

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
ICDR CASE NO. 01-19-0004-0808

REGISTRY, LLC, MINDS + MACHINES GROUP, LTD., RADIX DOMAIN SOLUTIONS
PTE. LTD., AND DOMAIN VENTURES PARTNERS PCC LIMITED
(Claimants)

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
(Respondent)

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As amended 28 November 2019

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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 (Internet Corporation for Assigned Names and Numbers)**") 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 (Internet Corporation for Assigned Names and Numbers):

(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name (Domain Name) System ("**DNS (Domain Name System)**") 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 (Internet Corporation for Assigned Names and Numbers)'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 (Domain Name System) including, with respect to gTLD (generic Top Level Domain) 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 (generic Top Level Domain) registrars and registries shall be deemed to be within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

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

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol (Protocol) numbers and Autonomous System numbers. In service of its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("**IETF (Internet Engineering Task Force)**") 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 (Internet Corporation for Assigned Names and Numbers)'s scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall not act outside its Mission.

(c) ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (Internet Corporation for Assigned Names and Numbers) (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 (Internet Corporation for Assigned Names and Numbers)'s Mission or otherwise exceed the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation ("**Articles of Incorporation**"):

(A)

(1) all registry agreements and registrar accreditation agreements between ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s Five-Year Strategic Plan and Five-Year Operating Plan (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 (Internet Corporation for Assigned Names and Numbers).

(iv) ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) will act in a manner that complies with and reflects ICANN (Internet Corporation for Assigned Names and Numbers)'s Commitments and respects ICANN (Internet Corporation for Assigned Names and Numbers)'s Core Values, each as described below.

(a) COMMITMENTS

In performing its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

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

(ii) Maintain the capacity and ability to coordinate the DNS (Domain Name System) 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 (Internet Corporation for Assigned Names and Numbers)'s activities to matters that are within ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

(b) **CORE VALUES**

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

(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 (Internet Corporation for Assigned Names and Numbers) 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 (Domain Name System) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet

Corporation for Assigned Names and Numbers)'s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section 2.2 is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN (Internet Corporation for Assigned Names and Numbers)'s constituent bodies (including the detailed explanations discussed above).

Section 3.2. WEBSITE

ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Empowered Community) (as defined in Section 6.1(a)), Supporting Organizations (Supporting Organizations) (as defined in Section 11.1), and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers) Budget (as defined in Section 22.4(a)(i)), the IANA (Internet Assigned Numbers Authority) 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 (Internet Corporation for Assigned Names and Numbers) activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (i) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), 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 (Advisory Committees) and Supporting Organizations (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary ("Secretary") for posting on the Website. All proceedings of the EC (Empowered Community) Administration (as defined in Section 6.3) and the EC (Empowered Community) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organizations) (as set forth in Article 9 through Article 11) and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Advisory Committee) ("**GAC (Governmental Advisory Committee)**" or "**Governmental Advisory Committee (Advisory Committee)**") and take duly into account any advice timely presented by the Governmental Advisory Committee (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 (Domain Name System), 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 (Governmental Advisory Committee) Consensus (Consensus) Advice (as defined in Section 12.2(a) (x)), the Board shall make a determination whether the GAC (Governmental Advisory Committee) Consensus (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 (Governmental Advisory Committee) Consensus (Consensus) Board Resolution**") and shall cite the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. To the extent practical, the Board shall ensure that GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolutions only relate to the matters that were the subject of the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and not matters unrelated to the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. For the avoidance of doubt: (i) a GAC (Governmental Advisory Committee) Consensus (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 (Governmental Advisory Committee) Consensus (Consensus) Advice received during a standard engagement process in which input from all Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) has been requested shall not be considered a GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution based solely on that input, unless the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution.

(e) GAC (Governmental Advisory Committee) Carve-out



(i) Where a Board resolution is consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and the Board has determined that the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution as described in the relevant GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution, the Governmental Advisory Committee (Advisory Committee) shall not participate as a decision-maker in the EC (Empowered Community)'s exercise of its right to challenge the Board's implementation of such GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. In such cases, the Governmental Advisory Committee (Advisory Committee) may participate in the EC (Empowered Community) 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 (Empowered Community) ("**GAC (Governmental Advisory Committee) Carve-out**"). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC (Governmental Advisory Committee) Carve-out shall only apply if an IRP Panel has found that, in implementing GAC (Governmental Advisory Committee) Consensus (Consensus) Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.

