

Robert E. Hall is the Robert and Carole McNeil Joint Professor of Economics at Stanford University and Senior Fellow at Stanford's Hoover Institution. He served as President of the American Economic Association for the year 2010, served earlier as the Association's Vice President and Ely Lecturer, and is now a Distinguished Fellow of the Association. He is an elected member of the National Academy of Sciences and Fellow of the American Academy of Arts and Sciences, the Society of Labor Economists, and the Econometric Society, the professional organization of economists specializing in measurement issues. He is Director of the Research Program on Economic Fluctuations and Growth of the National Bureau of Economic Research. He was a member of the National Presidential Advisory Committee on Productivity. For further information about his academic activities, see Stanford.edu/rehall. He received his Ph.D. in economics from MIT and his BA from the University of California, Berkeley.

Professor Hall is co-author of the college textbook Economics: Principles and Applications, now in its fifth edition, and author or co-author of numerous articles in the American Economic Review, the Journal of Political Economy, and other academic journals.

Professor Hall has advised a number of government agencies on

national economic policy, including the Treasury Department, the Federal Reserve Board, and the Justice Department, and has testified on numerous occasions before congressional committees.

Michael A. Flynn

Mr. Flynn is a consulting and testifying expert economist, specializing in antitrust, economic damages, intellectual property and other complex business litigation and consulting engagements. He has extensive case experience in a broad range of industries, markets and products. Mr. Flynn studied in the PhD Program in Economics of the Massachusetts Institute of Technology, Cambridge, Massachusetts, from 1971 to 1974, where he was a National Science Foundation Fellow. He completed his general and field examinations for the PhD degree in 1974. Mr. Flynn was awarded his AB degree from the University of California, Berkeley, where he was the 1971 recipient of the Department of Economics Citation as the Outstanding Graduating Senior.

Mr. Jaffe. I'd like to add just one point. It seems to me incredible that they are suggesting that the failure of their earlier proposals where they did a beauty contest, where they tried to select what they thought were going to be the most economically viable programs, and that they failed, then argues for us blowing open the doors, while we still do not have the protections that we need to fight against some of these cybercrimes, and say that this will then be looked at after we find whatever damage has been caused.

Senator Klobuchar. Ms. Alexander, can the Secretary of Commerce stop ICANN from doing this?

Ms. Alexander. Thank you very much.

Senator Klobuchar. That's what this quote was.

Ms. Alexander. Thank you very much, Senator. I haven't seen the letter if it arrived last night.

I think the role of the Department of Commerce is not to substitute our judgment for ICANN's. We've tried to very actively participate in the process. I think it's important to understand, though, too, while the application window starts in January and closes in April, then there's going to be a processing of the applications. We've read the applicant guidebook and we've mapped out eight or nine different scenarios of the paths an application could take.

An application with no problems and no objections will still take 9 months to process. So the earliest any new TLD will actually be operational on the root will be January of 2013.

Senator Klobuchar. Yes, but you're having people put in \$185,000 and at least spend all this money on applications. Are you implying like we'd stop in the middle, that you'd stop in the middle?

Ms. Williams. I think there's going to be--there's going to be a natural evolutionary, slow introduction of them anyway. And while ICANN has committed to do a review of their program with the GAC, they're also required under agreement with the Department of Commerce to do a review of the entire program a year after the first TLD's in the root. So there will be this process where we can have checks and balances to make sure.

We obviously take very seriously the concerns expressed by Mr. Jaffe and others.

Senator Klobuchar. Also, the other thing we've heard is the FTC Chairman and others as well. So I'm just trying to figure out if this gets started, I'm not sure you're going to be able to stop it in the middle. Maybe you can.

Ms. Williams. Mr. Leibowitz's comments yesterday are very consistent with the comments we've been raising inside the GAC. In fact, Mr. Leibowitz's staff is very much involved with us in the process. That's in fact why many of the changes were made to the ICANN program.

I think what we're looking at really is effective implementation and monitoring of this effort, and we think it's wholly appropriate for Mr. Leibowitz going forward to make sure that ICANN lives up to these things to protect consumers. For our part, that's what we'll be doing, working with consumers and law enforcement to make that happen.

Senator Klobuchar. My original question, though, was about this, this way of rolling it out slowly. Ms. Dyson, did you want to answer that?

Ms. Dyson. Sure. As the founding chairman of this organization, I'm extremely disappointed in its inability to do what we set out to do, which was to have a clean and open and transparent market for a limited, valid set of domain names. The slow-rolling expansion, as Mr. Jaffe just said, showed it

wasn't working, and I don't think it's going to work better whether we do it fast or slow.

The problem is, you've heard Mr. Pritz describe all these elegant processes and all these policies, but they haven't resulted in a clean and open market and I don't see why anything different is going to happen if we have more such TLDs.

And I want to address one other issue, which is the talk about innovation, that we need more domain names to innovate. I'm in the venture capital community. There's huge amounts of innovation. There are new name spaces. Twitter.com has a new name space. Federal Express has a name space of packages IDs. Amazon has a name space for books. You don't need to pervert the domain name system, which is an artificially scarce resource controlled by ICANN, in order to innovate elsewhere. People like Twitter and Amazon earn those rights through value creation. This is what I like to see: real innovation, where you don't buy a name for \$200,000 and then spend a few millions defending it, where you actually create something new. And for that you don't need a new TLD.

Senator Klobuchar. Mr. Pritz, obviously a lot of people, we're on the Commerce Committee, we like innovation. But I'm just trying to figure out. Clearly, there are many that are concerned in the nonprofit community about the cost of this, as Ms. Williams has articulated. And we've also heard from businesses that are concerned. Who's really pushing for this? Is there division in the nonprofit community? Is there division in the business community? Is it people who are focused on a free and open Internet, which we all are up here?

I just want to--I want to understand the motivation. Who are the groups pushing for this?

Mr. Pritz. A point I wanted to make at the end and I missed making earlier is, in our testimony when we talk about a consensus-based process and that there's a consensus for launching this program in this manner, those consensus opinions are hard-fought and hard-won. ICANN is a very noisy environment and it's all those groups you mentioned--IT attorneys, corporations, not-for-profits, noncommercial----

Senator Klobuchar. They have said they want to expand to over a thousand? I'm just trying to understand how we got where we are, because obviously Congress, for a change, didn't get us exactly here. And I want to know how we got where we are and who's been pushing it, because it didn't come through the political process so I'm somewhat naive about how you got where you are.

Mr. Pritz. So it came through the ICANN political process.

Senator Klobuchar. Yes.

Mr. Pritz. But that policymaking body, it's a bottom-up policymaking process. That policymaking body has representatives that are appointed by all those stakeholder groups or constituency groups. I could list them: IP, business, noncommercial, not-for-profit, Internet service providers, registries and registrars. Each one of those stakeholder groups appoint representatives to those policymaking bodies, where in this particular instance they undertook this formal bylaw-regulated policymaking process, and over a period of 19 months developed, ironically, 19 policy recommendations.

The most highly debated one was the answer to the first question: Should there be new TLDs and, if so, how should they be restricted? What you see in front of you is the opinion to restrict them by rounds, set a high bar, make sure they have the wherewithal. Those policymakers have discussions at ICANN meetings and in teleconferences that occur once a month, and then they go back to their constituency groups and meet with them and bring back opinions.

You know, many of the corporations that we're talking about today, they're also represented in those policymaking bodies and took part in this.

Senator Klobuchar. And how about the non-profits and groups that are very focused on a free and open Internet?

Mr. Pritz. The not-for-profit constituency group that we're really pleased to have and have some of the most dynamic people in ICANN is new, but the noncommercial constituency is very much for an open Internet and for the introduction of new gTLDs. In fact, the sole dissenting voice in the final consensus opinion was from the noncommercial that said it's not open enough, we're being too restrictive with our limitations and protection of rights of others.

So really it was a broad-based, hard-fought battle, if you

can imagine, by a very noisy group of stakeholders that are-- anybody can come to the microphone at an ICANN meeting and talk directly to the Chair, and the Chair sits there and responds in a dignified way.

Senator Klobuchar. I think sometimes what happens, just from judging what happens around here, everyone works on it in a room, people do come, and then all of a sudden they get the final product and then everyone steps back and looks at it a little bit. That's probably what you're hearing today from the Senators up here, who have been really exposed to this outcome for the first time, and what you'll probably hear in the weeks to come from some of the groups, is my prediction, and the public, and I think there's going to be an additional hearing as well.

So I just hope, given that I think there's issues about what the Congress or anyone could do about your group, which has been set up to do this to begin with, but I'm hopeful that you will listen to these concerns as we move forward. Will you? Will you listen to the concerns as we go forward?

Mr. Pritz. I certainly will. And I want to tell you how passionate everyone is at ICANN, and when I talk about ICANN it's the big ICANN with all its stakeholders, are concerned about this issue and have worked very hard on it.

Senator Klobuchar. OK.

Ms. Williams.

Ms. Williams. Senator, I just wanted to point out that, ICANN's credit, they did recognize that the not-for-profit arena's voice had not been heard. But we weren't officially recognized until June of this year. June of this year, the train had already left the station, and there are several iterations of the applicant guide and we weren't allowed to be able to contribute to having the not-for-profit world recognized, the issues around cost, the issues around defensive registrations.

In fact, if you take a look at what ICANN has put forward in terms of being able to protect one's brand, there are still--it's still fuzzy. There are still some incredible gaps. There are still opportunities for cybersquatters to come in that have the funds to be able to take the venerable names of not-for-profits, and we will be stuck.

For example, if--there is a rapid takedown process that ICANN has discussed. If someone comes in and takes a dot-ymca something, that can be taken down and then it sits dormant. But then it goes back out into the public for purchase again by another cybersquatter. So it doesn't even allow nonprofits to reserve their name and not have someone come in and take it.

I can't tell you what the specific answer is, but there has to be something done on behalf of our sector to protect us. We do not have the funds to be able to do this.

Senator Klobuchar. OK. I'm going to--OK, the last two comments here briefly and then we're going to conclude.

Ms. Dyson. Just finally, in all this process the end-users, the billions of people, not the thousands and millions of companies, but the billions of end-users who stand to gain nothing from being confused, haven't been heard.

Senator Klobuchar. Thank you. I think that's the beginning of this process.

Mr. Pritz. Right.

Senator Klobuchar. All right.

Mr. Pritz. What is required of ICANN under its affirmation of commitments is a consensus. What you're hearing here is that a very, very broad representation of the business community and the international business community is concerned. You've just heard that the not-for-profits are concerned. They have stated that they have talked to all sorts of groups. I'd just like to quote one more thing into the record to show that this is--and it is short, Senator, I understand the time circumstance--but to show that there is is not the consensus, there is no consensus behind this proposal, which is a radical proposal.

This is from the IRT, which deals with the trademark issues, and they were asked to look into this issue, which was a good thing. But they wanted to make very clear with the report: "Was it because we support the concept of the expansion of the gTLD space unreservedly? Hardly. The views of the IRT reflect the views of business and trademark interests in general. A sizable number"--let me emphasize that--"A sizable number of our team would have preferred status quo, with no new gTLDs, until better rights protection mechanisms are in place for the existing gTLDs. Others favored the

measured"--what you were talking about--"measured introduction of sponsored or community-based gTLDs."

And then they said: "Some support the current expansion, seeing the advantages for commerce and the consumer for open competition and innovation."

That is not consensus. ICANN then decides among all these different groups who have different views who wins, and guess who always wins? It is always the group that wants expansion. That is what drives the whole system. That's what the registrars and registries get almost all of their money from. That's where almost all the money for ICANN comes from.

So we think there's a very strong bias to always expand and always say the consensus is here. We don't see any consensus of the community.

Thank you very much.

Senator Klobuchar. All right. Well, this has been an incredibly good discussion. I want to thank you all for being here. I have to say, I raised this issue this morning with my attendees at my Minnesota breakfast that we have every Thursday. I thought I'd get something of a yawn, but actually some of them showed up at the hearing, and then also a number of them came up to me and asked questions, making me think that the public actually would be interested in this issue, and I think it's something that they understand.

We all know that the Internet is one of the great American success stories. Its beginnings can be traced to a program at the U.S. Department of Defense. In only a few short decades the network of networks has expanded in leaps and bounds, reaching people around the globe. The Internet has transformed not only how we communicate with friends and family, but also the way companies do business, how consumers buy goods and services, how we educate our children. It's a powerful engine for economic growth and a great democratic tool that citizens everywhere are using to empower their communities.

And I believe the job of ICANN and the job of the administration, the job of this Congress, is to make sure that we protect that Internet so it can be used by all.

So I want to thank you so much. We look forward to working with you. We may have some follow up questions in writing to follow up on some of the answers that we got today, so we will leave the record open for a week. Thank you.

This hearing is adjourned.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

A P P E N D I X

Response to Written Questions Submitted by Hon. Maria Cantwell to
Fiona Alexander

Question 1. Ms. Alexander, one of the purposes for DNSSEC is to ensure that the recipient can validate that the data from any domain name comes from the owner of that name and that it arrived at its destination unchanged from end-to-end. The recipient should be assured he or she is going to Internet site they are seeking to go to and not being re-directed to another site.

There is legislation reported out of the Judiciary Committee called the PROTECT IP Act that requires the use of filtering to re-direct end users who want to reach blacklisted Internet sites that are "dedicated to infringing activity" to a site that includes a statement by Department of Justice that the site was determined to be dedicated to infringing activity plus pointers to some to be determined information and resources.

Does the Administration have a position on whether it believes that the re-direction required under the PROTECT IP Act as reported by the Senate Judiciary Committee is incompatible with how DNS SEC is currently designed to authenticate domain names?

Answer. The Administration believes that online piracy by foreign websites is a serious problem that requires a serious legislative response, but will not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet. Legislation must avoid creating new cybersecurity risks or disrupting the underlying architecture of the Internet. In addition, proposed laws must not tamper with the technical architecture of the Internet through manipulation of the Domain Name System (DNS), a foundation of Internet security. The Administration's analysis of the DNS filtering provisions in some proposed legislation suggests that they pose a real risk to cybersecurity and yet leave contraband goods and services accessible online. Legislation must avoid driving users to dangerous, unreliable DNS servers and puts next-generation security policies, such as the deployment of DNSSEC, at risk.

Question 2. Given that many of the expected hundred of new domains created will be owned and operated by non-domestic entities, does the Administration believe that PROTECT IP Act as reported by the Senate Judiciary Committee will be effective in stopping non-domestic Internet sites dedicated to infringing activities?

Answer. Please see response to Question 1.

Question 3. Does the Administration have a position on whether it believes that PROTECT IP as reported by the Senate Judiciary Committee will strengthen, weaken, or have no change on efforts to make the DNS more secure for consumers and business?

Answer. Please see response to Question 1.

Question 4. What is the status of DNS SEC implementation for the Federal government?

Answer. The Department of Commerce's long-running effort to support the deployment of DNSSEC has included NTIA's work with ICANN and VeriSign in signing the authoritative root zone file which has facilitated broader DNSSEC deployment. The Federal Information Security Management Act (FISMA) guidelines require all Federal agencies to deploy DNSSEC. The Department of Commerce's National Institute of Standards and Technology (NIST) and the Department of Homeland Security (DHS) regularly measure DNSSEC deployment within the Executive Branch of the Federal government and their compliance with FISMA. According to their data, 35 agencies have fully implemented DNSSEC and 23 agencies have partially implemented. Fifty-one agencies are not yet compliant. The Department is currently 78 percent compliant with FISMA requirements and is working towards full compliance.

Response to Written Questions Submitted by Hon. Olympia J. Snowe to
Fiona Alexander

United Nations Model

Question 1. There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the U.S.' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," to which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state." ¹ Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU)." ²

¹ http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html.

² <http://premier.gov.ru/eng/events/news/15601/>.

The other proposal by India, Brazil, and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. NTIA recognizes that the new gTLD program is the product of a six-year, international multistakeholder process and has no intention of interfering with the decisions and compromises reached during that process. Doing so would provide ammunition to those governments seeking to exert top-down, government-led control over the Internet, which NTIA believes is inimical to the future growth of the Internet.

Question 2. If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

Answer. It is NTIA's view that the Internet we enjoy today--a major

engine of economic growth and innovation--did not develop by happenstance. It emerged as the result of the hard work of multistakeholder organizations such as the Internet Society, the Internet Engineering Task Force, and the World Wide Web Consortium. The United States is opposed to establishing a governance structure for the Internet that would be managed and controlled by nation-states. Such a structure could lead to the imposition of heavy-handed and economically misguided regulation and the loss of flexibility the current system allows today, all of which would jeopardize the growth, innovation and freedom of expression on the Internet we have enjoyed these past years.

Growth of the Internet and Expansion of the Domain Name System

Question 3. The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wall-mart. Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

If the Internet is going to continue to grow, shouldn't the domain name system?

Answer. The goal to establish new gTLDs beyond the original seven (.com, .edu, .gov, .int, .mil, .net, and .org) began over a decade ago when ICANN was charged in 1998 by the Department of Commerce with promoting competition in the registration of domain names. The current round of expansion of the gTLD space is a continuation of that effort.

White Paper

Question 4. In the "White Paper," which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition--that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper^{\3\} on the issue of new generic top level domains showed "very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." Also, commenters noted that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution."

^{\3\} <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

Isn't the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. As NTIA noted in our testimony, the development and deployment of the new gTLD program is consistent with ICANN's agreement to promote competition in the gTLD environment as outlined in the Affirmation of Commitments. In addition, the current round of expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other things. We expect this type of change to the DNS to enhance consumer trust and choice, and reinforce the global nature of the Internet. It is also expected that a portion of applications will be either generic words or brand-focused as part of business development, investment, and startup plans.

Some companies, however, have expressed concern that ICANN's process for expanding gTLDs may lead to the filing of defensive registrations. On December 21, 2011, Administrator Strickling and other Department of Commerce leadership met with various stakeholders to hear these concerns and, on January 3, 2012, Administrator Strickling sent a letter to ICANN's Chairman of the Board, Stephen Crocker, raising this and other issues. NTIA will continue to monitor stakeholder concerns and raise issues as appropriate. A copy of his letter is attached.

Question 5. Several commenters also stated "the market will decide which TLDs succeed and which do not." What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. NTIA agrees that the market will be a key determinant in

the success of new gTLDs and continues to be an active participant in the multistakeholder process related to the gTLD program.

Question 6. If commenters are correct that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution" then why should we place "artificial or arbitrary" limits on the Internet?

Answer. In NTIA's recent discussions with stakeholders, it has become clear that many organizations, particularly trademark owners, believe they need to file defensive applications at the top level. It appears that this possibility might not have been fully appreciated during the multistakeholder process on the belief that the cost and difficulty of operating a top-level registry would constrain companies from filing defensive registrations. NTIA believes that it would not be healthy for the expansion program if a large number of companies file defensive top-level applications when they have no interest in operating a registry. Accordingly, NTIA suggested in a January 3, 2012, letter to ICANN that it consider taking measures to mitigate against this possibility.