(ii) When the GAC (Governmental Advisory Committee) 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 (Governmental Advisory Committee) Consensus (Consensus) Board Resolution and the line item or provision that implements such specific GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution ("**GAC (Governmental Advisory Committee) Consensus (Consensus) Statement**"), (B) the Governmental Advisory Committee (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 (Empowered Community) 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 (Governmental Advisory Committee) Carve-out shall not apply to the exercise of the EC (Empowered Community)'s rights where a material factor in the Board's decision was advice of the Governmental Advisory Committee (Advisory Committee) that was not GAC (Governmental Advisory Committee) Consensus (Consensus) Advice.

Section 3.7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names

and Numbers) does not have the mechanisms to employ such contractors directly.

(b) The EC (Empowered Community) 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 (Empowered Community) of these Bylaws. The EC (Empowered Community) Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC (Empowered Community) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and/or established ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Country Code Top Level Domain)**") 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 (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) is accountable to the global Internet community and Claimants.

(iv) Address claims that ICANN (Internet Corporation for Assigned Names and Numbers) has failed to enforce its rights under the IANA (Internet Assigned Numbers Authority) Naming Function Contract (as defined in Section 16.3(a)).

(v) Provide a mechanism by which direct customers of the IANA (Internet Assigned Numbers Authority) 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 (Supporting Organizations), Advisory Committees (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 (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (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 (Empowered Community) is deemed to be materially affected by all Covered Actions. ICANN (Internet Corporation for Assigned Names and Numbers) shall not assert any defenses of standing or capacity against the EC (Empowered Community) in any forum.

(B)ICANN (Internet Corporation for Assigned Names and Numbers) shall not object to the standing of the EC (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee) or Supporting Organization (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 (Empowered Community) as set forth in the Articles of Incorporation or Bylaws.

(B) Claims that ICANN (Internet Corporation for Assigned Names and Numbers), the Board, individual Directors, Officers or Staff members have not enforced ICANN (Internet Corporation for Assigned Names and Numbers)'s

contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, and

(C) Claims regarding PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) 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 (Empowered Community) challenges to the result(s) of a PDP (Policy Development Process), unless the Supporting Organization (Supporting Organization)(s) that approved the PDP (Policy Development Process) supports the EC (Empowered Community) bringing such a challenge;

(ii) Claims relating to ccTLD (Country Code Top Level Domain) 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 (Empowered Community) to commence an IRP ("**Community IRP**"), the EC (Empowered Community) 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 (Empowered Community) 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 (Empowered Community) 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 (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the IRP, the IRP Panel shall award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers) has not enforced its contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations under the IANA (Internet Assigned Numbers Authority) 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 (Internet Assigned Numbers Authority) 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 (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall, in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers), in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers) shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (Supporting Organizations) and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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

(Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers).

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (Internet Assigned Numbers Authority) 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 (Internet Corporation for Assigned Names and Numbers), 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 (Internet Corporation for Assigned Names and Numbers).

(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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) failed to enforce ICANN (Internet Corporation for Assigned Names and Numbers)'s contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or resolve PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions, as applicable;
- (iv) Recommend that ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) and its Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) positions.

(ii) The IRP Provider shall disclose any material relationship with ICANN (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (Advisory Committee), or any other participant in an IRP proceeding.

(r) ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Empowered Community), 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 (Empowered Community) may seek enforcement in a court of competent jurisdiction. In the case of the EC (Empowered Community), the EC (Empowered Community) 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 (Internet Corporation for Assigned Names and Numbers) agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

(y) ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all

Directors, subject to any rights of the EC (Empowered Community) under the Articles of Incorporation and these Bylaws.

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

Section 4.5. ANNUAL REVIEW

ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Supporting Organizations) and Advisory Committees (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 (Supporting Organizations) and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers). The Operating Standards must be aligned with the following guidelines:

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

(B) Any Supporting Organization (Supporting Organization) or Advisory Committee (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 (Supporting Organization) or Advisory Committee (Advisory Committee) has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) shall be responsible for the determination of whether all 21 SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s deliberations and operations, the review teams, or a subset thereof, shall have access to ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) must provide a justification for any refusal to reveal requested information. ICANN (Internet Corporation for Assigned Names and Numbers)'s refusal can be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board for a ruling on the disclosure request.

(2) ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s designation of documents may also be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

(3) ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Governmental Advisory Committee)'s interaction with the Board and with the broader ICANN (Internet Corporation for Assigned Names and Numbers) community, and making recommendations for improvement to ensure effective consideration by ICANN (Internet Corporation for Assigned Names and Numbers) of GAC (Governmental Advisory Committee) input on the public policy aspects of the technical coordination of the DNS (Domain Name System);

(C) assessing and improving the processes by which ICANN (Internet Corporation for Assigned Names and Numbers) receives public input (including adequate explanation of decisions taken and the rationale thereof);

(D) assessing the extent to which ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Security – Security, Stability and Resiliency (SSR)), Stability (Security, Stability and Resiliency), and Resiliency (Security Stability & Resiliency (SSR)) Review

(i) The Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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

(Internet Corporation for Assigned Names and Numbers) coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Domain Name System), 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 (Domain Name System), consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Domain Name System) pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD (generic Top Level Domain) Round**").

(ii) After a New gTLD (generic Top Level Domain) 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 (Competition, Consumer Choice & Consumer Trust) Review**").

(iii) The review team for the CCT (Competition, Consumer Choice & Consumer Trust) Review ("**CCT (Competition, Consumer Choice &**

Consumer Trust) 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 (generic Top Level Domain) Round's application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD (generic Top Level Domain) Round.

(iv) For each of its recommendations, the CCT (Competition, Consumer Choice & Consumer Trust) 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 (Competition, Consumer Choice & Consumer Trust) Review Team shall also assess the extent to which prior CCT (Competition, Consumer Choice & Consumer Trust) 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 (Internet Corporation for Assigned Names and Numbers) shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations (Supporting Organizations) and Advisory Committees (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 (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 ("**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 (Organization for Economic**

Co-operation and Development") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD (Organization for Economic Co-operation and Development) 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 (Empowered Community) Decision under these Bylaws, the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) 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 (Empowered Community) Decision if the Board has not complied with the EC (Empowered Community) Decision within 30 days of being notified of the relevant EC (Empowered Community) 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 (Empowered Community) Administration shall designate individuals to represent the EC (Empowered Community) in the mediation ("**Mediation Administration**") and the Board shall designate representatives for the mediation ("**Board Mediation Representatives**"). Members of the EC (Empowered Community) Administration and the Board can designate themselves as representatives. ICANN (Internet Corporation for Assigned

Names and Numbers) 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 (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers). The mediator may not have any ongoing business relationship with ICANN (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community). 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 (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community).

(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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC (Empowered Community) Administration shall promptly notify the Decisional Participants of the Mediation Resolution.

(j) The EC (Empowered Community) shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC (Empowered Community) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Budget recommended by the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers));

(e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

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

(b) ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) structure, procedures, processes, or any conduct by the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Empowered Community)**") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO (Address Supporting Organization), the ccNSO (Country Code Names Supporting Organization) (as defined in Section 10.1), the GNSO (Generic Names Supporting Organization) (as defined in Section 11.1), the ALAC (At-Large Advisory Committee) (as defined in Section 12.2(d)(i)) and the GAC (Governmental Advisory Committee) (each a "**Decisional Participant**" or "associate," and collectively, the "**Decisional Participants**").

(b) This Article 6 shall constitute the articles of association of the EC (Empowered Community) and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC (Empowered Community), and the terms contained herein and in these Bylaws relating to the EC (Empowered Community) shall be the EC (Empowered Community)'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 (Empowered Community) 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 (Supporting Organizations) or Advisory Committees (Advisory Committees)), and any corresponding changes in the voting thresholds for exercise of the EC (Empowered Community)'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

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RESPONDENT'S EXHIBIT

Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP)¹

Adopted 25 October 2018

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These interim procedures (Interim Supplementary Procedures) supplement the International Centre for Dispute Resolution’s international arbitration rules in accordance with the independent review process set forth in Article 4, Section 4.3 of ICANN’s Bylaws. These procedures apply to all independent review process proceedings filed after 1 May 2018.