In addition, NTIA's letter cited an immediate need to improve communication with stakeholders and potential new gTLD applicants prior to the launch of the program. NTIA also advocated that following the application period, ICANN use the data that will then be available to examine the potential scope of the program and consider if there is a need for a phased implementation of new gTLDs. Using that data, ICANN can also explore the possibility of implementing additional protections by new TLD operators at the second-level. In addition to addressing these program-specific concerns, NTIA also reiterated the importance of implementing a stronger registrar accreditation agreement; improving current WHOIS policy; and dedicating resources to fully staff and equip the contract compliance department, including creating a centralized and automated complaint process. A copy of the January 3, 2012, letter to ICANN is enclosed.

ICANN has now taken steps to enhance its outreach in the United States, including holding an information session on January 11, 2012, in Washington, D.C. In addition, NTIA was encouraged by ICANN's January 11, 2012, written response in which ICANN commits to review possible improvements to the program, specifically to deal with the perceived need for defensive registrations at the top-level, as well as to complete a series of work streams that will facilitate more effective tools for law enforcement and consumer protection. As is necessary in a multistakeholder process, all of these efforts will require active engagement by all parties prior to adoption.

Expansion of Internet Addresses

Question 7. The Internet has revolutionized some many different areas of society and the economy. The innovation, adoption, and sheer size of the Internet are simply unparalleled. The Internet currently comprises of approximately 2 billion users and more than five billion devices. Cisco estimates there will be more than 50 billion Internet connected devices by 2020.

However, we have for the most part exhausted the existing pool of Internet address--IPv4 provides for approximately 4.3 billion addresses. The shortage has been the driving factor in creating and adopting several new technologies as well as new and larger addressing system, known as IP version 6. This migration from a 32-bit addressing space to a 128-bit addressing, will provide 340 trillion, trillion, trillion separate addresses--enough for every human bring to use many trillions of address. With IPv6, there will be approximately 670,000 IP addresses for every squared nanometer of the earth's service. To put that into perspective, a human hair is 100,000 nanometers wide.

However, the implementation of IPv6 has been somewhat slow. Last year, I read only about 20 percent of the Internet was IPv6 compatible and while a recent survey shows adoption of IPv6 grew by 1,900 percent over the past 12 months that results in only about 25 percent of .com, .net, and .org Internet subdomains.

What is the status of the migration to IPv6 and what will it mean for Internet users and businesses, domestic and globally?

Answer. Stakeholders are in varying stages of IPv6 deployment depending on individual budgets, technological coordination, and management. The Office of Management and Budget (OMB) has established IPv6 transition deadlines for U.S. agencies, and the National Institute for Standards and Technology (NIST) has begun tracking Federal agency deployment. A set of industry-wide metrics related to IPv6 deployment is lacking, however. This is one of the topics NTIA plans to address in a multistakeholder workshop planned for the first quarter of 2012. For Internet users, IPv6 will enable innovative new technologies and allow the Internet to continue to grow and expand. IPv6 is increasingly being integrated into equipment and services. There are some computer operating systems that already include IPv6 and use IPv6 automatically

if it is available. Applications will follow as demand increases. For domestic businesses, operational costs (e.g., staff training, administrative costs) may constitute additional costs outside of normal equipment refresh cycles.

Question 8. Is there anything governments can do to encourage faster adoption of IPv6 as well as increase awareness to businesses and citizens about the migration?

Answer. Government can continue to increase awareness about the need to adopt IPv6 by convening public workshops and conducting outreach. Government as a user can ensure that IPv6 is integrated and deployed in its own networks through better coordination of its acquisition and procurement activities across management, legal, policy, and technical teams.

Response to Written Questions Submitted by Hon. Barbara Boxer to Kurt Pritz

Question 1. Intellectual property rights holders have expressed some concerns about the possibility of ICANN granting generic top-level domain names (gTLDs) that could lead to consumer confusion, or violations of trademark or other intellectual property rights. Could you describe, in detail, the pre-grant procedures by which ICANN will act to prevent gTLDs that could cause consumer confusion and/or violation of intellectual property rights?

Answer. The New gTLD Program contains a suite of new, mandatory intellectual property rights protection mechanisms, both at the first level (for the top-level domains, or names to the right of the dot such as .org) and at the second level (second-level domains, like icann.org). The first level protections mitigate against applications for and the approval of new TLDs that may infringe on the legal rights of others or cause consumer confusion.

First, there is a high bar to participation in the Program. The \$185,000 evaluation fee itself is a bar to potential wrongdoing at the top-level.¹ In today's environment, second-level domain names are available for \$10. Wrongdoers easily leave them behind when the site is exposed. The higher evaluation fee for top-level names in itself will discourage abuse.

¹ The fee was calculated based on a cost recovery model but the amount has the side benefit of deterring frivolous or malicious applications.

Second, the stringent reviews include measures specifically targeted to identify--and reject--applicants that are bad actors or have already demonstrated a history of cybersquatting. ICANN requires background reviews of TLD applicants, including reviews for criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others). In addition, ICANN will reject applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or with reckless disregard to their obligations under cybersquatting legislation.

Third, the Program offers public review of the applied-for strings and the opportunity to state an objection to any string. After the April 12, 2012 close of the application window, ICANN will publish a list of all applied-for gTLDs. (That publication will occur around May 1, 2012.) At that time, entities, individuals and governments can review the list of strings and consider if they wish to object to any individual application. In addition, the New gTLD Program allows ICANN's Governmental Advisory Committee, comprised of representatives of over 120 governments, to inform ICANN that there are concerns with an application--concerns that may include issues of consumer confusion or harm. If the Governmental Advisory Committee provides consensus advice to the Board not to approve an application, that advice creates a presumption in favor of denying the application.

There are four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider. Types of objections that can be lodged are:

String Confusion Objection--The applied-for gTLD string is confusingly similar to an existing TLD or to another applied for gTLD string in the same round of applications.

Legal Rights Objection--The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection--The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection--There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

To avoid frivolous objections, parties must have standing to object. For example, legal rights objectors must be the right holder or intergovernmental organization whose rights are being infringed.

Objections lead to independent dispute resolution proceedings. Parties are the objector and the gTLD applicant.

The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.

The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

Standards of review for each of the objections have been carefully crafted through reviews by intellectual property holders and the Internet community. For example, in the case of rights infringement objections, "Strings" must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. A Dispute Resolution Service Provider panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

For a complete description of the standards and rules for the objection and dispute resolution processes, see Module 3 of the Applicant Guidebook, <http://newgtlds.icann.org/en/applicants/agg/objection-procedures-11jan12-en.pdf>.

In addition, there will be a specialized function, an "Independent Objector" that will act solely in the best interest of the public, and may file an objection to an application that may give rise to the concerns raised above.

As noted at the Subcommittee hearing, some trademark holders continue to voice concern that the New gTLD Program does not offer sufficient protections to reduce the need to submit defensive applications for top-level domains. Detailed discussions with intellectual property experts that participate actively in ICANN policy development indicate that those experts who are knowledgeable of the TLD marketplace are most comfortable with protections for top-level names. In regards to the perceived need for defensive registrations at the top-level by trademark holders, ICANN has already committed to solicit information as expeditiously as possible from the intellectual property community. This commitment, set out in a January 11, 2012 letter to Assistant Secretary for Communications and Information, Lawrence Strickling, also committed ICANN to submit any new proposals or recommendations arising out of that work for evaluation and comment from the ICANN stakeholder community.

Question 2. It is my understanding that in previous expansions of domain names, ICANN has allowed a "sunrise" period, prior to considering applications, in order to allow rights holders to submit information regarding their protected names and uses. The "sunrise" submissions by rights holders could act as a resource for ICANN to help prevent consumer confusion and/or intellectual property rights violations. Does ICANN plan to allow "sunrise" submissions by rights holders, and if not, why?

Answer. Yes, a "sunrise" period is mandated for each new TLD approved under the New gTLD Program.

ICANN is in the process of selecting providers for a Trademark Clearinghouse, a central repository for information to be authenticated, stored, and disseminated pertaining to the rights of trademark holders. Trademark holders will have the opportunity to record (i) Nationally or multi-nationally registered word marks from all jurisdictions; (ii) Any word mark that has been validated through a court of law or other judicial proceeding; (iii) Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion; and (iv) other marks that constitute intellectual property, all subject to the specific criteria of the Clearinghouse.

The authenticated rights data in the Trademark Clearinghouse will be used to support pre-launch Sunrise and Trademark Claims services. All new gTLD registries will be required to use the Trademark Clearinghouse to support the required pre-launch and initial launch period rights protection mechanisms that must include, at minimum, a Trademark Claims service and a Sunrise process.

The Trademark Clearinghouse is expected to create efficiencies and for trademark holders. Instead of requiring trademark holders to authenticate mark information for each separate new registry, the authentication and validation processes can be completed once through submission to the Trademark Clearinghouse.

Through the Sunrise process, trademark holders will have the opportunity to register desired second-level domain names before a new gTLD opens for general registration. Rights holders who have recorded their data in the Trademark Clearinghouse will receive notice if a third party registers a domain name matching the Clearinghouse record during the sunrise period.

After the gTLD is accepting general registrations, ICANN requires that each new TLD offer a Trademark Claims service to provide real-time notices to prospective registrants where a domain name matches a Clearinghouse record, and provide notice to trademark holders in cases where domain names matching a Clearinghouse record are registered. Information on the additional intellectual property protections required under the New gTLD Program is detailed in my written

testimony.\2\

\2\ A summary of the trademark protections is available at <http://www.icann.org/en/topics/new-gtlds/rights-holders-with-insert-02sep11-en.pdf> and <http://www.icann.org/en/topics/new-gtlds/trademark-factsheet-insert-02sep11-en.pdf>.

Response to Written Questions Submitted by Hon. Maria Cantwell to
Kurt Pritz

DNS Security

Question 1. Mr. Pritz, my understanding is that all of the new domains that will be selected by ICANN must agree to use the Domain Name System Security Extensions, known as DNS SEC. DNS SEC uses public key cryptographic digital signatures to authenticate the origin of the DNS data and assure the integrity of the DNS data.

Currently, are DNS servers and DNS server software targeted for attack by hackers?

Why is DNS SEC important to any broader global cyber-security effort?

Does DNS SEC allow for any re-direction in its current implementation? Could it be made to? What would be some of the potential security vulnerabilities if DNS SEC were to allow any redirection?

What is the status of DNS SEC implementation with respect to existing domains? Is it realistic to expect that the new domains will be compliant right from the start?

Answer. Today, DNS servers and server software are targeted for attack by hackers. There are recent examples of incidents in which hackers were able to impersonate DNS server responses, or feed false data to the servers, ultimately redirecting end users to rogue sites to install malware. For example, the "DNS Charger" case--recently the subject of an indictment in the Southern District of New York, infected over 4 million computers worldwide through this type of attack.

Coordinated deployment of DNSSEC is important in many respects. First, it will protect against attacks on DNS servers and software. Possibly even more important, however, the borderless nature of DNSSEC deployment has--for the first time--created a global, cross-organizational, trans-national platform for authentication, cyber security innovation and international cooperation. This will make DNSSEC a critical tool in combating the global nature of cyber crime.

DNSSEC does not allow for re-direction in its current implementation. Re-direction requires a change to the original record by a third party. With DNSSEC, any changes to the original record from the domain name owner's servers will be detected and flagged as an error or dropped. The validation occurs on the end user's machine to provide true end-to-end security.

Any change to DNSSEC to allow for re-direction would defeat its purpose. The purpose of DNSSEC is to use digital signatures to ensure records do not get changed "in flight." An alternative could be to put full trust in your Internet service provider (ISP) to perform the validation and enter manual re-direction entries, however this appears to be an inadequate level of security. For example, in late 2011, an attack on servers at multiple Brazilian ISPs caused redirection to malware-infected sites before connecting the ISP's customers to popular Internet sites. \3\ This affected millions of users, and demonstrates that leaving validation to the ISP level is insufficient to protect against attacks.

\3\ See e.g., "Hackers poison Brazilian ISP DNS to infect users with banking Trojan," TECHWORLD, Nov. 9, 2011 at <http://news.techworld.com/security/3317148/hackers-poison-brazilian-isp-dns-to-infect-users-with-banking-trojan/>.

If DNSSEC were to allow re-direction or filtering, that would make the system again vulnerable to insider attacks. In addition, re-direction could lead to poor performance due to the processing of large re-direction lookup tables for the billions of DNS queries that happen each day, as well as undesired responses. Re-direction could result--with one click--permanently leading the end user to use alternate, unfiltered and insecure non-DNSSEC validating servers.

DNSSEC adoption is growing. Today, 82 top-level domain name registries (covering 82 percent of existing domain names), including

.COM and .ORG, have DNSSEC deployed. The new gTLD Program requires that all new registries deploy DNSSEC. In the United States, Comcast has begun rolling out DNSSEC to all 17.8 million of its Internet customers [4], and internationally, we've seen adoption by network carriers such as Vodafone and Telefonica. It is realistic that new TLDs will be compliant from their introduction, as required in the Program. It is not a difficult requirement to meet, and current products, including hardware have DNSSEC support built in. ICANN and other organizations are regularly running training and awareness sessions to increase DNSSEC adoption.

[4] See, "Comcast Completes DNSSEC Deployment," by Jason Livingood, Vice President, Internet Systems, January 10, 2012 at <http://blog.comcast.com/2012/01/comcast-completes-dns-sec-deployment.html>.

Cracking Down on Rogue Websites

Question 2. Mr. Pritz, do you believe that the increase in top level domains combined with all the requirements ICANN is putting in place will make it easier, more difficult, or not change the ability of U.S. authorities to crack down on Internet sites--to use the phrase--that are dedicated to infringing activity?

Answer . The New gTLD Program includes protections (not required in today's TLD), designed to prevent malfeasance and to make it easier to crack down on malicious conduct where it occurs. Some of the tools directly relating to increased law enforcement access to information and ability to combat malicious conduct in new TLDs include:

- A requirement to maintain enhanced, or "thick", WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;
 - A centralized zone file access system to allow for more accurate and rapid identification of key points of contact within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity; and
 - A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities).
- Background reviews of TLD applicants, including reviews for criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);
- Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or with reckless disregard to their obligations under cybersquatting legislation;
- The requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records; and

Requirements that New gTLD Registry Operators must:

- Maintain a Continued Operations Instrument sufficient to fund basic registry operations for a period of three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.
- Maintain continuity and transition plans, including regular failover testing.
- Cooperate with ICANN In the event transition to a new registry operator is necessary. ICANN will identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed.

In addition, ICANN is actively working to address 12 recommendations made by law enforcement regarding strengthening ICANN's contracts with its accredited registrars. Specifically, as directed by the Board, ICANN is currently in negotiations with its accredited

registrars to amend the Registrar Accreditation Agreement (RAA) to meet the recommendations raised by law enforcement authorities. Amendments are expected to be in force prior to the entry of the first new gTLD in 2013.

These negotiations include face-to-face meetings with law enforcement agencies to ensure understanding of law enforcement requirements. The negotiation anticipates substantial and unprecedented steps to improve the accuracy of Whois data. ICANN is taking a strong stand in regard to issues relating to the verification of Whois data and expects the accredited registrars to take action to address the demands of governments and law enforcement worldwide. Updates on the negotiations are available at <https://community.icann.org/display/RAA/Negotiations+Between+ICANN+and+Registrars+to+Amend+the+Registrar+Accreditation+Agreement>.

Question 3.

Mr. Pritz, how many new gTLD and other domains does ICANN estimate will be created?

What is the process by which ICANN will award the new gTLD and other domains? Will it be just a matter of who can bid the most?

How much money is expected to be raised from the new gTLDs and other domains?

What does ICANN intend to do with the funds? What are the mechanisms in place to assure accountability?

Answer. The number of new gTLDs that will be created through this first application round is still a matter of speculation. Early estimates coming from the community postulated that there would be 500 or more applications. Recently, some have estimated that 1000 or more applications will be made in the current round, opened on January 12, 2012. Once the application window closes on April 12, 2012, the speculation will come to an end and the full number of applications will be known. Not surprisingly, many companies are remaining quiet about their business strategies regarding plans to establish new gTLDs, making true estimates difficult.

If significantly more than 500 applications are received, the applications will be processed in batches of 500. In addition, on the advice of root server stability experts, ICANN has committed to limit the number of new TLD entered into the root in any one year to 1,000.

The extensive application and evaluation process is set out in the Applicant Guidebook, with over 300 pages of detail. Applicants must meet all of the application criteria, pass the rigorous evaluations, as well as pass through any of the four objection processes that may be used against the application. The key to the application process, however, is that it does not create a beauty contest among applicants or impose arbitrary limitations such as type of application that existed in two prior pilot rounds on new gTLDs. These pilot rounds are described in detail in response to Senator McCaskill's question 2.

All applicants are expected to pay the \$185,000 evaluation fee to ICANN, unless the applicants qualify for financial support. If an applicant qualifies for the available financial support, it will only pay \$47,000 towards the application fee. The \$185,000 application fee is calculated on a cost-recovery model, and was determined through a comprehensive and complex process that included identifying over 100 separate tasks required for the evaluation of a new gTLD application and seeking guidance from experts. The fee includes development costs (\$26,950 per application); application processing and evaluation costs (\$97,800 per application); and costs for risk mitigation steps, including allowance for unanticipated costs and variations between estimates and actual costs incurred (\$60,000 per application). A 14-page document setting out the methodology and further breakdown of the fee component is available at <http://www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>.

This document is an update to the earlier "Cost Considerations of the New gTLD Program", published in October 2008, available at <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

While there is a possibility that multiple applicants for the same TLD could proceed to an auction to operate the TLD, ICANN intends the auction process as a last-resort method. ICANN encourages applicants to work together to arrive at a mutually-agreeable solution instead of allowing the competing applications to proceed to an auction. To the extent that a TLD proceeds to auction and generates additional funds, I discuss below ICANN's commitments to using these funds towards its not-for-profit mission.

As a Not-for-Profit Public Benefit Corporation, ICANN is committed to its not-for-profit mission. For ICANN, that commitment requires us to assure that excess funds generated through the New gTLD Program (i.e., those that exceed the costs incurred for the processing, evaluation and other components of the New gTLD Program) are used in furtherance of ICANN's mission. The evaluation fee has been calculated to recover costs and not exceed those costs. If evaluation fees exceed actual costs, future evaluation fees will be reduced. If costs exceed fees, then ICANN will absorb that and future fees will be increased to meet the actual costs. For additional funds accruing to ICANN other than evaluation fees, such as the auction proceeds mentioned, the Applicant Guidebook addresses the issue in this way:\5\

\5\ See Module 4, Page 19 of the Applicant Guidebook, version 2010-01-11.

It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also

allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/ community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

ICANN handles its budgeting processes in an open and transparent manner. Not only will the community discussion regarding the use of excess funds be the subject of community consultation, but the funds will also be tracked and accounted for within ICANN's publicly-posted financial documents.

Response to Written Questions Submitted by Hon. Claire McCaskill to Kurt Pritz

Question 1. I recognize that ICANN has put a tremendous amount of work and study into the planned expansion of top-level domain names. There have been a number of economic studies, dozens of comment periods and seven versions of the Applicant Guidebook before the final one was issued. ICANN clearly views the expansion of gTLDs as vital to the growth and viability of the Internet.

Given how much time, effort and study has been put into this decision, I find it disturbing that there is still so much dispute about expansion. There is clearly a lack of consensus about these changes in the business and non-profit industries as well as concerns from law enforcement. This is not a decision to be taken lightly and I believe there needs to be better agreement on the outstanding issues from all interested parties.