In drafting these Interim Supplementary Procedures, the IRP Implementation Oversight Team (IOT) applied the following principles: (1) remain as close as possible to the current Supplementary Procedures or the Updated Supplementary Procedures (USP) posted for public comment on 28 November 2016²; (2) to the extent public comments received in response to the USP reflected clear movement away from either the current Supplementary Procedures or the

¹ CONTEXTUAL NOTE: These Interim Supplementary Procedures are intended to supplement the ICDR RULES. Therefore, when the ICDR RULES appropriately address an item, there is no need to re-state that Rule within the Supplemental Procedures. The IOT, through its work, may identify additional places where variance from the ICDR RULES is recommended, and that would result in addition or modification to the Supplemental Procedures.

² See <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>.

USP, to reflect that movement unless doing so would require significant drafting that should be properly deferred for broader consideration; (3) take no action that would materially expand any part of the Supplementary Procedures that the IOT has not clearly agreed upon, or that represent a significant change from what was posted for comment and would therefore require further public consultation prior to changing the supplemental rules to reflect those expansions or changes.

1. Definitions

In these Interim Supplementary Procedures:

A CLAIMANT is any legal or natural person, group, or entity including, but not limited to the Empowered Community, 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.

COVERED ACTIONS are 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.

DISPUTES are defined as:

(A) Claims that COVERED ACTIONS violated ICANN's 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 the Post-Transition IANA entity service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

EMERGENCY PANELIST refers to a single member of the STANDING PANEL designated to adjudicate requests for interim relief or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for emergency relief (ICDR RULES Article 6).

IANA refers to the Internet Assigned Numbers Authority.

ICDR refers to the International Centre for Dispute Resolution, which has been designated and approved by ICANN's Board of Directors as the IRP Provider (IRPP) under Article 4, Section 4.3 of ICANN's Bylaws.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

INDEPENDENT REVIEW PROCESS or IRP refers to the procedure that takes place upon the Claimant's filing of a written statement of a DISPUTE with the ICDR.

IRP PANEL refers to the panel of three neutral members appointed to decide the relevant DISPUTE.

IRP PANEL DECISION refers to the final written decision of the IRP PANEL that reflects the reasoned analysis of how the DISPUTE was resolved in compliance with ICANN's Articles and Bylaws.

ICDR RULES refers to the ICDR's International Arbitration rules in effect at the time the relevant request for independent review is submitted.

PROCEDURES OFFICER refers to a single member of the STANDING PANEL designated to adjudicate requests for consolidation, intervention, and/or participation as an *amicus*, or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to its International Arbitration Rules relating to appointment of panelists for consolidation (ICDR Rules Article 8)

PURPOSES OF THE IRP are to hear and resolve Disputes for the reasons specified in the ICANN Bylaws, Article 4, Section 4.3(a).

STANDING PANEL refers to an omnibus standing panel of at least seven members from which three-member IRP PANELS are selected to hear and resolve DISPUTES consistent with the purposes of the IRP.

2. Scope

The ICDR will apply these Interim Supplementary Procedures, in addition to the ICDR RULES, in all cases submitted to the ICDR in connection with Article 4, Section 4.3 of the ICANN Bylaws after the date these Interim Supplementary Procedures go into effect. In the event there is any inconsistency between these Interim Supplementary Procedures and the ICDR RULES, these Interim Supplementary Procedures will govern. These Interim Supplementary Procedures and any amendment of them shall apply in the form in effect at the time the request for an INDEPENDENT REVIEW is commenced. IRPs commenced prior to the adoption of these Interim Supplementary Procedures shall be governed by the Supplementary Procedures in effect at the time such IRPs were commenced.

In the event that any of these Interim Supplementary Procedures are subsequently amended, the rules surrounding the application of those amendments will be defined therein.