Both of you have very differing opinions about the implications of the gTLD expansion. Why has it taken this long to get this out in the open?

Mr. Jaffe, there was an extensive comment period before the guidelines were issued, which I'm sure you were aware of--did you and other industries fully participate in the process? Do you disagree with the economic studies that ICANN has cited saying this would increase competition and innovation? If so, why?

Mr. Pritz, how much weight was given to the concerns raised by Mr. Jaffe and others with his viewpoints? The danger of increased copyright infringement appears to be a legitimate issue--do you agree?

Answer. Formation of rights protection mechanisms for the new gTLDs has been an important, legitimate concern throughout the development of the New gTLD Program.

The years of policy and implementation design work that have gone into the New gTLD Program have formed a program that will result in

TLDs that are required to offer more protections than TLDs that have already been introduced into the Domain Name System. The program was designed over more than six years, with input from no less than ten independent expert and community working groups addressing the issues that ANA continues to raise outside of the multi-stakeholder process. There are significant trademark protections designed by intellectual property experts. There are substantial protections against registry failure, including requirements for registry transition planning and designation of emergency registry operators, so that even in the event of registry failure, consumers will have a period of three to five years until basic registry operations are concluded.

One of the hallmarks of ICANN is its ability to call together world-class experts to consider issues facing the ongoing stability and security of the Internet. For the new gTLD program, ICANN formed teams of: intellectual property experts to develop trademark protection mechanisms; Internet security experts to develop consumer protections; registry operators to create mechanisms to access registry data; financial services providers to develop thresholds for "secure" TLDs; and linguists to avoid user confusion.

In addition to those ten independent expert working groups formed, ICANN published, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1,400 pages of comment summary and analysis as part of the community formation of the New gTLD Program. All comments were listened to and taken into account across the eight versions of the Applicant Guidebook. All of the rights protection mechanisms were borne of these community consultations.

The Association of National Advertisers is just one of the hundreds of voices that participated in the formation of the New gTLD Program. The ANA provided feedback using ICANN's public comment process, and its suggestions have been carefully considered as described below. Referring to the comment submitted by the ANA on 15 December 2008, that letter stated:

"Although ANA would have preferred ICANN to have decided against introducing the gTLD proposal, we urge, at a minimum, that ICANN move cautiously and consider points carefully before embarking on this potentially seismic shift in domain availability."

The letter suggested five specific proposals that ICANN should, at a minimum, consider:

1. Protections for Trademarks. ICANN should explore additional application restrictions, processes and technologies to insulate brand owners from the costs and burdens of chasing and prosecuting squatters and others for violation of their trademark rights.

In response to this and similar comments, ICANN convened the Implementation Response Team (comprised of 18 intellectual property experts) to recommend additional trademark protections, as discussed within my testimony. The majority of those recommendations have been incorporated, many in a stronger form than was originally proposed by the IRT.

2. Transparency of Applications and Registration Information. Some comments suggest transparency in the application process (e.g., elimination of proxy registrations, heightened emphasis on the provision of complete "whois" information, and posting all gTLD applications) will lead to less abuse. ICANN should examine these proposals as well.

In response to this and other comments: (1) more application information will be made public in the process of publishing information about the applied-for strings (personally identifiable information and sensitive security or proprietary information are not published), (2) background checks on applicants have been deepened, and (3) all new gTLD registries are required to maintain a "complete" or "thick" Whois model. As discussed in response to Senator Cantwell's Question 1, work to require verification of Whois information is underway through ICANN's negotiations with its registrars on the Registrar Accreditation Agreement. Those verification requirements are expected to be in place prior to the entry of the first new gTLD.

3. Fees. ICANN should study the various issues raised concerning fees, including those questions relating to how the new proposed fee structure might impact fee structures with existing gTLDs.

In response to this and other comments, fee structures have been extensively studied. The process used for estimating fees has been available since October 2008 and was iterated in response to public comment, and an economic study was undertaken on registry competition and price caps, which supported that price caps should not be introduced within new TLDs absence a showing of market power. A detailed discussion regarding the fee structure is provided in response to Senator Cantwell's Question 2.

4. General Process Issues. ANA notes several application and adjudication process issues that should be analyzed, including ICANN's right to "overrule" the determination of a Dispute Resolution Provider, the apparent absence of judicial remedy and how allowing public comments on the application process impacts it as a whole and, particularly, the objection process.

In response to this and other comments, elaborations were made to the objection processes, and the roles of the Board, governments, and public comment have been clarified. As discussed in my response to Senator Boxer's Question 1, the objection processes are robust and well-defined.

5. "Generic" gTLDs (e.g., .bank, .insurance, .securities, .medicine, etc.) have a unique social and commercial value as they are broadly descriptive of industries and other unifying activities. Under the terms of the Draft RFP, anyone can apply for these "generic" gTLDs, including a single member of the applicable industry. ANA suggests that ICANN thoroughly review the uses and standing requirements for these gTLDs.

In response to this and other comments, and in particular working with BITS (the policy division of The Financial Services Roundtable) and the financial services industry, a requirement was added that security capabilities should be commensurate with the nature of the string, i.e., applications for strings with unique trust implications are expected to provide a commensurate level of security. Applicants are also given incentive to incorporate security levels that exceed the baseline requirements. The gTLD criteria also references work independently published by the American Bankers Association and The Financial Services Roundtable as an illustrative example of how the criteria for a high-security TLD could be satisfied. In the event that a string is applied for and does not include appropriate security measures, that could serve as the basis for objection or an issuance of a GAC Early Warning regarding the string (a process where governments, through the Governmental Advisory Committee, provides notice regarding potential sensitivities with an application).

As seen from ICANN's responses, all of the ANA's comments were considered, responded to, and, as is clear from the above, largely accepted. This is indicative of the process that was followed with all stakeholder comment on the New gTLD Program to arrive at a balanced outcome.

The broad consensus work that went into the development of this program does not mean that everyone is satisfied with the result. There are some who wish for more restrictions; some for less. Lawrence Strickling, Assistant Secretary of Commerce for Communications and Information of the National Telecommunications and Information Agency, U.S. Department of Commerce, recently described the process of building consensus in ICANN's multistakeholder model, as well as the importance of respecting the outcomes reached, noted that while the multistakeholder process does not guarantee that everyone will be satisfied with the outcome, it is critical to respect the process and accept the outcome reached.\6\

\6\ Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference, December 8, 2011, available at <http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te>.

ICANN's opening of the application window for new TLDs is in fulfillment of ICANN's role of accountability to the outcomes of the multistakeholder model. ICANN remains accountable to evaluation of the expansion and implementing refinements to the New gTLD Program that may arise through the multistakeholder model.

With the opening of the application window, ICANN's work continues. ICANN has already committed to solicit information as expeditiously as possible from the intellectual property community. This commitment, set out in a January 11, 2012 letter to Assistant Secretary for

Communications and Information, Lawrence Strickling, also committed ICANN to submit any new proposals or recommendations arising out of that work for evaluation and comment from the ICANN stakeholder community.

ICANN has already committed to review the impacts of the rollout of the New gTLD Program, including a post-launch study on the effectiveness of the new trademark protections and any effects on root zone operations, and a post-delegation economic study on the results of the first set of new gTLDs. ICANN has also committed to undertake reviews in accordance with the Affirmation of Commitments between the United States Department of Commerce and ICANN, including a review ``that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion." There will be opportunities for public input regarding all of this post-launch work.

ICANN looks forward to ICANN and Internet community members continuing their involvement within the multi-stakeholder model and bringing their proposals for discussion among all of the Internet's stakeholders.

Question 2. I know that ICANN is resistant to limiting the number of new gTLDs because it does want to pick winners and losers about which gTLDs should be added. But prior expansions have been limited. What are the concerns now of trying a pilot or more limited expansion to examine problems that may occur in the process?

Answer. ICANN has operated three pilot programs on the introduction of new TLDs into the DNS. In 2000, ICANN launched a ``Proof of Concept" round, through which seven new TLDs were selected out of 44 applicants who proposed over 200 different potential TLDs. In 2004, ICANN accepted applications for Sponsored Top-Level Domains (sTLDs), specialized TLDs that are tied to defined sponsor communities (such as .CAT for the Catalan-speaking community). Finally, ICANN launched the Internationalized Domain Name country code TLD (IDN ccTLD) Fast Track process in 2009 that, to date had resulted in the delegation of 30 IDN TLDs, enabling countries and territories that use languages based on scripts other than Latin to offer users domain names in non-Latin characters (e.g., Arabic, Chinese, Devanagari, Russian, Thai scripts).

Through these pilot rounds, important lessons were learned. First, new TLDs can safely be added to the DNS. Second, the imposition of artificial restrictions on the rounds, such as the numerical restriction imposed in 2000 and the type-restriction imposed in 2004 place ICANN in the position of picking winners and losers, as opposed to fulfilling its mission of facilitating competition in the DNS. Artificial restrictions also create incentives for applicants to work to fit their TLD ideas into categories that may not be a true fit. The outcomes of the pilot rounds also helped inform the heightened protections in place for the New gTLD Program. The pilot programs informed the creation of independent dispute resolution programs that anticipate points of contention and provide paths for addressing potential abuses, controversies and sensitivities. The Fast Track program (and the IDN test bed before that) demonstrates that IDNs can be safely delegated into the root zone. These lessons learned will enable the realization of anticipated benefit in a safer environment.

The New gTLD Program will be implemented in a measured and limited manner. Rather than limiting by number or type, the round is limited by a high bar of required competencies and protections, and a limited application period. There is a 90-day application window, followed by a stringent evaluation process through which ICANN's expert evaluation panels will evaluate registry abilities to meet the high technical and operational requirements. The rollout of new gTLDs will be distributed over time--no TLDs are expected to be operational prior to early 2013; delegations of additional TLDs will be distributed after that, as the applications pass through the evaluation and dispute resolution processes. The imposition of otherwise artificial limitations on today's New gTLD Program would only create incentives for the bad-acting applicants to seek advantages in a subjective evaluation process. The Program in place today allows applicants to be evaluated against objective standards.

As part of the consensus-building process, ICANN has agreed with governments and trademark holders that the next round of new TLD applications should occur after studying the impact of this round `s delegations on root zone stability and conducting a study on whether new trademark protections should be adjusted. ICANN will undertake these studies as soon as is practicable, in consultation with stakeholders. ICANN will also provide public updates on the ongoing process to determine the timing of the next round.

ICANN is also mindful of its commitments set forth in the

Affirmation of Commitments to, ``organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion." \7\

\7\ See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

Question 3. I recognize that ICANN believes all of the issues have been fully vetted and that everyone has had ample time to state their views. But given the major disagreements that are still occurring, what is the harm in delaying implementation to further work through these issues in the hope of coming to a better consensus? In your view, what would happen if ICANN does not start the expansion process in January?

Answer. On January 12, 2012, ICANN opened the first application window for new gTLDs. As discussed within my written testimony, the opening of the application window is only the first step to rolling out new gTLDs, with the first new gTLD expected to be operational until 2013.

ICANN's opening of the application window in accordance with the time-frame committed to in June 2011 was an important step in remaining accountable to the Internet community. As noted above, work is still ongoing--the Program will be subject to continued reviews and refinements. However, with the years' worth of work already completed, the ten independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1,400 pages of comment summary and analysis, it was time for the Program to move into implementation so that the Internet community can start analyzing its effects using true data and experience.

Delaying the process serves those seeking to upset the multi-stakeholder model, designed by the U.S. Government to ensure an open Internet. Assistant Secretary Lawrence Strickling, recently stated:

The multistakeholder process does not guarantee that everyone will be satisfied with the outcome. But it is critical to preserving the model of Internet governance that has been so successful to date that all parties respect and work through the process and accept the outcome once a decision is reached. When parties ask us to overturn the outcomes of these processes, no matter how well-intentioned the request, they are providing ``ammunition" to other countries who attempt to justify their unilateral actions to deny their citizens the free flow of information on the Internet. This we will not do. There is too much at stake here. [Emphasis added.] \8\

\8\ Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference, December 8, 2011, available at <http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te>.

Response to Written Questions Submitted by Hon. Mark Warner to Kurt Pritz

Question 1. I understand the reasoning behind the high price of a new top level domain. It is important to me that the new gTLDs are only available to legitimate and serious organizations. However, up to 1,000 new TLD names at \$185,000 a piece is a considerable increase in income for ICANN. How will this money be used to regulate the expansive space new gTLDs will create? What are your plans for excess revenue? Will ICANN retain any revenue from the creation of new gTLDs? If so, how much revenue do you anticipate ICANN will receive over the next five years?

Answer. ICANN shares your concern that a high bar is created to apply for a new gTLD, to help assure that new gTLDs are available to organizations that are serious in commitment to operate a portion of the Internet infrastructure. As discussed in response to Senator Cantwell's Question 3, the New gTLD Program fee is operated on a cost-recovery basis. As provided to Senator Cantwell:

The \$185,000 application fee is calculated on a cost-recovery model, and was determined through a comprehensive and complex process that included identifying over 100 separate tasks required for the evaluation of a new gTLD application and seeking guidance from experts.

The fee includes development costs (\$26,950 per application); application processing and evaluation costs (\$97,800 per application); and costs for expected contingencies, including allowance for unanticipated costs and variations between estimates and actual costs incurred (\$60,000 per application). A 14-page document setting out the methodology and further breakdown of the fee component is available at <http://www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>. This document is an update to the earlier "Cost Considerations of the New gTLD Program", published in October 2008, available at <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

While there is a possibility that multiple applicants for the same TLD could proceed to an auction to operate the TLD, ICANN intends the auction process as a last-resort method. ICANN encourages applicants to work together to arrive at a mutually-agreeable solution instead of allowing the competing applications to proceed to an auction. To the extent that a TLD proceeds to auction and generates additional funds, I discuss below ICANN's commitments to using these funds towards its not-for-profit mission.

As a Not-for-Profit Public Benefit Corporation, ICANN is committed to its not-for-profit mission. For ICANN, that commitment requires us to assure that excess funds generated through the New gTLD Program (i.e., those that exceed the costs incurred for the processing, evaluation and other components of the New gTLD Program) are used in furtherance of ICANN's mission. The evaluation fee has been calculated to recover costs and not exceed those costs. If evaluation fees exceed actual costs, future evaluation fees will be reduced. If costs exceed fees, then ICANN will absorb that and future fees will be increased to meet the actual costs. For additional funds accruing to ICANN other than evaluation fees, such as the auction proceeds mentioned, the Applicant Guidebook addresses the issue in this way:⁹

⁹ See Module 4, Page 19 of the Applicant Guidebook, version 2010-01-11.

It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit

status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

In addition to evaluation fees, each registry will contribute \$25,000 annually to ICANN operations, policy development and community outreach activities. (If some registries become very large, they will pay greater fees.) That fee will cover contractual compliance, registry and IANA services for that registry, as well as contribute to the general ICANN activities described here. It has been urged by the community that ICANN "staff-up" to meet compliance, IANA function and other needs to adequately serve the new environment. If these revenues exceed needs, fees will be reduced.

ICANN handles its budgeting processes in an open and transparent manner. Not only will the community discussion regarding the use of funds be the subject of community consultation, but the funds will also be tracked and accounted for within ICANN's publicly-posted financial documents.

Question 2. Federal Trade Commission Chairman Leibowitz recently stated that "a rapid, exponential expansion of generic TLDs has the potential to magnify both the abuse of the domain name system and the corresponding challenges we encounter in tracking down Internet

fraudsters." His statement echoes the concerns of many that this expansion may be necessary, but the expansion from 21 gTLDs to up to 1000 gTLDs sounds extreme.

a. Why did ICANN choose to go from twenty-one top level domains up to over 500 in the first wave, or 1000 overall, instead of a more gradual increase over a set period of years? Can you please explain why this particular expansion program is the best plan for industry and consumers?

Answer. The domain name system (DNS) today includes over 300 TLDs: 249 ccTLDs, 30 IDN ccTLDs, and 21 gTLDs. None of those 300 existing TLDs are required to include the standard protections that new TLDs must offer. The protections of the New gTLD Program were formed through ICANN's multi-stakeholder model.

ICANN has operated three pilot programs on the introduction of new TLDs into the DNS. In 2000, ICANN launched a "Proof of Concept" round, through which seven new TLDs were selected out of 44 applicants (proposing over 200 different potential TLDs). In 2004, ICANN accepted applications for Sponsored Top-Level Domains (sTLDs), specialized TLDs that are tied to defined sponsor communities (such as .CAT for the Catalan-speaking community). Finally, ICANN launched the IDN ccTLD Fast Track process in 2009 that, to date had resulted in the delegation of 30 IDN TLDs.

Through these pilot rounds, important lessons were learned. First, new TLDs can safely be added to the DNS. Second, the imposition of artificial restrictions on the rounds, such as the numerical restriction imposed in 2000 and the type-restriction imposed in 2004 place ICANN in the position of picking winners and losers, as opposed to fulfilling its mission of facilitating competition in the DNS. Artificial restrictions also create incentives for applicants to work to fit their TLD ideas into categories that may not be a true fit. The outcomes of the pilot rounds also helped inform the heightened protections in place for the New gTLD Program.

The gTLDs approved under this program will be introduced in a measured, limited manner. Rather than limiting by number or type, the round is limited by a high bar of required competencies and protections, and a limited application period. There is a 90-day application window, followed by a stringent evaluation process through which ICANN's expert evaluation panels will evaluate registry abilities to meet the high technical and operational requirements. The rollout of new gTLDs will be distributed over time--no TLDs are expected to be operational prior to early 2013; delegations of additional TLDs will be distributed after that, as the applications pass through the evaluation and dispute resolution processes. The imposition of otherwise artificial limitations on today's New gTLD Program would only create incentives for the bad-acting applicants to seek advantages in a subjective evaluation process. The Program in place today allows applicants to be evaluated against objective standards.

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ICANN is also mindful of its commitment in the Affirmation of Commitments to, "organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion." \10\

\10\ See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

As discussed previously, the New gTLD Program today is created through over six years of policy and implementation work. The policy recommendations to guide the introduction of new gTLDs were created by the ICANN's Generic Names Supporting Organization (GNSO) over a two-year effort through its bottom-up, multi-stakeholder policy development process. The GNSO Council is comprised of all facets of the Internet community: Intellectual Property interests; business and commercial users; ISPs; non-commercial institutions, and ICANN's contracted registries and registrars.

In 2005, the GNSO initiated a formal, Bylaws-defined policy development process on the addition of new gTLDs. Policy recommendations are formed through consensus building among stakeholder groups representing: intellectual property, business, non-commercial interest, Internet service providers, registries and registrars. In the

case of this program and the release of gTLDs in this manner, the GNSO approved the policy recommendations in 2007 by a bylaw described 19-1 vote in favor of the new gTLD Policy (the lone dissenting vote by a non-commercial interest found that the approved model had too many restrictions). The policy recommendations were submitted to ICANN's Board of Directors. In 2008, the ICANN Board approved the recommendations \11\ and directed ICANN staff to commence the implementation phase.

\11\ GNSO Final Report on the Introduction of New Top Level Domains ("Final Report"), at <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm> (Aug. 8, 2007); ICANN Board resolution, <http://www.icann.org/en/minutes/resolutions-26jun08.htm> (June 26, 2008); GNSO Minutes, <http://gns0.icann.org/meetings/minutes-gns0-29oct03.html> (Oct. 29, 2003).

Also see The GAC Principles Regarding New gTLDs, at http://gac.icann.org/system/files/gTLD_principles_0.pdf (Mar. 28, 2007).

After the directive to implement, ICANN continued working with the community on the design of the New gTLD Program to meet the policy recommendations. Since 2008, the New gTLD Program has been refined through ten independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1400 pages of comment summary and analysis. All comments were listened to and taken into account across eight versions of the Applicant Guidebook. The Applicant Guidebook implements the consensus polices developed by ICANN's multi-stakeholder community.

Question 3. Cyber-crime is a growing threat to the security and stability of the Internet, with broad and direct public policy and financial impacts. Law enforcement agencies, which have experience combating cyber-crime, have identified a series of specific problems which are limiting their ability to address this growing threat. In 2009, these law enforcement agencies made 12 concrete recommendations to reduce the risk of criminal abuse of the domain name system. It is my understanding that none of the recommendations offered by law enforcement were included in the gTLD expansion program.

a. Can you please explain why ICANN chose not to include these recommendations?

b. How will ICANN cooperate with law enforcement moving forward to make sure that safety concerns are properly addressed?

c. How does ICANN plan to review applications from state-owned enterprises?

d. If problems develop in any of the new gTLDs, how will ICANN be able to adequately monitor and police any abuses or mismanagement?

Answer.

Law Enforcement Recommendations are Being Addressed

As mentioned in response to Senator's Cantwell's Question 2, ICANN is actively working to address all twelve of the law enforcement recommendations referenced in the GAC's October 27, 2011 communication. Specifically, as directed by the Board, ICANN is currently in negotiations with its accredited registrars on amending the Registrar Accreditation Agreement (RAA) to meet the recommendations raised by law enforcement authorities. Amendments are expected to be in force prior to the entry of the first new TLD in 2013.

These negotiations include face-to-face meetings with law enforcement agencies to ensure understanding of law enforcement requirements. The negotiation anticipates substantial and unprecedented steps to improve the accuracy of Whois data. ICANN is taking a strong stand in regard to issues relating to the verification of Whois data and expects the accredited registrars to take action to address the demands of governments and law enforcement worldwide. Updates on the negotiations are available at <https://community.icann.org/display/RAA/Negotiations+Between+ICANN+and+Registrars+to+Amend+the+Registrar+Accreditation+Agreement>.

By February 20, 2012, proposed amendments to address the law enforcement recommendations (and more) will be posted for public comment. One important aspect of the negotiations focuses on the verification of Whois data, and work is underway to plan a targeted forum, including representatives of law enforcement and experts in verification. This forum would be open to the public and is expected to take place before the ICANN meeting in Costa Rica.

Law Enforcement Helped Design New gTLD Protections

Addressing the 12 law enforcement recommendations for improvement to the gTLD registrars is just one part of how ICANN remains responsive to law enforcement. In fact, law enforcement agencies worldwide have worked closely with ICANN in the new gTLD implementation process, with

a goal of reducing domain name abuses. Representatives of U.S. law enforcement agencies played a critical role in proposing standards for background screening for applicants. Law enforcement agencies worldwide, including the FBI, the UK Serious Organized Crimes Agency (SOCA) and the Royal Canadian Mounted Police, supported proposals to aid in the prevention and disruption of efforts to exploit domain name registration procedures for criminal purposes. ICANN has built a relationship with Interpol and discussed safeguards and, in particular, the implementation of meaningful background checks.

My testimony outlined a series of measures to mitigate against malicious conduct in new gTLDs, formed in part through law enforcement recommendation and involvement. Those measures include:

- Background reviews of TLD applicants, including reviews for criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);

- Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or reckless disregard under cybersquatting legislation;

- The requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records;

- A requirement to maintain enhanced, or "thick", WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;

- A centralized zone file access system to allow for more accurate and rapid identification of key points of contact within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity;

- A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities);

Requirements that New gTLD Registry Operators must:

- Maintain a Continued Operations Instrument sufficient to fund basic registry operations for a period of three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.

- Maintain continuity and transition plans, including regular failover testing.

- Cooperate with ICANN in the event transition to a new registry operator is necessary. ICANN will identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed.

DNS abuse and security are regularly the subject of collaborative meetings between ICANN and the U.S. law enforcement community, as well as representatives of international agencies.¹² ICANN expects this successful collaboration to continue. To that end, there are formal "DNS Abuse" sessions at every ICANN public meeting where ICANN and law enforcement representatives come together to advance this important work.

¹² ICANN's relationships with law enforcement are not limited to the New gTLD Program; ICANN coordinates regularly on security-related issues and to address threats to the DNS.

Applications from State-Owned Enterprises

All applications under the New gTLD Program are subject to the same application and evaluation process as laid out in the Applicant Guidebook. As part of the application process, ICANN acts in compliance with all U.S. laws, rules and regulation. This includes the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to specially

designated nationals and blocked person without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide services (through the gTLD Program or elsewhere) to an individual or entity on the SDN list.

ICANN Commits to Continued Monitoring of New gTLDs

In response to your Question 1, we identify the reviews that ICANN has committed to undertake to assist in identifying the results of this first round. In addition to these reviews, ICANN is committed to a continued monitoring of the effects of the measured rollout of new TLDs, as well as working with law enforcement and the Internet community as a whole to identify new areas of concern and to be proactive in determining how to address new issues as they arise.

Question 4. There are a number of failed top-level domain names from previous ICANN expansions--".museum" for instance. Unfortunately, such failures can be costly for companies that have registered and they can be disruptive to users. Further, I understand that ICANN's own reports indicate that "if a new gTLD failed and ceased operation, external costs might be imposed on the Internet community. Registrants . . . might be stranded. . . . Internet users might face increased clutter on the Internet if links fail to resolve."

a. The high-tech companies in Virginia- not to mention Internet users generally--would not welcome such volatility. What, if anything, has been done to address this concern?

Answer. While the .museum registry may not have achieved a level of desired success or adoption, the .museum registry is still operational. No gTLD registries have failed during ICANN's existence. However, the risk of potential failure for a new gTLD registry is an understandable and valid concern. Among other safeguards, ICANN has in place provision for an "Emergency Back End Registry Provider" to take over operations for a failed registry to ensure the interests of registrants are protected and domain names continue to resolve.

The issue of registry failure has been considered in detail through the work on the New gTLD Program. First, the extensive evaluation process will help assure that only companies that meet the stringent financial requirements are able to operate new TLDs. Of course, this pre-emptive evaluation process may not fully protect against future registry failure, and ICANN has included multiple additional protections within the New gTLD Program to address potential failure.

During the application process, applicants are required to provide evidence that critical functions of the registry will continue to be performed even if the registry fails. This includes a requirement that the costs for maintaining critical registry functions over an extended period of time (between three to five years) be estimated as part of the application process, and registries must have available a Continuing Operations Instrument (funded through a letter of credit or an escrow account) that ICANN may invoke to pay a third party to maintain the critical registry functions.

ICANN is currently working to identify the entity that will serve as an Emergency Back End Registry Operator (EBERO), which will step in to perform the critical registry functions during the three-to-five year period. These provisions are expected to protect registrants against the risk of immediate registry failure.

To facilitate any need for emergency transition, ICANN also requires the escrow of registry data that the EBERO would be allowed to access for the purpose of providing the registry services.

In the event of a termination of a Registry Agreement, and in consultation with the registry operator, ICANN maintains the right to determine whether to transition the operation of a TLD to a successor registry operator as is necessary to protect the public interest. Transition is not required, however, if a registry operator's use of the TLD is for its own exclusive use and all names are registered and maintained by the registry operator.

Question 5. The protection and development of intellectual property is essential to economic growth in technology, and especially important to high-tech entities in Virginia. I am told that ICANN's own experts have said the following: "There may also be indirect harm from the loss of intellectual property owners' incentives to invest in that intellectual property due to concerns that some of the benefits of that investment would be misappropriated."

a. Is this an accurate statement?

b. Has anything been done to address this issue? If not, why is this expansion going forward in the face of such risks?

Answer. Prior to this rollout, ICANN commissioned five economic studies that examined anticipated benefits and costs of the new gTLD program, the effects of price constraints, and the benefits of vertical

integration. All support a conclusion that Internet users stand to benefit from the introduction of new gTLDs and that potential costs should be mitigated with the introduction of new safeguards.

As part of this work, economists did note that one of the potential external costs that may be imposed through new gTLDs is the impact on investments in intellectual property. However, in the same report, the economists clarified that these external costs can be reduced through the institution of "rules and procedure to protect companies' intellectual property rights." The economists noted that there are a range of effective rights protection mechanisms that balance intellectual property protections against the interests of those with legitimate interests in registering a domain name, including watch lists and sunrise periods. This is discussed in Michael Katz, Gregory Rosston and Theresa Sullivan's report entitled Economic Considerations in the Expansion of Generic Top-Level Domain Names--Phase II Report: Case Studies, available at <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>.

ICANN, with experts from the intellectual property community, addressed this cost/benefit concern. Trademark experts created rights protection mechanisms that exceed the bar suggested by the economists. The new trademark protection that help protect intellectual property rights and combat abuses include:

Uniform Rapid Suspension: A rapid, inexpensive way to take down infringing domain names;

Trademark Clearinghouse: a one-stop shop so that trademark holders can protect their property right in ALL new TLDs with one registration;

Mandatory sunrise and Trademark Claims processes for all new gTLDs;

The requirement to maintain thick Whois information, provision of centralized access to zone data, and a strong incentive to provide a searchable Whois database--all to make it easier to find infringing parties; and

A post-delegation dispute procedure where rights holders can assert claims directly against TLD registry operators for domain name abuse if the registry has played an active role.

The implementation work to create the New gTLD Program carefully identified risks such as the one raised in your question, and created expert-informed solutions to address those risks. The Katz/Rosston report is just one of five economic studies performed in consideration of the New gTLD Program. All supported a conclusion that Internet users stand to benefit from the introduction of new gTLDs.

The four additional reports are:

Dr. Dennis Carlton, Report Regarding ICANN's Proposed Mechanism for Introducing New gTLDs, at <http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf> ("Carlton I");

Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries, at <http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf> ("Carlton II");

CRA International, Revisiting Vertical Separation of Registries and Registrars, at <http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf>;

Michael Katz, Gregory Rosston and Theresa Sullivan, An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf> ("Katz/Rosston Phase I"); and

The reports are detailed. Briefly summarized, the reports indicate that: benefits will accrue from the opening of this market in a way similar to other markets; innovation (and thus benefit) is difficult/impossible to quantify; and costs should be mitigated through the adoption of new trademark and consumer protections.

This work followed the careful consideration of the Internet community through ICANN's bottom-up process.

Given the scope of the economic study already undertaken, as well

as the commitment to measuring the effects of new gTLDs once there is actual data to inform that assessment, the Board and the Governmental Advisory Committee agree that further economic study would not be beneficial prior to the opening of the application round. Instead, the Board and the GAC focused on the collection of information that will inform the analysis of the effects of the introduction of new gTLDs after this first round. The Applicant Guidebook now includes application questions that are specifically targeted to collect information relating to stated purposes and anticipated outcomes of each application, for use in later studies.

Question 6. I've heard a number of questions from industry regarding their concerns with the new TLD system. However, these changes will also impact Internet users. I am concerned that some of my constituents will be confused by the new TLD program at the least and could be exposed to additional consumer harm such as cybersquatting, typosquatting, phishing, malware, etc. If it is more difficult for Internet users to determine whether a website is legitimate, it will be easier for criminals to lure Internet users to fake websites that include malicious content.

a. Can you please explain how the new program will change the Internet for consumers?

b. How will ICANN work to make sure users are aware a coming changes and know how to navigate the new landscape?

What specific safeguards will be put into place to prevent cybersquatting and typosquatting?

Answer. The protections within the New gTLD Program will create TLDs that are more secure for Internet users. For example, all new TLDs are required to implement domain name security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records. In terms of user confusion as a result of cybersquatting, the new protections for intellectual property and to mitigate malicious conduct all work to reduce cybersquatting activities in the expanded space. We expect that new TLDs will be a less fertile ground for wrongdoing and, as a result, the Domain Name System, as a whole will be improved. Abuses are prevalent in the larger TLDs, not within the smaller, more differentiated registries.

While there is always some uncertainty and concern with change, Internet users have always proved adept at adapting to change and taking advantage of new, value-added services. In the case of new gTLDs, it is thought that the new landscape will reduce confusion. TLDs that are clearly tied to brands or communities will create consumer awareness and result in more certainty. Also, that brand awareness will build certainty that a domain is what it purports to be--that is, reduce the risks of cybersquatting. As an example, take senate.gov names: users have great certainty that use of a .gov name will reliably lead to a U.S. Government site.

The New gTLD Program allows for community-based TLDs, as well as other TLDs that will have special attributes that may make them attractive to users. For example, work has been conducted towards creating a higher security TLD for the financial services industry, where the registry operator would commit to additional protections for the development of a TLD where consumers know they are making financial transactions in a trusted space. The opportunities that may be available in new gTLDs are endless--the opening of the new gTLD space will allow for creativity and innovation that follows the opening of other markets.

ICANN and the Internet community recognize that there will be a need to educate consumers about the changing landscape of the Internet, and ICANN understands that communication and education is a necessary component of any rollout. ICANN is working with its stakeholder community to plan for this educational work.

Response to Written Questions Submitted by Hon. Olympia J. Snowe to
Kurt Pritz
United Nations Model

Question 1. There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state."¹³ Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the

Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU).\14"

\13\ http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html.

\14\ <http://premier.gov.ru/eng/events/news/15601/>.

The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new U.N. entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. If the U.S. Government or any entity unilaterally modified a decision by ICANN's multistakeholder community, it would undermine if not decimate the legitimacy and credibility of the multistakeholder model. Lawrence Strickling, Assistant Secretary of Commerce for Communications and Information, has spoken forcefully on two recent occasions in support of the multistakeholder model and the danger presented by requests for the U.S. Government to unilaterally modify the new gTLD program. On December 8, 2011,\15\ he addressed these points as follows:

\15\ Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference on December 8, 2011, (available at <http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te>).

[W]e are now seeing parties that did not like the outcome of that multistakeholder process trying to collaterally attack the outcome and seek unilateral action by the U.S. government to overturn or delay the product of a six-year multistakeholder process that engaged folks from all over the world. The multistakeholder process does not guarantee that everyone will be satisfied with the outcome. But it is critical to preserving the model of Internet governance that has been so successful to date that all parties respect and work through the process and accept the outcome once a decision is reached. When parties ask us to overturn the outcomes of these processes, no matter how well intentioned the request, they are providing ``ammunition" to other countries who attempt to justify their unilateral actions to deny their citizens the free flow of information on the Internet. This we will not do. There is too much at stake

here. [Emphasis added.]

On January 11, 2012 \16\ he stated:

\16\ Remarks by Assistant Secretary Strickling at the Brookings Institution's Center for Technology Innovation, January 11, 2012 (available at <http://www.ntia.doc.gov/speechtestimony/2012/remarks-assistant-secretary-strickling-brookings-institutions-center-technology>).

[M]ultistakeholder processes have succeeded by their very nature of openness and inclusiveness. They are most capable of attacking issues with the speed and flexibility required in

this rapidly changing Internet environment.

Nonetheless, we face challenges to this model even in our own country.

...

For the last six years, ICANN and its many stakeholders have debated the rules for expanding of the domain name system (DNS)--essentially the Internet's address book--through the

introduction of new generic top-level domain names (gTLDs). ICANN's process involved global stakeholders from the business community, civil society, registries, registrars, and governments. Nonetheless, in December we saw parties that did not like the outcome of that multistakeholder process trying to bypass ICANN by seeking unilateral action by the U.S. government to overturn or delay the product of a six-year multistakeholder process that engaged folks from all over the world.

...

Each challenge to the multistakeholder model has implications for Internet governance throughout the world. When parties ask us to overturn the outcomes of these processes, no matter how well-intentioned the request, they are providing "ammunition" to other countries who would like to see governments take control of the Internet.

Question 2. If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

Answer. The Affirmation of Commitments between the U.S. Department of Commerce and ICANN sets out landmark commitments to "(a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination."

Some of the commitments that ICANN undertakes include "commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act."

While the ICANN model is not perfect, it has shown to be a powerful, dynamic model that is capable of reaching consensus positions on extremely difficult issues. The multistakeholder model that is ICANN is at risk if there is a heightened level of governmental involvement above that exercised today through the Governmental Advisory Committee (GAC). American businesses and citizens are very active in the ICANN model, and continuing to remain accountable to them--along with the global Internet community--is essential to ICANN's mission.

Moving to a U.N. model pushes those stakeholders outside government to an inconsequential role. U.S. businesses would be reduced to influencing the U.S. vote in a one country--one vote model.

Assistant Secretary Strickling and former Ambassador David Gross have spoken eloquently on the negative impact of abandoning the multistakeholder approach to Internet governance issues. In the following excerpts, each describes proposals to give governmental bodies such as the UN's International Telecommunications Union (ITU) exclusive responsibility for Internet governance and standards development. Assistant Secretary Strickling recently described¹⁷ the proposals and their potential impact as follows:

17 Id.

Each challenge to the multistakeholder model has implications

for Internet governance throughout the world.

...

As many of you are aware, this is precisely the challenge we face this December in Dubai, at the World Conference on International Telecommunications (WCIT). This conference, which is hosted by the International Telecommunication Union (ITU), attracts delegates from the ITU's 193 member countries.

...

[S]ome countries have submitted proposals to make ITU standards recommendations mandatory and thus enforceable by treaty, a drastic departure from their current voluntary nature. Some countries have proposed moving oversight of critical Internet

resources into the ITU, including naming and numbering authority from multistakeholder institutions such as ICANN. Many governments have called for the ITU to play a greater role in regulating peering and termination charges in order to compensate for lost telecommunication fees, the so called "bypass phenomenon". Also, in an effort to establish the ITU as an operational authority on international cybersecurity, some more authoritarian countries have proposed to include cybersecurity and cybercrime provisions into the ITRs.

...

The challenge before us is clear. We must continue to make the case that an Internet guided by the open and inclusive processes as articulated in the OECD Policymaking Principles will encourage the rapid economic growth and wealth creation that the Internet has made possible.

It is incumbent upon us to convince other nations that enshrining the Internet in an international treaty will not accomplish these goals. The framework simply will not fit. An Internet constrained by an international treaty will stifle the innovators and entrepreneurs who are responsible for its awesome growth. As FCC Commissioner Robert McDowell recently said, "upending the fundamentals of the multistakeholder model is likely to Balkanize the Internet at best, suffocate it at worst". The states who seek to impose their control over the Internet will only be further removed from its awesome potential.

Former Ambassador David Gross described the proposals and their potential impact as follows:

18 The 2012 World Conference On International Telecommunications: Another Brewing Storm Over Potential UN Regulation Of The Internet," November 2011 (available at <http://www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/>). See also, "Governments vie for control of the Web," by Eliza Krigman, POLITICO Pro, January 18, 2012 (available at <https://www.politicopro.com/story/tech/?id=8499>; subscription required) ("The end result [of adoption of some proposals at the WCIT], American officials warn, would be an Internet more susceptible to censorship and less potent as a tool to foster democracy.")

Once again, many companies in the telecoms and information and communications technology (ICT) sector are facing the spectre of a United Nations agency (in this case the International Telecommunication Union (ITU)) regulating critically important aspects of the Internet as well as substantially expanding its

jurisdiction over the telecoms and ICT industries.

...

Some within the ITU and among its 193 member states would like to see major changes to the treaty, particularly with respect to the Internet as well as wireless, IP-based, and next-generation networks, which have historically been mostly free of intrusive economic and other regulation.

...

The WCIT could lead to new regulations governing how these businesses are run and how such businesses may interact with their customers, partners, and vendors, as well as how they can innovate and provide new and improved services. Moreover, because of the implicit attacks on established mechanisms of Internet governance, the WCIT has the potential to destabilise and politicise standardisation processes and the management of the Internet architecture in a way that could also hinder innovation and efficiency.

Growth of the Internet and expansion of the domain name system
Question 3. The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wal-mart. Small

businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

If the Internet is going to continue to grow shouldn't the domain name system?

Answer. Yes. Since 1998, ICANN has been working to execute on its promise to facilitate competition in the Domain Name System while protecting vital security, consumer and business interests. The New gTLD Program has been carefully crafted over the past six years to achieve this goal. As stated in my written testimony,

A founding mandate for ICANN, included within the United States Government's "White Paper on the Management of Internet Domain Names and Addresses",¹⁹ is to create competition in the domain name market and specifically, to "oversee policy for determining the circumstances under which new TLDs are added to the root system."²⁰ The introduction of new gTLDs "has been a longstanding goal" of the relationship between the Department of Commerce and ICANN.²¹ The relationship formed with the United States Government in 1998, and set out in the many Memoranda of Understanding between the Department of Commerce and ICANN, included a core objective to "Define and implement a predictable strategy for selecting new TLDs."²² This fundamental assumption that increasing the number of gTLDs will increase competition resulted in the House Committee on Energy and Commerce initiating a 2001 hearing regarding the potential detrimental effects to competition when ICANN approved only seven of 200 applied-for TLDs in an earlier application round.²³

¹⁹ United States Department of Commerce, White Paper on the Management of Internet Domain Names and Addresses ("White Paper"), at http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm (June 6, 1998)

²⁰ Id.

²¹ Testimony of Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, June 4, 2009, before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, United States House of Representatives, available at <http://www.ntia.doc.gov/speechtestimony/2009/testimony-associate-administrator-fiona-alexander-issues-concerning-internet-co>.

²² See, e.g., Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, at http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm (Sept. 16, 2003).

²³ See Transcript of February 8, 2001 Hearing before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives, On Hundred Seventh Congress, First Session, available at <http://archives.energycommerce.house.gov/rearchives/107/hearings/02082001Hearing37/print.htm> ("some view ICANN's approval of only a limited number of names as thwarting competition").

Today, the DNS is continues to grow. The next billion Internet users will be from outside the U.S. but their participation represents opportunity for all businesses and communities. Since 2010, 30 new country code top-level domains in non-Latin scripts have been added to the DNS. These internationalized domain names, or IDN ccTLDs, help bring the Internet to the next billion people. We've seen innovation in the business models for existing country code TLDs, such as .CO (Colombia) and .ME (Macedonia) to take advantage of commercial opportunities waiting in the U.S. and beyond. But only TLDs introduced under the New gTLD Program will provide the significant, mandatory protections I describe in my testimony. The introduction of the New gTLD Program is therefore not just fulfilling a mandate to add competition through the introduction of more TLDs, but also represents the creation of a new, more secure baseline for the expansion of the Domain Name System.

White Paper

Question 4. In the "White Paper," which was released in 1998 and led to the formation of ICANN is competition, has as one of its core

principles is competition--that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper \24\ on the issue of new generic top level domains showed ``very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." Also, commenters noted that ``there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution."

\24\ <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

Isn't the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. Yes. In response to your Question 3 under the ``Growth of the Internet and expansion of the domain name system" heading, it is noted that the introduction of the New gTLD Program is expected to fulfill ICANN's mandate to introduce competition in the DNS. ICANN does not know all of the potential business models that are contemplated, nor is ICANN in a position to judge or foretell which business models may succeed. That is the role of the market. ICANN's role is to allow for the creation of opportunities in the DNS for marketplace participants to compete, to innovate and to offer users new products and services.

For at least the past two years, future applicants have attended ICANN meetings, passing out marketing materials with their ``dot-NEWDOMAIN" prominently displayed. Consulting businesses to advise applicants have arisen. Over 120 persons or entities have publicly announced their intention to apply for new gTLDs. Nearly 90 declared applicants have active websites marketing their new gTLD idea proposing all types of gTLDs--city names, community ideas, branding opportunities for internationally known corporations and others.

There are other forms of competition in addition to new gTLDs, for example, the introduction of services provided by Twitter and Facebook, and also the increased use of ``apps." However, one form of introducing competition should not foreclose another. The formation of ICANN in 1998 and the potential introduction of new gTLDs have been clearly described as an opportunity for increasing competition, choice and innovation. That introduction has taken place in a careful way, including two limited rounds in 2000 and 2004, the limited introduction of IDNs starting in 2010.

There is tremendous opportunity for innovation, competition and consumer choice within the New gTLD Program.

Question 5. Several commenters also stated ``the market will decide which TLDs succeed and which do not." What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. Allowing the market to determine the success of new gTLD offerings is one of the fundamental tenets of the introduction of the New gTLD Program. One of the policy recommendations that serves as the basis for this program is that the introduction of TLDs should only be limited by round, and not by subjective and arbitrary factors. In addition, the economic studies, described in response to Senator Warner's Question 5, support that competition results from the opening of markets--not by imposing artificial limitations such as number or type.

One of those economists, Dr. Dennis Carlton, Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice from October 2006 through January 2008, explained: ``ICANN's plan to introduce new gTLDs is likely to benefit consumers by facilitating entry which would be expected both to bring new services to consumers and mitigate market power associated with .com and other major TLDs and to increase innovation." \25\ Delay will inhibit competition in the use of generic, non-trademarked terms, and runs counter to the generally accepted view that market entry benefits consumers by expanding output and lowering price. Potential innovations in the new gTLD namespace will be stifled if limitations to entry are imposed, which would ``essentially freeze the number of TLDs fifteen years after the first commercial development of the Internet." \26\

\25\ Dr. Dennis Carlton, Report Regarding ICANN's Proposed Mechanism for Introducing New gTLDs, at <http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09>

en.pdf at paragraph 23.
\\26\ Id.

The introduction of new gTLDs will also serve to alleviate issues in existing market conditions: concentration within some existing registries, most generic strings unavailable, and those that trade on the value of the current marketplace holding portfolios based upon the value of current .COM names.\\27\

\\27\ Katz/Rosston Phase II, at paragraphs 75-76.

While the market should decide which TLDs succeed and which do not, we understand the valid concerns associated with registry failure and ICANN has put into place consumer interest protections.

Among other safeguards, ICANN has in place provision for an "Emergency Back End Registry Provider" to take over operations for a failed registry to ensure the interests of registrants are protected and domain names continue to resolve.

The issue of registry failure has been considered in detail through the work on the New gTLD Program. First, the extensive evaluation process will help assure that only companies that meet the stringent financial requirements are able to operate new TLDs. Of course, this pre-emptive evaluation process may not fully protect against future registry failure, and ICANN has included multiple additional protections within the New gTLD Program to address potential failure.

During the application process, applicants are required to provide evidence that critical functions of the registry will continue to be performed even if the registry fails. This includes a requirement that the costs for maintaining critical registry functions over an extended period of time (between three to five years) be estimated as part of the application process, and registries must have available a Continuing Operations Instrument (funded through a letter of credit or an escrow account) that ICANN may invoke to pay a third party to maintain the critical registry functions.

ICANN is currently working to identify the entity that will serve as an Emergency Back End Registry Operator (EBERO), which will step in to perform the critical registry functions during the three-to-five year period. These provisions are expected to protect registrants against the risk of immediate registry failure.

To facilitate any need for emergency transition, ICANN also requires the escrow of registry data that the EBERO would be allowed to access for the purpose of providing the registry services.

In the event of a termination of a Registry Agreement, and in consultation with the registry operator, ICANN maintains the right to determine whether to transition the operation of a TLD to a successor registry operator as is necessary to protect the public interest. Transition is not required, however, if a registry operator's use of the TLD is for its own exclusive use and all names are registered and maintained by the registry operator.

ICANN's past experience with its 2000 and 2004 pilot programs on the introduction of new gTLDs, described in response to Senator McCaskill's Question 2, represent limited expansion. ICANN learned valuable lessons from each of these rounds: First, new TLDs can safely be added to the DNS. Second, the imposition of artificial restrictions on the rounds, such as the numerical restriction imposed in 2000 and the type-restriction imposed in 2004 place ICANN in the position of picking winners and losers, as opposed to fulfilling its mission of facilitating competition in the DNS. Artificial restrictions also create incentives for applicants to work to fit their TLD ideas into categories that may not be a true fit.

Today's New gTLD Program instead allows for competition tempered by the suite of new protections for trademark owners and Internet users. Choice and competition will be introduced in a more secure environment than ever before.

Question 6. If commenters are correct that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution" then why should we place "artificial or arbitrary" limits on the Internet?

Answer. Today's New gTLD Program is balanced so as not to impose artificial or arbitrary limits of any kind. Limits on the Program were created to safeguard specific, important interests, for example, property rights and community interests. The mandatory rights protection mechanisms in place for the New gTLD Program are broader than the protections offered to trademark holders in the rollout of any other media of which I am aware. However, the rights protection mechanisms were carefully crafted, balancing the input of trademark experts against third parties with legitimate rights to register domain names. To that end, including the suite of trademark protections in the

New gTLD Program is not an "artificial or arbitrary" limit on the Internet and ICANN is committed to enforce the mandatory requirements. The creation of trademark protections is also supported by the economic analysis described in response to Senator Warner's Question 5.

The protections that exist are careful and balanced. Further, ICANN has agreed to undertake studies of a post-launch review on the feasibility of enhancing both the scope of the words registered within the Trademark Clearinghouse and the length of the Trademark Claims notification process. If further protection is warranted and feasible, these enhanced protections could be included in future gTLD application rounds. Imposition of drastic limitations--and creating rights that are neither justified on the basis of experience nor recognized in other areas--could impair the ability for competition to flourish in new gTLDs.

Expansion of Internet Addresses

Question 7. The Internet has revolutionized some many different areas of society and the economy. The innovation, adoption, and sheer size of the Internet are simply unparalleled. The Internet currently comprises of approximately 2 billion users and more than five billion devices. Cisco estimates there will be more than 50 billion Internet connected devices by 2020.

However, we have for the most part exhausted the existing pool of Internet address--IPv4 provides for approximately 4.3 billion addresses. The shortage has been the driving factor in creating and adopting several new technologies as well as new and larger addressing system, known as IP version 6. This migration from a 32-bit addressing space to a 128-bit addressing, will provide 340 trillion, trillion, trillion separate addresses--enough for every human bring to use many trillions of address. With IPv6, there will be approximately 670,000 IP addresses for every squared nanometer of the earth's service. To put that into perspective, a human hair is 100,000 nanometers wide.

However, the implementation of IPv6 has been somewhat slow. Last year, I read only about 20 percent of the Internet was IPv6 compatible and while a recent survey shows adoption of IPv6 grew by 1,900 percent over the past 12 months that results in only about 25 percent of .com, .net, and .org Internet subdomains.

What is the status of the migration to IPv6 and what will it mean for Internet users and businesses, domestic and globally?

Answer. While universal IPv6 deployment is likely to obviate the need for IPv4 deployments in the long-term, the short and medium-term is likely to see Internet networks running both protocols side-by-side for years to come. As such, migration away from IPv4 is a less important goal than the widespread deployment of IPv6.

The status of IPv6 deployment can be measured both quantitatively and qualitatively. Quantitatively, over 7,500 IPv6 address blocks had been allocated to network operators around the globe by the end of September 2011 ^{\28\} and by January 2012, the American Registry for Internet Numbers (ARIN) allocated IPv6 address blocks to over 2,300 networks in the USA ^{\29\} alone. Almost 6,700 ^{\30\} IPv6 networks were publicly routed on the Internet in January 2012, which is approximately 17 percent ^{\31\} of Internet networks.

^{\28\} http://www.nro.net/wp-content/uploads/nro_stats_2011_q3.pdf.

^{\29\} <ftp://ftp.arin.net/pub/stats/arin/>

^{\30\} <http://www.cidr-report.org/v6/as6447/index.html>.

^{\31\} <http://www.cidr-report.org/as2.0/>.

Qualitatively, IPv6 deployments have undergone testing and are now being made as part of ISPs and content providers' standard services. World IPv6 Day ^{\32\} in June 2011 was a coordinated test of IPv6 by including Google, Facebook, Yahoo!, Akamai and Limelight Networks, together with over 1,000 website operators. It was a success, and June 6, 2012 will see the World IPv6 Launch, in which major ISPs, home networking equipment manufacturers and web companies around the world are coming together to permanently enable IPv6 for their products and services.

^{\32\} <http://www.worldipv6day.org/>.

While June's World IPv6 Launch is not a flag day, the combination of successful testing and market leading deployment is expected to provide an incentive to other Internet businesses and help raise awareness with non-Internet businesses. Some businesses may note that they need to update systems to allow for IPv6 deployment, though regular updating of systems to meet with technological advances is a normal cost of business. However, successful IPv6 deployment should be seamless for Internet users, whose computer operating systems have been IPv6 capable for some years already.

Question 8. Is there anything governments can do to encourage faster adoption of IPv6 as well as increase awareness to businesses and citizens about the migration?

Answer. From ICANN's perspective, public support for adoption of IPv6 can help increase awareness of the deployment of IPv6, as well as provide incentives for Internet-related businesses to engineer products that are capable of IPv6 deployment. For example, in 2005, the United States Office of Management and Budget (OMB) mandated ^{\33\} that Federal agencies initiate the transition to IPv6. The target readiness date was June 2008. In September 2010 the OMB released a further memorandum ^{\34\} setting out additional deadlines for the Federal IPv6 transition. Other national governments have introduced similar roadmaps. Examples include Australia's 2009 Strategy for the Implementation of IPv6 in Australian Government Agencies ^{\35\} and the European Commission's Action Plan for the deployment of Internet Protocol version 6 (IPv6) in Europe.^{\36\} The latter has guided deployment in governments throughout Europe, including Germany.^{\37\}

^{\33\} http://www.cio.gov/documents/Transition_Planning_for_IPv6.pdf.

^{\34\} <http://www.cio.gov/Documents/IPv6MemoFINAL.pdf>.

^{\35\} http://www.finance.gov.au/e-government/infrastructure/docs/Endorsed_Strategy_for_the_Transition_to_IPv6_for_Australian_Government_agencies.pdf.

^{\36\} http://ec.europa.eu/information_society/policy/ipv6/docs/european_day/communication_final_27052008_en.pdf.

^{\37\} <http://ripe58.ripe.net/content/presentations/ipv6-in-germany.pdf>.

Mandates such as OMB's 2005 timeline have helped establish demand for IPv6 feature sets, as customers now require those features in equipment purchases. As such, governments have contributed to the success of World IPv6 Day in 2011, which readied the stage for this year's World IPv6 Launch.

Response to Written Questions Submitted by Hon. Olympia J. Snowe to Angela Williams
United Nations Model

Question 1. There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state."^{1\} Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU)."^{2\}

^{\1\} http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html.

^{\2\} <http://premier.gov.ru/eng/events/news/15601/>.

The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. The YMCA of the USA ("Y-USA") did not enter testimony requesting that ICANN delay its new gTLD Program. Our testimony primarily focused on the financial impact the new gTLD Program would have on the not-for-profit sector. It is hard for us to predict what the global impact would be or whether it would give other countries momentum to call for the United Nation's involvement in Internet governance if the new gTLD Program were to be delayed. Nevertheless,

ICANN's irresponsible launch of the new gTLD Program with an implementation plan that does not adequately address consumer protection or the financial burdens for our organizations could have a negative impact on the not-for-profit sector. Further, we suspect that anti-government sentiments will continue to be prevalent regardless of ICANN's decision.

Question 2. If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilizes the Internet? What impact could it have on Freedom of Speech?

Answer. Based on U.S. laws, American citizens, companies and not-for-profit organizations are able to fully engage in ecommerce, humanitarian and educational pursuits and commentary and free expression on the Internet. The Y-USA does not believe that ICANN's new gTLD Program will affect these protections. Furthermore, the Y-USA is unaware of any data, studies or research that analyze the potential effect the United Nations or government would have on businesses or citizens should they take control of the Internet.

Growth of the Internet and expansion of the domain name system

Question 3. The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wal-mart. [sic] Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc. Given that there have already been two expansions of top level domains, it seems difficult to simply state that there shouldn't be any additional top-level domains for the Internet. The Internet is all about expansion and innovation, after all. Are you really saying we already have all the top-level domains the Internet will ever need?

Answer. Y-USA did not enter testimony suggesting that the Internet should not be expanded. Again, our testimony primarily focused on the financial impact the new gTLD Program would have on the not-for-profit sector. It is our assertion that not-for-profits (for those that can afford to) should not be required to use the humanitarian contributions it receives to (1) change its business model to operate as a domain name registry; and/or (2) file countless defensive top level and second level domain name registrations to protect its intellectual property against cyber squatters seeking profit off their names.

Question 4. If the Internet is going to continue to grow shouldn't the domain name system?

Answer. The domain name system can grow, but in a way that protects businesses, and affords the not-for-profit sector meaningful input and access as global stakeholders.

Question 5. Putting aside your request for delay, are there specific improvements you would recommend in the gTLD program that would address your concerns?

Answer. Y-USA testified as a not-for-profit organization and as a member of ICANN's newly-formed Not-for-Profit Operational Concerns Constituency ("NPOC"). We did not request that the new gTLD Program be delayed. Instead we offered the following recommendations:

That verified not-for-profit organizations be permitted to exempt their trademarks from any other applicant in the new gTLD program at no cost, or if that is not possible, then at a drastically reduced fee;

That the mechanisms for trademark protection be significantly strengthened, with the ability to proactively protect trademark owners before any application is accepted; and

That the costs to participate in the new gTLD program for verified not-for-profit organizations be eliminated.
White Paper

Question 6. In the "White Paper," which was released in 1998 and led to the formation of ICANN is competition, has as one of its core

principles is competition--that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper \3\ on the issue of new generic top level domains showed ``very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." Also, commenters noted that ``there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution." Isn't the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

\3\ <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

Answer. Y-USA is of the opinion that expansion of the gTLD program could be a form of healthy competition if there is a demonstrated need for the expansion and an articulated rationale supporting the scope of the expansion (e.g., the number of new TLDs to be introduced). ICANN has estimated 200-1000 new gTLDs within the first launch phase. Rollouts of new gTLDs such as .biz, .mobi, etc., were staggered. Y-USA and we suspect many other not-for-profits and businesses, filed defensive domain name registrations during these expansions, rather than using the new domain names to support an innovative business plan, or to offer new content or services for our communities. For example, a new gTLD for ``.xxx" was recently launched for the adult entertainment industry. We filed a defensive registration for ``ymca.xxx" at the cost of \$300. Should there be a need for our organization and/or other not-for-profits organizations to file hundreds of defensive registrations with no plans to actually use them or incorporate them in our business plans, the costs and impact to do so could be staggering. Our sector not only prefers to, but must, use our monies to provide critical services to our communities.

Question 7. As stated the white paper highlighted that ``most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." What has happened since the inception of ICANN that warrants the United States Government from ignoring these initially comments from U.S. and non-U.S. stakeholders that ICANN should decide the issue of new gTLDs?

Answer. Y-USA is not well versed in the nuances of the evolution of Internet governance.

Question 8. Several commenters also stated ``the market will decide which TLDs succeed and which do not." What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. Y-USA is in favor of the market deciding which new gTLDs will succeed. However, what concerns us are the costs for not-for-profits to participate in the expansion (including defending its intellectual property rights) of the Internet with humanitarian monies donated for our worthy causes. Unfortunately, not-for profit organizations will have to allocate financial and human resources to defend their brand and intellectual property early in the process and long before the market determines whether these new gTLDs are successful. Our sector not only prefers to, but must, use our monies to provide critical services to our communities.

Question 9. If commenters are correct that ``there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution" then why should we place ``artificial or arbitrary" limits on the Internet?

Answer. Y-USA does not favor restricting or limiting the internet. Again, what concerns us is the costs for not-for-profits to participate in the expansion (and defend its brand and intellectual property rights) of the Internet with humanitarian monies donated for our worthy causes. Unfortunately, expansion without limits will place not-for profit organizations in the position to allocate financial and human resources to defend their brand and intellectual property, well before these new top level domains are proven successful. For some new domains, if history is a predictor, most of the registrations for second level domain names will come from companies and organizations defensively registering their names.

Response to Written Question Submitted by Hon. Maria Cantwell to
Daniel L. Jaffe

Cracking down on rogue websites

Question. Mr. Jaffe, do you believe that the increase in top level domains combined with all the requirements ICANN is putting in place will make it easier, more difficult, or not change the ability of U.S. authorities to crack down on Internet sites--to use the phrase--that are dedicated to infringing activity?

Answer: We believe an unlimited expansion of the TLDs would make it much more difficult for U.S. authorities to crack down on "rogue" Internet sites. This is a serious challenge in today's environment with 22 TLDs so an unlimited expansion would increase the problem exponentially. In 2009, an international coalition of law enforcement agencies including the U.S. Department of Justice and the FBI issued a set of 12 specific law enforcement recommendations to ICANN. None of those recommendations has been adopted. In a very detailed letter to ICANN dated December 16, 2011, the Federal Trade Commission (FTC) stated that the TLD expansion presented a "dramatically increased opportunity for consumer fraud, distribution of malware, and proliferation of other malicious activity. . ." The Commission made five specific recommendations to ICANN to address before any new TLDs are approved. We believe it is critical that ICANN fully implement the recommendations of the FTC and other law enforcement agencies from around the world.

Response to Written Question Submitted by Hon. Claire McCaskill to
Daniel L. Jaffe

Question. I recognize that ICANN has put a tremendous amount of work and study into the planned expansion of top-level domain names. There have been a number of economic studies, dozens of comment periods and seven versions of the Applicant Guidebook before the final one was issued. ICANN clearly views the expansion of gTLDs as vital to the growth and viability of the Internet.

Given how much time, effort and study has been put into this decision, I find it disturbing that there is still so much dispute about expansion. There is clearly a lack of consensus about these changes in the business and non-profit industries as well as concerns from law enforcement. This is not a decision to be taken lightly and I believe there needs to be better agreement on the outstanding issues from all interested parties.

Both of you have very differing opinions about the implications of the gTLD expansion. Why has it taken this long to get this out in the open?

Mr. Jaffe, there was an extensive comment period before the guidelines were issued, which I'm sure you were aware of--did you and other industries fully participate in the process? Do you disagree with the economic studies that ICANN has cited saying this would increase competition and innovation? If so, why?

Mr. Fritz, how much weight was given to the concerns raised by Mr. Jaffe and others with his viewpoints? The danger of increased copyright infringement appears to be a legitimate issue--do you agree?

Answer. ANA and many other business groups and companies have been actively participating in the ICANN process for several years. We filed detailed comments with ICANN in 2008 and 2009 expressing our serious concerns about the unlimited TLD expansion. Many companies have attended the numerous meetings around the world of the ICANN board to express similar concerns. Unfortunately, the strong objections raised by ANA and a very broad cross-section of the international business community have largely fallen on deaf ears with ICANN. We seriously challenge the economic analysis that has been put forward by ICANN. An unlimited expansion of the TLDs will cost the business community billions of dollars. The only voices speaking in favor of the expansion are registrars, registries and others who will directly profit from the roll-out. The broader Internet business community, including the 161 members of the Coalition for Responsible Internet Domain Oversight (CRIDO) is strongly opposed to the current program.

Response to Written Questions Submitted by Hon. Olympia J. Snowe to
Daniel L. Jaffe

United Nations Model

Question 1. There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," which a senior

State Department official stated ``they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state.\1" Even Russian Prime Minister Vladimir Putin remarked recently his desire of ``establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU).\2"

\1\ http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html.

\2\ <http://premier.gov.ru/eng/events/news/15601/>.

The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. We do not believe that a delay in the TLD expansion or a pilot project involving a smaller number of new TLDs would have negative implications for the role of ICANN in Internet governance. Indeed, given the serious concerns that have been expressed by the international law enforcement community, more than 30 IGOs and a broad cross-section of the international business community, it would be a reckless experiment for ICANN to proceed full speed ahead with the unlimited expansion. A failed and costly program that hurts both consumers and businesses could drastically undermine the foundations of ICANN and its supervisory role over TLDs.

Question 2. If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

Answer. We do not advocate that the U.S. government or any other government control the Internet. We also do not seek the abolition of ICANN. A private sector led multi-stakeholder process that truly achieves consensus will result in an online environment that encourages creativity and innovation for all the citizens of the world.

Unfortunately, we do not believe that these goals have been fostered by ICANN's current TLD program.

Self-Regulation vs. Government Intervention

Question 3. In a letter and petition, submitted by the Association of National Advertisers and other organizations to Commerce Secretary Bryson, on November 10, 2011, you express your ``strong opposition to the new Top Level Domain (TLD) program that was approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on June 20, 2011." The petition then calls for the Department of Commerce and NTIA to use all of its best efforts to persuade ICANN to postpone the opening of the Top Level Domain application window. The ANA and the other petitioners are basically calling for the government intervention.

However, in comments the filed, in June 2010, with respect to the Department of Commerce's Notice of Inquiry on information privacy and innovation in the Internet economy, ANA and some of the same organizations that voiced for government intervention on ICANN, praised the virtues of self-regulation and that ``existing and emerging robust self-regulatory principles address privacy concerns while ensuring that the Internet can thrive, thereby benefiting consumers and the U.S. economy." The petition went on to state that self-regulation ensures ``the marketplace is not stifled or smothered by overreaching and rigid regulation." So you all are warning against government intervention with respect to online privacy.

These petitions seem in direct conflict with each other--on one issue you want the government to intervene but on another you don't. Can you provide clarity as to why this is because it doesn't seem consistent?

Answer. We do not believe that industry self-regulation and reasonable regulation by the government in certain areas are mutually exclusive. For example, in the privacy arena, we have always agreed that there are certain sensitive areas (health and financial

information and children) where there is a legitimate interest for reasonable government regulation. Thus, we have supported the privacy regimes of Gramm-Leach-Bliley, HIPPA and the Children's Online Privacy Protection Act (COPPA). However, for non-sensitive information, we continue to believe that the privacy interests of consumers can be best protected through strong, effective industry self-regulation. For that reason, we were one of the founding partners of the Self-Regulatory Program for Online Behavioral Advertising (OBA).

With regard to ICANN, we have never sought direct government intervention by the Department of Commerce. We support the role that ICANN plays as part of a multi-stakeholder approach. However, it is critical that the various requirements regarding the public interest, consumer trust and public benefits that are contained in the Affirmation of Commitments between ICANN and the Department of Commerce are being adequately fulfilled. ICANN was provided authority over key functions of the Internet under the Affirmation of Commitments with the Department of Commerce. If ICANN fails to uphold these commitments, then the DOC must provide assurance that the legitimate concerns of businesses and consumers will be met.

Question 4. Do you believe this intervention you request is counter to the "Framework for Global Electronic Commerce" working paper, which its first principle is "the private sector should lead" and that "governments should encourage industry self-regulation wherever appropriate and support the efforts of private sector organizations to develop mechanisms to facilitate the successful operation of the Internet?"

This intervention also seems in direct conflict with the Commerce Department's Commitments in the Affirmation of Commitments (AoC), where it is written the Commerce Department "affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model." Could Commerce's involvement in delaying the gTLD expansion be perceived as renegeing on this commitment within the AoC?

Answer. We do not believe that our request to the Department of Commerce is inconsistent with either the "Framework for Global Electronic Commerce" or the Affirmation of Commitments. We do not advocate that the U.S. government or any government control the Internet. However, that does not mean that the Commerce Department has no role to play in the broad governance of the Internet. Indeed, as a member of ICANN's Governmental Advisory Committee (GAC), the Commerce Department is a vital part of the multi-stakeholder global community. In addition, ICANN made a number of specific promises in the Affirmation of Commitments between ICANN and the NTIA, in exchange for the considerable power to oversee the Internet that was delegated to ICANN by the U.S. government. It has become very clear over the last several months that the process followed by ICANN on the TLD proposal has not achieved consensus among all of the stakeholders. If ICANN is to maintain the trust in its ability to act for the public benefit that is critical to its continued success as a private, not-for-profit Internet governance body, the Commerce Department has a vital role to play to protect the interest of American consumers and businesses. Growth of the Internet and expansion of the domain name system

Question 5. The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wall-mart. Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

Given that there have already been two expansions of top level domains, it seems difficult to simply state that there shouldn't be any additional top-level domains for the Internet. The Internet is all about expansion and innovation, after all. Are you really saying we already have all the top-level domains the Internet will ever need?

Answer. We have never said that there is something sacrosanct about maintaining the existing 22 TLDs unaltered. However, it has become clear over the past several months that there is serious opposition to the unlimited expansion that ICANN has proposed. That opposition comes not just from the business community, but also from law enforcement and consumer protections agencies, IGOs, and the non-profit community.

Furthermore, the proposed added protections that ICANN states will

provide protection for the Top Level Domain system have never been tested in a pilot project. It is reckless to have such a broad expansion of the Domain Name System without this more limited test.

Question 6. If the Internet is going to continue to grow shouldn't the domain name system?

Answer. There is no scarcity of space within the existing domain name system, so the ICANN program seems to be a solution in search of a problem. Most of the current TLD names are minimally used, but brand owners nevertheless spend millions of dollars policing them to protect against trademark dilution, cybersquatting and the online sale of pirated or counterfeit products. Those costs and dangers would expand exponentially under the ICANN program. The broad Internet business community is not calling for this unlimited expansion. The expansion of domains should be based on a careful analysis of costs and benefits, and we do not believe that ICANN's analysis has been adequate to date.

Question 7. Putting aside your request for delay, are there specific improvements you would recommend in the gTLD program that would address your concerns?

Answer. In a very detailed letter to ICANN dated December 16, 2011, the Federal Trade Commission (FTC) stated that the TLD expansion presented a "dramatically increased opportunity for consumer fraud, distribution of malware, and proliferation of other malicious activity. . ." The Commission made five specific recommendations for ICANN to responsibly address before any new TLD applications are approved. The FTC letter is available at: www.ftc.gov/os/closings/publicltrs/111216letter-to-icann.pdf.

We believe it is critical that ICANN fully implements the consumer protection recommendations of the FTC. ANA recently wrote to Assistant Secretary Lawrence Strickling at the NTIA, urging the Commerce Department to ensure that ICANN adopts those recommendations. We believe it is critical that NTIA play a more proactive role in this area by providing specific timetables and benchmarks for ICANN to meet as well as specific consequences if they fall short. We also have recommended a "Do Not Sell" list that would allow companies to temporarily protect their trademarks from registration without paying registration fees. A copy of our letter is attached for your information.

White Paper

Question 8. In the "White Paper," which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition--that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper³ on the issue of new generic top level domains showed "very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." Also, commenters noted that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution."

³ <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

Isn't the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. ANA's member companies operate in very competitive markets and strongly support free, fair and open competition. There may be situations where individual companies or a specific industry (such as the hotel or automobile industry) decide there are significant benefits to be gained through new TLDs. However, that is not the case we have with the current ICANN program. Rather than a targeted or limited expansion based on specific demand from companies or industries or consumers, ICANN has decided to embark on a veritable names rush, an unlimited expansion that will impose enormous costs on brand owners.

Question 9. As stated the white paper highlighted that "most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." What has happened since the inception of ICANN that warrants the United States Government from ignoring these initially comments from U.S. and non-U.S. stakeholders that ICANN should decide the issue of new gTLDs?

Answer. We agree that the decision about expanding TLDs must

ultimately be made by ICANN. However, the decision-making process must be fair, open and impartial and consistent with the promises ICANN has made with the Department of Commerce in the Affirmation of Commitments. ICANN has been considering this program for several years, but has largely ignored the serious concerns expressed by the business community as well as the international law enforcement community during that time period. Even now, after two Congressional hearings and a growing chorus of opposition from across the Internet community, ICANN's response is "pay now and trust us to make changes later." There must be some mechanism to hold ICANN accountable and NTIA and the other members of the Governmental Advisory Committee must occupy that role.

Question 10. Several commenters also stated "the market will decide which TLDs succeed and which do not." What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. If ICANN's program was likely to enhance competition and expand the Internet marketplace, you would expect broad statements of support for it from multiple stakeholders. That is most certainly not the case here. The more scrutiny it has received, the more groups have strongly concluded that the program is not ready to be rolled out. This program has multi-billion dollar implications for all marketers and consumers. For example, in a December 16, 2011 letter to ICANN, the Federal Trade Commission (FTC) noted that ICANN has failed for over a decade to address serious issues with the WHOIS database, which is critical to protecting consumers in cyberspace. The Commission also noted the serious conflict of interest issues that have been raised about ICANN's vote to approve the TLD expansion. Those issues raise fundamental concerns about whether the program is truly a fair and open marketplace.

Question 11. If commenters are correct that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution" then why should we place "artificial or arbitrary" limits on the Internet?

Answer. The unlimited expansion of TLDs would dramatically increase the cost and complexity for trademark holders to protect their rights. The immediate cost imposed on businesses is likely to be in the billions of dollars. Applying for a new Top Level Domain name will require an extraordinarily expensive registration fee of \$185,000 as well as a minimum cost of \$25,000 paid annually to ICANN over the ten-year contractual commitment that successful applicants must make. Costs will further escalate at the second level of naming--the word to the left of the "dot"--as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes.

Some have estimated that, for a typical company, the cost of acquiring a single gTLD and managing it over the initial commitment of ten years could easily exceed \$2 million, including expenses for the application process, operations, disputes, and related legal services. The costs associated with trademark monitoring and protection in all the new gTLD spaces will run even higher. Some members of ANA and the Coalition for Responsible Internet Domain oversight (CRIDO) spend over \$1 million a year today to enforce against cybersquatting and fraud in the existing 22 gTLD spaces. These numbers will clearly escalate if ICANN's proposal goes forward. In addition, many companies may face an auction for a generic Top Level Domain, which will result in higher costs to ICANN's benefit. Many companies have hundreds or even thousands of brands to defend. Brand owners will face a Hobson's choice of either being compelled to spend substantial resources to acquire and manage new gTLDs or risk the harm to their brands that could occur if they take no action. This has certainly been the message spoken loud and clear to us from our members and the many groups within CRIDO.

Response to Written Question Submitted by Hon. Maria Cantwell to
Esther Dyson
Cracking down on rogue websites

Question. Ms. Dyson, do you believe that the increase in top level domains combined with all the requirements ICANN is putting in place will make its easier, more difficult, or not change the ability of U.S. authorities to crack down on Internet sites--to use the phrase--that are dedicated to infringing activity?

Answer. I believe that the increase in volume is likely to make the task more difficult and reduce the US's ability to effectively stop illegal activity because it will be easier to create and exploit new websites . . . and consumers are likely to be even more confused than now when they try to figure out what's legitimate and what's not.

Unfortunately, ICANN does not have a very good record of properly enforcing its own requirements, so I'm not inclined to believe its promises as the opportunities for abuse proliferate.

Response to Written Questions Submitted by Hon. Olympia J. Snowe to
Esther Dyson
United Nations Model

Question 1. There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state."¹ Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU)."²

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The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. Basically, it is up to ICANN itself whether to delay the gTLD expansion. If they do it the right way--genuinely soliciting input from all over the world--then I think that would in fact reduce other governments' standing to take over ICANN. It needs to reach out beyond governments and domain-name interests to see whether the public itself wants new domain names. . .and make sure its board represents those diverse interests.

Question 2. If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

Answer. It's hard to predict exactly, but I think it would be likely to reduce freedom of speech and freedom of association in general.

Growth of the Internet and expansion of the domain name system

Question 3. The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wall-mart. Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

Given that there have already been two expansions of top level domains, it seems difficult to simply state that there shouldn't be any additional top-level domains for the Internet. The Internet is all about expansion and innovation, after all. Are you really saying we already have all the top-level domains the Internet will ever need?

Answer. In extremis, any new name you can dream up--such as

ANYNAME--can either be represented as ANYNAME.com or it's redundant to an existing ANYNAME.com. If you actually look at most of what's in the new TLDs, you will find huge amounts of redundancy and conflicts. Most companies I talk to register their names in .com, .net, .org and a variety of other TLDs. . . . So, again, it's redundancy rather than expansion.

And meanwhile, any new business model can work with the existing domain name system. . . . Such as all the names that come after the slash as in twitter.com/edyson.

Question 4. If the Internet is going to continue to grow shouldn't the domain name system?

Answer. It can expand within the current structure. The shortage is not of domain names; it's of space in people's heads to remember all the names.

Question 5. Putting aside your request for delay, are there specific improvements you would recommend in the gTLD program that would address your concerns?

Answer. The obvious answer is stronger upfront protection for trademarks, but all this will come at tremendous legal cost with very few benefits. And of course, more attention to the legal protections suggested by CRIDO and actual enforcement of ICANN's requirements. And finally, a change in who is represented on ICANN's board and other decision-making bodies.

White Paper

Question 6. In the "White Paper," which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition--that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper^{\3\} on the issue of new generic top level domains showed "very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." Also, commenters noted that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution."

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Isn't the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. In theory it is, but in practice it is more a way of eroding the value of existing names.

Question 7. As stated the white paper highlighted that "most commenters--both U.S. and non-U.S.--suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." What has happened since the inception of ICANN that warrants the United States Government from ignoring these initially comments from U.S. and non-U.S. stakeholders that ICANN should decide the issue of new gTLDs?

Answer. Yes, I do think it's appropriate for ICANN to make these decisions, but they should consider the public interest more thoroughly when they do so. As it is, the major benefits will go to insiders--people in the business of selling and managing domain names--rather than to the owners or users of the names.

Question 8. Several commenters also stated "the market will decide which TLDs succeed and which do not." What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. In principle, there's nothing wrong with this . . . but the domain-name market seems stacked to the benefit of insiders. The reality is that there is no competition for ICANN itself. That's not necessarily a problem, but it means that ICANN and the entities that control it should be held to a high standard of accountability to the public interest.

Question 9. If commenters are correct that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution" then why should we place "artificial or arbitrary" limits on the Internet?

Answer. Because the benefits of the expansion go to third parties rather than to the participants. De facto, ICANN and its stakeholders

are creating dilutive property rights out of thin air and then auctioning many of them to the highest bidders.

Name.Space, inc.
New York, NY

Thank you this opportunity to present the views of Name.Space and its board of directors to the Committee on Commerce's hearing on ICANN and the expansion of Top Level Domains.

I am Paul Garrin, the founder of Name.Space, a first mover in the Internet Top Level Domain registry field, working to bring our original generic TLDs to market since 1996, predating ICANN by two years.

Name.Space recognizes the concerns of intellectual property holders, and we believe that we have a constructive and workable solution for policy and practice that will satisfy all parties, and welcome this opportunity to present our views to the Committee on Commerce at this December 8, 2011 hearing.

This testimony is intended to serve the Committee members and parties concerned about the positive impact of new generic Top Level Domains by raising awareness of our position and vision for a constructive approach to bringing generic Top Level Domains to market in a way that protects intellectual property owners, and creates new opportunities for branding, consumer choice and confidence, and free expression.

Historically, the commercialization of the Domain Name System has been plagued with ill-will. Cyber-squatting, domain name speculation, and fraud cost legitimate publishers, content creators, and brand owners millions of dollars in settling disputes, paying inflated prices from domain auctioneers and speculators, and in defensive domain name registrations. There are many conditions that led to this cascade of malfeasance resulting in defensive actions, un-budgeted costs, and damages to intellectual property and brand owners, and consumers. Foremost, is the lack of competition in the commercial TLD registry space. The incumbent registries, through their aggressive practices have done nothing but fuel the feeding frenzy on unmitigated domain name speculation in order to maximize their profits without regard to the negative consequences against brand owners and the overall utility of the DNS. ICANN's own policies only partially address brand protection through the (optional) sunrise period that precedes the launch of a new gTLD to the general public, and the trademark and brand clearing house.

Name.Space, in its year 2000 application to ICANN, presented its policy and business practices that we believe are the most equitable in protecting the interests of intellectual property and brand owners, and free speech. Our business model is based not on exuberance over a particular string, but on a balanced portfolio of gTLDs that represents opportunities to create strong new brands, essential for new businesses and products, as well as for less popular community, cultural, and free expression purposes. Our model establishes an economy of scale that supports both commercially valuable gTLDs, and less-profitable gTLDs that serve smaller communities, and free expression, at a stable and affordable price point.

In the upcoming 2012 gTLD round, Name.Space will re-assert its policies and responsible business practices for the fair delegation of domain names under its gTLDs, as well as work with IP interests and ICANN to develop new methods that better serve the proactive and preemptive protections necessary for the protection of intellectual property and brands in all of the gTLDs that we own and operate.

Some of Name.Space's IP protections include:

- (1) Registered trademark name clearing house and preemptive famous names filter.
- (2) Sunrise period reserved for registered brands and intellectual property at a fixed wholesale cost.
- (3) Whois "lockout" that prevents registered brands from becoming available to the general public.
- (4) Wholesale registrar access with volume discounts to associations who serve intellectual property constituents.
- (5) Full cooperation with organizations such as the ANA, IPO, WIPO, INTA, MPAA, and others to develop technologies, policies, and business practices for operating our gTLDs that protect existing brands, and develop new opportunities to use gTLDs to create strong new brands, and to present owners with innovative ways to protect and serve their content online.

(6) Restrictions on registering domain names for the sole purpose of resale.

Name.Space had applied for 118 of its original generic Top Level Domains (including such gTLDs as .ART, .BOOKS, .MUSIC, .NOW, .SHOP, .SPACE, .SUCKS) in the first gTLD round held by ICANN in 2000. Although our application was accepted under ICANN's rules, and selected in the top 10 picks of "strong candidates", it was not advanced toward delegation, and thus remains pending. Our year 2000 ICANN application had the support of then Chair Esther Dyson, who stated that Name.Space represents diversity, free speech, and is likely to be a successful business that supports both commerce and free expression.

Name.Space, whose business has a potential value of over 1 billion dollars, has been deprived the opportunity to fully launch and operate its portfolio of gTLD properties under what we believe is the most responsible, fair, and ethical practices yet to be employed in the commercial domain name industry. ICANN's approval of Name.Space's gTLDs will increase competition and diversity in the TLD registry space, and assure that our exemplary practices will best serve the public by providing the new gTLDs and the opportunities they present for new brands, small businesses, individual publishers and content creators, and for all owners of content libraries and new services in all media. The Internet is evolving and new gTLDs are an essential part of Internet infrastructure, and its evolution.

The 2012 ICANN round is the first opportunity for gTLD selection since 2000, and we have very patiently been waiting for this time to arrive so that our business can reach its full potential. We don't believe that our responsible and ethical approach to operating our gTLDs will harm intellectual property and brand owners, but will in fact protect them and offer new opportunities. Any further delay in launching our business will do nothing but cause further distress to my struggling business, and prevent us from creating jobs and contributing to the economy. We ask that there be no delay in the ICANN 2012 gTLD round, and that ICANN honor our year 2000 application for the portfolio of gTLDs that Name.Space originated since

1996, operated in commerce, and that we reserve our rights to. Name.Space is committed to the principles and practices stated here, and we believe that our gTLD policies are fair and exemplary, and welcome the cooperation of ICANN and the intellectual property associations to work with us in the most constructive and reasonable way so that our gTLDs become available on the global Internet without further delay.

I look forward to questions from the members of this committee, and to the beginning of a constructive dialogue with constituencies affected by the introduction of new gTLDs to the global Internet.

Sincerely,

Paul Garrin,
Founder,
Name.Space.

Appendix:

Name.Space has testimony on the record from hearings held by both Senate and House Commerce Committees on the subject of Top Level Domains submitted between 1997-2001. Name.Space is an early advocate of the shared registry system, and an advocate of a neutral non-profit organization to oversee the framework for introducing new gTLDs to the Internet, and was a participant in the IFWP process from which ICANN emerged.

Brief history:

1996--Name.Space launched real time domain name registry service publishing its original generic TLDs
1997--March 11, Name.Space requested Network Solutions add our gTLD data to the global root.zone file.
1997--March 12, Network Solutions refuses to add our gTLDs to root.zone
1997--March 20, Name.Space files antitrust suit against Network Solutions in Federal Court, Southern District NY
1997--September 25 House Commerce Committee hearing on Internet Domains Pt 1 (Name.Space testimony on record)
1997--September 30 House Commerce Committee hearing on Internet Domains Pt 2 (Name.Space testimony on record)
1997--National Science Foundation joined to lawsuit on First Amendment grounds
1998--Commerce Dept. NTIA releases "Green Paper" (Name.Space comments on record)
1998--Commerce Dept. NTIA releases "White Paper" (Name.Space comments on record)
1998--Commerce Dept. NTIA IFWP process (Name.Space participates)
1998--NTIA takes over contract between NSF and NSI, and amends it (amendment 11)

1998--Commerce Dept. NTIA contracts Internet Corporation for Assigned Names and Numbers

1999--NTIA creates separation of TLD ``registry" (wholesale) and domain name ``registrar" (retail) using shared registry system. Prices drop from \$100 per 2 year registration to \$30 per year.

1999--ICANN accredits 30 companies to serve as domain name registrars (reselling .COM); Name.Space accredited

2000--February, Second Circuit Court of Appeals decision--immunity for Network Solutions

2000--November--Name.Space participates in ICANN gTLD round, submits 118 gTLDs, pays \$50,000 application fee; is picked in top 10 strong applicants; support from chair Esther Dyson, opposed by other board members; application unresolved, still pending. *several ICANN board members recused themselves in connection with TLD applications that were selected.

2001--February 8 House Commerce Committee ICANN hearing (Name.Space testimony on record)

2001--February 14 Senate Commerce Committee ICANN hearing (Name.Space testimony on record)

2000--Present--Name.Space business severely impacted by non-global access for its gTLDs, struggles to stay afloat. New investment enables us to participate in the 2012 round with our standing application from 2000.

Links to view video from ICANN's 2000 gTLD round:

Paul Garrin presents Name.Space to ICANN board, answers board's questions (Nov. 15, 2000): <http://replace.tv/vid/2000-icann1115-pg-presents.mov> (approx. 8 min.)

ICANN board (sans recused members) discusses the Name.Space gTLD application: <http://replace.tv/vid/2000-icann1116-pt02-ns-discussion.mov> (approx. 28 min.)

For more information, history, press highlights links, please see:

<http://about.namespace.org>.

Select press links:

<http://www.nytimes.com/library/cyber/week/032297domain.html>
(Name.Space formerly known as PGP Media) <http://timeto.freethe.net/pg/media/washpost>
19970706.txt

<http://news.cnet.com/2100-1023-203408.html> (Name.Space formerly known as PG Media)

<http://timeto.freethe.net/pg/media/dot-monopoly1.jpg> <http://timeto.freethe.net/pg/media/dot-monopoly2.jpg>

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/12/03/BU113071.DTL>

http://www.thevillager.com/villager_314/thebattleofnyc.html

Attachments:

- (1) Name.Space ICANN application from the 2000 gTLD round
 - (2) Questions and answers from ICANN to Name.Space on the 2000 application
 - (3) Name.Space business plan (2000 version as submitted to ICANN)
- [Attachments not inserted into the record.]

ICANN
14 December 2011

At-Large Advisory Committee

Att:

Hon. John D. (Jay) Rockefeller IV,
Chairman, Senate Committee on Commerce, Science, and Transportation
United States Senate,
Washington, DC.

Dear Chairman Rockefeller,

We are following up on the discussions which took place during the 8 December 2011 hearing of the United States Senate Committee on Commerce, Science and Transportation about ICANN's expansion of generic Top Level Domains.

As current chairs of ICANN's At-Large Advisory Committee (ALAC) and North American Regional At-Large Organization (NARALO), we found Ms. Esther Dyson's description of the ALAC circa 2003 extremely out-of-date. Her testimony depicted the ALAC prior to the establishment of the five Regional At-Large Organizations (RALOs) which are designed to provide a structured input first to the ALAC and then to ICANN from Internet end-users around the world. However, we fully support her overall message for the public to pay attention to the workings of

ICANN, and that ICANN's door is open.

Today, the ALAC is able to comment on any aspect of the new gTLD program, which it has on several occasions, as well as any other program or process at ICANN. It carries much more "weight" within ICANN's multi-stakeholder, bottom-up model, than it had in the past, thanks to the hard, relentless work of many end-user volunteers who are fighting in the "trenches" to bring the public interest to the ICANN table. We have nearly 140 At-Large Structures (acronym ALS--any formal commercial or non commercial organization having established a process to collect member input at a country level, whether a local non-profit computer club, or a charity bringing computing to the disadvantaged) worldwide and are increasing our membership on a monthly basis.

We believe it is the duty of ICANN, and of the ALAC, to impress upon legislators and the Executive Branch in all countries that the touchstone of future Internet development is, and should remain, in the public interest. In parallel, we wish to draw the attention of legislators in the United States to the fact that, because their conclusions and choices regarding the Internet have the potential to affect Internet end-users elsewhere, United States' initiatives and laws should seek to be compatible with the public interest internationally.

Active At-Large members cannot purport to "represent" the 2.1 billion global Internet users, but they can try to act in what they honestly believe is in the best interests of the Internet's end users. Do we have enough members? Probably not--our aim is to have at least one At-Large Structure (ALS) in every country around the world. We need more volunteers. We need more input from global Internet end-users.

The vehicle for this input is here. It is already used and has produced dozens of statements every year, which you and your honorable colleagues can consult on: <http://www.atlarge.icann.org/correspondence>

However, this vehicle needs to be more advertised. We are doing our part to raise awareness of ALAC and the issues of interest to global Internet end-users.

We ask that you share the information of this vehicle as outlined above with your colleagues.

Yours sincerely,

Beau Brendler, Chair,
North American Regional At-Large Organization (NARALO),
<http://www.naralo.org/> Yonkers, New York.
Dr. Olivier MJ Crepin-Leblond, Chair,
At-Large Advisory Committee,
<http://www.alac.icann.org/> London, UK.

Council of Better Business Bureaus, Inc.
December 8, 2011

Hon. Jay Rockefeller IV,
Hon. Kay Bailey Hutchinson,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Dear Chairman Rockefeller and Senator Hutchinson:

The Council of Better Business Bureaus (CBBB) would like to thank you for holding a hearing on the important topic of Internet domain expansion.

CBBB concurs with the concerns expressed by the Association of National Advertisers and the nonprofit constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). Currently, there is insufficient control over the rampant crime that takes place via the Internet in the form of pirating of intellectual property, identity theft, phishing scams and other types of brand infringement and consumer fraud. CBBB and its constituents--small and medium business, nonprofits and consumers--are victimized by Internet crime on a daily basis.

Before ICANN undertakes a mass expansion of potential websites, it needs to come up with a workable solution, in conjunction with international crime fighting organizations and victims of crime, to improve the ability of law enforcement to track and shut down illicit activities on currently registered Internet websites.

As a not-for-profit trade association with famous and well-recognized trademarks, CBBB has to devote considerable resources to tracking and taking action against illicit use of its trademarks on the Internet. We also have to spend scarce financial resources each year purchasing domain names in all of the different top level domains corresponding to all of our trademarks and programs to keep illegitimate users from purchasing our name and diverting traffic to their fraudulent websites. An increase in the top level domains will

exponentially increase these costs.

ICANN's current proposal requires trademark holders to register their trademarks in a Trademark Clearinghouse and then purchase or block each trademark in each new top level domain (an expense that most non-profits and small businesses cannot afford). Instead of the current proposal, ICANN should block the new TLD registries from selling domains that belong to trademark holders and have been properly registered in the Trademark Clearinghouse.

As an example of the backward manner in which ICANN "protects" trademarks, it is notable to consider the experience the CBBB had in the most recently opened top level domain, the .xxx TLD operated by ICM Registry for the adult entertainment industry. Any trademark holder that wanted to ensure that its trademark was not sold in that registry had to block it during the "sunrise" period. Otherwise, ICM could sell the trademark as domain names, a common practice. In all, ICM and the registrars selling to .xxx made approximately \$23 million from this type of defensive registration by trademark holders who simply wanted to protect their good names from abuse.

Even more astounding was the fact that ICM Registry refused to accept CBBB's registration of its most famous trademark ("BBB," one of the most recognized trademarks in North America) because ICANN allowed ICM to reserved bbb.xxx as a premium name that it can later auction off to the highest bidder.

Another type of Internet crime and organizational identity theft occurred just yesterday when the BBB network e-mail and registered torch logo were used as tools in a widespread phishing scam that sent e-mails to thousands of people across North America and victimized unsuspecting e-mail recipients who believed these e-mails came from BBB. Despite best efforts, long hours and wasted resources, it is difficult to identify the perpetrators of phishing scams such as this.

ICANN was authorized to operate the domain naming and addressing system under the condition that it act in the public interest, per the terms of its Memorandum of Understanding with the Department of Commerce and its subsequent Affirmation of Commitments. To fulfill this public interest requirement, ICANN must balance the desire for greater competition on the Internet with suitable protections for legitimate organizations and hard working business owners. That is essential to fulfilling its public interest commitment.

Without more controls on Internet registries and registrars, the Internet will increasingly serve criminal interests over the public interest. More resources must be made available to combatting Internet crime. We recommend that these strong actions be taken before ICANN expands top level domains, an expansion that will only exacerbate these grave problems.

The Council of Better Business Bureaus and our entire BBB network appreciate the work of the Committee in helping solve these issues that impact large and small companies, nonprofits, charities and, ultimately, consumers.

Sincerely,

Stephen A. Cox,
President and CEO,
Council of Better Business Bureaus, Inc.

Dell, Inc.
Washington, DC, December 7, 2011

Senator Jay Rockefeller IV,
Chairman
Committee on Commerce, Science, and Transportation
Washington, DC.
Senator Kay Bailey Hutchison,
Ranking Member
Committee on Commerce, Science, and Transportation
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchison:

Thank you for committing your and the Committee's time and resources toward exploring the implications of the International Corporation for Assigned Names and Numbers' (ICANN) generic top-level domain (gTLD) expansion plan. This proposal is of great concern to Dell and our many online customers.

As a company that transacts significant business online, Dell is already a major target of online criminals who fraudulently incorporate our trademark into domain names in attempts to steal individuals' private information, sell dangerous counterfeit products, or otherwise defraud consumers. Dell expends significant resources, in the form of litigation and defensive domain name procurement, to counter these

threats to consumer welfare in the existing universe of domain names. ICANN's plan to multiply the size of that universe will both multiply the expenses required to undertake those defenses, as well as multiply the potential online threats to consumers. We believe that the inevitable result of ICANN's current plan will be erosion of consumer trust in ecommerce, along with significant new expenses on all honest companies that transact business online--expenses that are particularly undesirable during a time when our economy needs companies to invest instead in innovation and job creation.

ICANN's multi-stakeholder process did not adequately address the concerns of stakeholders in the domain name system, and Dell believes it imperative for the U.S. Government to now take steps to ensure that ICANN fulfills its obligations to resolve these serious issues. We respectfully request that you and your colleagues encourage the Department of Commerce to ask ICANN, under the Affirmation of Commitments Agreement, to delay implementation to fully review and work to resolve stakeholder concerns, particularly those that threaten the consumer trust that currently enables ecommerce to thrive.

Respectfully,

Rebecca MJ Gould,
Vice President,
Global Government Relations
and Public Policy.

Prepared Statement of Jim Gibbons, President and CEO,
Goodwill Industries International, Inc.

Mr. Chairman, Ranking Member, and members of the Committee, on behalf of Goodwill Industries International, Inc., I appreciate this opportunity to submit written testimony on the Internet Corporation for Assigned Names and Numbers (ICANN) expansion of new generic top level domains (new gTLD program).

Goodwill Industries is comprised of 165 independent, community-based Goodwill agencies in the United States and Canada and 14 international affiliates. Collectively, Goodwill's network of local agencies provides employment training, job placement services and other community services to nearly 2.5 million people annually. In addition, 170,000 people obtain meaningful employment as a result of Goodwill career services programs. These employees earn \$2.7 billion in salaries and wages and contribute to their communities as productive, taxpaying citizens.

Goodwill Industries is one of the early organizational members of the Not-for-Profit Operational Concerns Constituency (NPOC). After several years of discussing the new gTLD program, the ICANN board identified the nonprofit sector as an under-represented voice within the ICANN community and Internet governance, thus appointing a new councilor to represent and promote the needs of nonprofits in the fall of 2009. In June, 2010 the nonprofit voice had increased sufficiently and warranted the formation of a new constituency. NPOC was formally approved by the ICANN board on June 24, 2011. Unfortunately by the time the nonprofit sector was recognized and able to raise valid concerns, the proposed guidelines for the new gTLD program has undergone many revisions. NPOC currently represents 23 nonprofits from around the world, 11 of which are based in the United States including the YMCA. Many other applications are pending membership, demonstrating the increased interest by nonprofits of this issue. Goodwill Industries supports the testimony provided by Angela Williams, General Counsel, YMCA of the USA on behalf of her agency and NPOC.

As a member of NPOC and one of the five most valuable and recognized nonprofit brands as well as a leading social services enterprise, Goodwill Industries has several concerns with the new gTLD program, including: budgetary concerns; the increased risks of fraud, cybersquatting, and trademark infringement; and public confusion.

Budgetary Concerns

The ultimate cost in proceeding through the entire process of applying for a gTLD could reach several hundred thousand dollars. The initial application cost is to be approximately \$185,000 plus an additional annual cost thereafter of at least \$25,000 for a required ten-year term. This does not include the legal fees required to prepare the application and certain amounts required to be in escrow. Furthermore, additional costs can be incurred if an applicant is required to defend the application. For example, if ICANN requires an extended evaluation of an application, the applicant may have to pay an additional \$50,000 including fees to defend the application which range from \$1,000 to \$5,000 in filing fees per party per proceeding, and an additional \$3,000 to \$20,000 in costs per proceeding, which must be paid up front.

Should Goodwill choose not to participate in the new gTLD program, there is a great risk that another entity will apply for the use of the

name "goodwill" or one that is similar--such as a misspelling of the word "goodwill". In the likely event that another entity applies for a top-level domain that contains "goodwill", the costs for filing an objection are expected to be \$30,000 to \$50,000.

As a nonprofit social enterprise committed to its mission of eliminating barriers to opportunity and helping people in need reach their fullest potential through the power of work, Goodwill Industries and its local members simply do not have the resources to participate in the new gTLD and will certainly not be able to compete against for-profit organizations with resources and reserves available for intellectual property protection. In these tough economic times when faced with decreased donations and increases in the number of people seeking services, Goodwill and other nonprofits must continue to use funds to provide critical services to our communities. Goodwill simply cannot afford thousands of dollars to become a domain name registry solely to ensure brand protection. Becoming a domain name registry is not part of Goodwill's mission, yet protection of its reputation and brand is critical. Founded in 1902, Goodwill has a long history and a solid reputation with the millions of shoppers, donors, and people who use our services. Last year Goodwill earned the trust of 74 million donors and provided job-training and employment services to nearly 2.5 million people.

Risk of Fraud and Public Confusion

The primary enforcement mechanism of the new gTLD program is the Trademark Clearinghouse where registered trademark owners can protect their registered trademark rights. Many of the costs of listing marks in the Trademark Clearinghouse are still unclear, creating uncertainty as to whether this is a viable option for nonprofits to protect their brands.

The Trademark Clearinghouse will only apply to exact matches of trademarks, rather than common misspellings, etc. that fraudsters and cybersquatters often use to deceive and confuse Internet users attempting to locate a particular nonprofit. Nonprofits are not in a position to register their marks using hundreds of additional gTLDs, particularly at premium prices.

Bad actors such as fraudsters and cybersquatters who register and use domain names in bad faith to take advantage of the established trust between nonprofits and the public and the brand reputation of other well-known entities have existed for many years. Goodwill Industries recently learned of an unauthorized entity using its name to fundraise online and in a local community. Potential funders were confused about which organization was seeking donations and for what purpose. Unfortunately this is a common occurrence as trademark infringement is becoming more rampant.

The likely increased public confusion and fraud that will occur in the new gTLD space will be particularly devastating for nonprofits. If nonprofits, including Goodwill and our members, are not able to adequately protect names and trademarks, bad-faith domain name registrants will be able to inappropriately profit from hundreds of domain names that are identical or similar. In addition, those bad actors may disseminate dangerously false information to Internet users, greatly increasing the likelihood that the public will be misled.

Conclusion

Goodwill Industries believes ICANN should eliminate the costs--or at a minimum, drastically reduce the costs--for verified nonprofits to participate in the new gTLD program. Furthermore, verified nonprofit trademarks should be exempt from the new gTLD program at little-to-no cost and mechanisms for trademark protection within the new gTLD program should be significantly strengthened.

Goodwill is an innovative social enterprise and as such has expanded its presence on the Internet and increased its mobile accessibility to meet the needs of its shoppers, donors, and program participants. The zip code locator is the most popular feature of www.goodwill.org where one can find the nearest Goodwill to shop, donate, volunteer, and/or receive job-training and employment services. Like many nonprofits, Goodwill is also increasing its online fundraising capacity. As Goodwill continues to see growth in these areas, protecting our brand, reputation, and the nonprofit sector as a whole is more important than ever. However, these protections should not come at the expense of the critical services that nonprofits provide.

Thank you for taking the time to consider these consequences of the new gTLD program. We look forward to continuing our work with ICANN via our participation in NPOC to ensure the voice of the nonprofit sector and the people we serve is heard.

Hon. John D. Rockefeller IV,
Chair,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Dear Senator Rockefeller:

Easter Seals is pleased to endorse the testimony of the Not-for-Profit Operational Concerns Constituency (NPOC) before the United States Senate Committee on Commerce, Science, & Transportation on the issue of the Internet Corporation for Assigned Names and Numbers' (ICANN) new Generic Top-Level Domain Name Program (new gTLD Program)..

Easter Seals, like many non-profit organizations, increasingly relies on the Internet for communicating and fulfilling our mission to provide services and supports to people with disabilities and other special needs. The potential for cybersquatting and fraud could be greatly increased under the gTLD Program and groups like Easter Seals would need to divert greatly needed resources away from services to protect ourselves. We believe that the new gTLD Program, as currently defined, will ultimately create unintended, and costly, consequences for not-for-profit organizations.

Thank you for your consideration.

Sincerely,

Jennifer Dexter,
Assistant Vice President,
Government Relations.

Prepared Statement of the National Restaurant Association

The National Restaurant Association appreciates the opportunity to register the U.S. restaurant industry's strong opposition to the January 2012 roll-out of the new generic top-level domain (gTLD) program approved by the Internet Corporation for Assigned Names and Numbers (ICANN) in June 2011.

The Association is the leading business association for the restaurant and foodservice industry. Our industry is comprised of 960,000 restaurant and foodservice locations. These nearly 1 million restaurant locations serve more than 130 million Americans every day. Our members include multi-state, multi-unit restaurant brands with thousands of locations worldwide and small independent businesses with a single location.

The restaurant industry plays a significant role in our Nation's economy. Restaurants will generate an estimated \$604 billion in sales this year, with an overall economic impact of more than \$1.7 trillion. The restaurant industry is one of the Nation's largest private-sector job creators, employing about 12.8 million people, representing nearly 10 percent of the U.S. workforce.

The Association joins more than 100 other major business associations and companies in the Coalition for Responsible Internet Domain Oversight (CRIDO) in urging the Department of Commerce to stop or delay ICANN's new gTLD program. We were part of CRIDO's petition to U.S. Department of Commerce Secretary John Bryson in November urging the Department to work with ICANN on delaying and reconsidering the program.

We believe ICANN's gTLD program would impose billions of dollars in unnecessary costs on the restaurant industry at a time when restaurant operators are looking forward to investing in their businesses and hiring employees after the worst recession in decades. Profit margins in restaurants are notoriously slim, with restaurants averaging about 4 percent in pre-tax profits on every dollar in sales. The ICANN program will divert scarce restaurant resources away from job creating, business-building activities. These are dollars far better spent reinvesting in our businesses.

If ICANN proceeds as planned, the organization will start accepting applications next month for hundreds and ultimately thousands of new top-level domains. Restaurants of all sizes will be forced to apply for new domains to protect their brands and trademarks. Costs include a \$185,000 application fee for each new top-level domain. Restaurants and other companies also likely would be forced to register numerous second-level domains--the words to the left of the "dot" in Internet addresses--within the new top-level domains. Costs would be driven higher by legal, marketing and other costs. Some businesses have put the cost of registering a single top level domain at \$2 million or more over the initial 10-year contract as companies submit applications, watch and defend their domains, monitor for infringement and litigate to block abuse. Costs could run higher if businesses are forced to buy their own Internet names in auctions.

The Internet is increasingly central to restaurateurs' efforts to

attract guests and grow their businesses. This is true for both major restaurant brands and independent restaurants. Association research shows that Americans increasingly go online for information about restaurant menus, specials, nutrition facts and more. Restaurants rely on the Internet to reach guests. Our members would have little choice but to apply for domain names for both commercial and defensive reasons. For our largest restaurant-member brands, the price tag is exorbitant. For the hundreds of thousands of smaller restaurant operators who depend on the Internet to communicate with guests, the costs and confusion could be insurmountable.

Even beyond the financial toll the gTLD program will exact on millions of U.S. businesses, the Association believes that ICANN's program will confuse consumers by spreading Internet searches across hundreds or even thousands of new top-level domains. As confusion grows, each domain name becomes less valuable. This could undermine consumer trust in the system and make it harder for the Internet to serve as the efficient conduit for business activity that it does today.

The U.S. government has delegated powers to ICANN to govern the domain-name process. ICANN is responsible for ensuring its actions further the public interest and promote consumer trust. ICANN says it has built consensus on its recommendations; indeed, its contract with the Department of Commerce requires this consensus. Yet the Association believes ICANN has failed to justify the need for the potentially explosive expansion in top-level domains or to get consensus from the millions of business stakeholders who will be affected by the program.

Finally, we believe ICANN has taken only minimal steps to educate and inform the business community and consumers about the new top-level domain process. If ICANN proceeds with the January roll-out of its gTLD program, businesses and non-profit organizations will be immediately affected. Yet even given the reaction of the business and non-profit communities to the ICANN program, there has been little education and information to help businesses and consumers understand the scope of what is about to happen. Millions of American business owners know nothing about the gTLD expansion. Information has filtered out slowly and sporadically since ICANN approved the program in June, leaving businesses and consumers in the dark about one of the biggest shake-ups in Internet marketing in decades.

The Association asks Congress and the Commerce Department to urge a reassessment of the gTLD program before its planned roll-out in January. We thank the Committee for holding this hearing to air the serious concerns of America's business community with ICANN's domain name expansion program.

Prepared Statement of Josh Bourne, President,
Coalition Against Domain Name Abuse (CADNA)

Chairman Rockefeller, Senator Klobuchar and distinguished members of the Committee, thank you for convening this hearing on the Internet Corporation for Assigned Names and Numbers (ICANN) and its program to expand the number of new generic top-level domains (gTLDs) in the domain name space. This is a drastic change that ICANN is about to implement. It will dramatically impact the space, and given the commercial significance of the Internet, it is critical that the United States Congress involve itself in matters of domain name space policy and regulation.

My name is Josh Bourne and I am the president of the Coalition Against Domain Name Abuse (CADNA). Over four years ago with the help of leading brand owners we founded CADNA, a 501(c)(6) non-profit association, to combat a variety of abuses on the Internet. CADNA represents businesses vital to the American and global economies from a wide range of commercial industries including financial services, manufacturing, pharmaceutical, leisure, high technology, and manufacturing. Our members include companies such as: Dell, DIRECTV, Lilly, Hewlett-Packard, Hilton, HSBC, LEGO, Marriott, Nationwide, New York Life Wells Fargo, and Wyndham.

CADNA was founded in response to the growing international problem of cybersquatting, which is the bad faith registration of domain names that include or are confusingly similar to existing trademarks. In addition to the mounting legal costs that companies now face in defense of their own trademarks in the domain space, this infringement costs organizations billions of dollars in lost or misdirected revenue. CADNA works to decrease instances of cybersquatting in all forms by facilitating dialogue, effecting change, and spurring action on the part of policymakers in the national and international arenas. CADNA also aims to build awareness about illegal and unethical infringement of brands and trademarks online. In the four years since its inception, CADNA has generated valuable new intelligence to help inform and expertly guide its members and increase awareness of CADNA's mission.

CADNA seeks to make the Internet a safer and less confusing place for consumers and businesses alike.

Thank you very much for the opportunity to present the views of our organization on this very important topic.

CADNA looks at the way that the New gTLD Program was developed as the product of a flawed system. CADNA believes that the goal of fostering innovation and competition through the expansion of the domain name space is not inherently objectionable, but rather, that the policy development process that ICANN conducted created a problematic program.

Since ICANN's June 20 decision to approve the Applicant Guidebook, CADNA has continued to promote changes in ICANN to improve governance, policy making, and to increase transparency. In addition, we have looked to find ways to ensure that ICANN follows through on its commitments with respect to the implementation of the gTLD policy and to develop recommendations that may improve the policy going forward.

CADNA's aim is to be a constructive partner in the Internet governance process. We have always supported ICANN's multi stakeholder system and strongly believe that, with some reforms, ICANN can better fulfill its designated mission. Our research efforts and conversations with hundreds of potential participants in the application process have resulted in several recommendations. I will be the first to admit that they need further development, but CADNA believes that they can serve as the basis of further dialogue with the Internet community and ICANN.

Here are some concrete steps that can be taken to immediately improve the implementation of the gTLD policy:

A declaration by ICANN of when the next applicant round will take place would relieve much of the anxiety surrounding the first round. CADNA has found that businesses feel forced into applying for new gTLDs in the first round, lest they be put at a disadvantage relative to their competitors who may gain an edge by acquiring their own new gTLDs.

Businesses are worried about dealing with the cybersquatting that will occur to the "left of the dot" in the new space--in other words, they are worried about the defensive registrations that they will need to pay for in others' new gTLDs and the infringing domains that ultimately get registered by cybersquatters. To alleviate this issue, ICANN should require registries to give brand owners the option to buy a block on their trademark before any registration period (sunrise or land-rush) opens. This can be offered at a lower cost than sunrise registrations have been priced at in the past--this precedent has been set with the blocks offered in .XXX, where the blocks are made in perpetuity for one, non-recurring fee.

If ICANN is awarded a renewed IANA contract, the National Telecommunications and Information Administration (NTIA) should renew the IANA contract for one year. In this one year, there should be an evaluation of whether ICANN followed through on its commitments with regard to the gTLD process and any extension of the contract should be contingent on conducting internal reforms to improve governance and transparency.

As the process moves forward, CADNA believes there will be many more improvements that can be made. In the coming months, CADNA intends to monitor progress and to research and develop other recommendations.

Mr. Chairman, you have been an outspoken leader on Internet issues and on Internet governance. The exponential expansion of the Internet created by ICANN's gTLD policy holds tremendous opportunities for innovation and for improving the lives of many. At the same time, the new policy creates many challenges in regard to the enforcement of individual rights, intellectual property protection, and consumer fraud.

CADNA would like to seize this opportunity with you and your Committee, the Obama Administration, and other private and public partners to develop an ICANN policy making process that will not repeat the mistakes of this gTLD policy, but one that will produce policies that will improve the Internet experience for all Internet users.

Hon. John D. Rockefeller IV,
Chairman,
Commerce, Science, and Transportation Committee,
United States Senate,
Washington, DC.

Hon. Kay Bailey Hutchinson,

Ranking Member,
Commerce, Science, and Transportation Committee,
United States Senate,
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchinson:

In response to the December 8 hearing regarding new generic top-level domains (gTLDs), we write to register our concern with the mischaracterization of elements of the gTLD program, and to communicate our support for new gTLDs.

The organizations signing this letter believe the introduction of new gTLDs will be innovative and economically beneficial, that the Internet Corporation for Assigned Names and Numbers (ICANN) has conducted an inclusive and well-handled review of the program, and that preparations for gTLD introduction are sufficient to ensure Internet security and stability and to protect rights holders.

ICANN, along with multiple relevant stakeholders and policy organizations, including the Generic Names Supporting Organization, undertook a very lengthy, comprehensive and transparent process that led to the approaching application for and introduction of new gTLDs. Since the formation of the multi-stakeholder Internet governance, no process has been as inclusive, and no level of outreach has been as far-reaching as the one facilitating discussion of namespace expansion. ICANN, its stakeholders, the intellectual property community, and governments are to be applauded for actively seeking, welcoming and incorporating the input of so many.

As undeniably inclusive as this process has been, however, we believe it is even more important to recognize the significant social and economic opportunities new gTLDs will provide, particularly in a fragile global economy. Since ICANN's establishment in 1998, a key element of its mandate has been not only to ensure the secure and stable operation of a global domain name system, but to promote the competition and consumer choice that contributes to global economic growth. Established and developing economies are anticipating the new opportunities afforded by new gTLDs and it is noteworthy that this expansion will include internationalized domain names (IDNs), TLDs that permit Internet users, for the first time, to access domain names in their native languages and character sets.

Innovation and expansion into new areas of technology always bring questions and concerns—further development of the namespace is no exception. Since ICANN's inception in 1998, it has successfully managed careful generic namespace expansion while addressing the well-known concerns of many, including cybersecurity experts, government representatives, intellectual property rights holders, and others. Since the process for the current round of expansion was introduced in 2005, more than six years ago, all interested stakeholders took unprecedented steps—well in advance—that provide further protections against infringement, damage or harm to national interests. More than a dozen open-to-the-public global meetings, nearly fifty public comment periods, a dedicated meeting between the ICANN Board and its Governmental Advisory Committee, and the exchange and discussion of tens of thousands of documents confirm that the decision in favor of new gTLDs can't be logically characterized as sudden.

These painstaking deliberations have involved some of us more than others. However, we each equally respect and support the efforts and the intentions of ICANN in this beneficial endeavor. We are confident the evaluation process for applicants, including the stringent attention to DNS stability and security, will allow for a safe and productive new gTLD introduction.

While new gTLDs will experience different levels of end-user adoption, we optimistically anticipate the useful possibilities for new services and applications from the namespace, the positive economic impact in the United States and globally, the inclusion of developing nations in Internet growth and development, and the realization of the hard work and preparation of the thousands of interested stakeholders dedicated not only to their own interests, but that of the global Internet.

Sincerely:

Alexa Raad, Chief Executive Officer, Architelos
Alexander Siffrin, Chief Executive Officer, Key Systems GmbH
Andreas Schreiner, Chief Executive Officer, InterNetWire Communications GmbH
Angie D. Graves, President, WEB Group, Inc.
Antony Van Couvering, Chief Executive Officer, Minds + Machines
Bhavin Turakhia, Chief Executive Officer and Founder, Directi
Bret Fauset, President and Founder, Internet Pro APC
Clyde Beattie, Principal, The Yorkland Group
Dr. Liz Williams, Chief Executive Officer, Sedari

Elliot Ness, Chief Executive Officer, Tucows
John Styli, Chief Operating Officer, Far Further
Jonathon Nevett, President, Domain Dimensions, LLC
Kevin Saimon, President, Urban Brain
Krista Papac, Chief Strategy Officer, ARI Registry Services
Loren Salman, Chief Executive Officer, Far Further
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Robin Gross, Executive Director, IP Justice
Steve Miholovich, Sr. Vice President Sales & Marketing, Safenames Ltd.
Susan Prosser, Vice President, Marketing, Domain Tools
Tad Yokoyama, President, Interlink Co., Ltd.
William Mushkin, Chief Executive Officer and Founder, Name.com

cc: Members of the Commerce, Science and Transportation Committee