3. Composition of Independent Review Panel

The IRP PANEL will comprise three panelists selected from the STANDING PANEL, unless a STANDING PANEL is not in place when the IRP is initiated. 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. A STANDING PANEL member's appointment will not take effect unless and until the STANDING PANEL member signs a Notice of STANDING PANEL Appointment affirming that the member is available to serve and is Independent and Impartial pursuant to the ICDR RULES. In addition to disclosing relationships with parties to the DISPUTE, IRP PANEL members must also disclose the existence of any material relationships with ICANN, and/or an ICANN Supporting Organization or Advisory Committee. In the event that a STANDING PANEL is not in place when the relevant IRP is initiated or is in place but does not have capacity due to other IRP commitments, 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 the two party-selected panelists cannot agree on the third panelist, the ICDR RULES shall apply to selection of the third panelist. In the event that a panelist resigns, is incapable of performing the duties of a panelist, or is removed and the position becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of this Section [3] of these Interim Supplementary Procedures.

4. Time for Filing³

An INDEPENDENT REVIEW is commenced when CLAIMANT files a written statement of a DISPUTE. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days after a CLAIMANT becomes aware of the material effect of the action or inaction giving rise to the DISPUTE; provided, however, that a statement of a DISPUTE may not be filed more than twelve (12) months from the date of such action or inaction.

In order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days (as measured by the ICDR) of the filing of the request with the ICDR.

5. Conduct of the Independent Review

It is in the best interests of ICANN and of the ICANN community for IRP matters to be resolved expeditiously and at a reasonably low cost while ensuring fundamental fairness and due process consistent with the PURPOSES OF THE IRP. The IRP PANEL shall consider accessibility, fairness, and efficiency (both as to time and cost) in its conduct of the IRP.

In the event that an EMERGENCY PANELIST has been designated to adjudicate a request for interim relief pursuant to the Bylaws, Article 4, Section 4.3(p), the EMERGENCY PANELIST shall comply with the rules applicable to an IRP PANEL, with such modifications as appropriate.

5A. Nature of IRP Proceedings

The IRP PANEL should conduct its proceedings by electronic means to the extent feasible.

Hearings shall be permitted as set forth in these Interim Supplementary Procedures. Where necessary, the IRP PANEL may conduct hearings via telephone, video conference or similar technologies). The IRP PANEL should conduct its proceedings with the presumption that in-person hearings shall not be permitted. For purposes of these Interim Supplementary Procedures, an “in-person hearing” refers to any IRP proceeding held face-to-face, with participants physically present in the same location. The presumption against in-person hearings may be rebutted only under extraordinary circumstances, where, upon motion by a Party, the IRP PANEL determines that the party seeking an in-person hearing has demonstrated that: (1) an in-

³ The IOT recently sought additional public comment to consider the Time for Filing rule that will be recommended for inclusion in the final set of Supplementary Procedures. In the event that the final Time for Filing procedure allows additional time to file than this interim Supplementary Procedure allows, ICANN committed to the IOT that the final Supplementary Procedures will include transition language that provides potential claimants the benefit of that additional time, so as not to prejudice those potential claimants.

person hearing is necessary for a fair resolution of the claim; (2) an in-person hearing is necessary to further the PURPOSES OF THE IRP; *and* (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of an in-person hearing. In no circumstances shall in-person hearings be permitted for the purpose of introducing new arguments or evidence that could have been previously presented, but were not previously presented, to the IRP PANEL.

All hearings shall be limited to argument only unless the IRP Panel determines that a the party seeking to present witness testimony has demonstrated that such testimony is: (1) necessary for a fair resolution of the claim; (2) necessary to further the PURPOSES OF THE IRP; *and* (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of witness testimony and cross examination.

All evidence, including witness statements, must be submitted in writing 15 days in advance of any hearing.

With due regard to ICANN Bylaws, Article 4, Section 4.3(s), the IRP PANEL retains responsibility for determining the timetable for the IRP proceeding. Any violation of the IRP PANEL's timetable may result in the assessment of costs pursuant to Section 10 of these Interim Supplementary Procedures.

5B. Translation

As required by ICANN Bylaws, Article 4, Section 4.3(l), "All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for CLAIMANTS if needed." Translation may include both translation of written documents/transcripts as well as interpretation of oral proceedings.

The IRP PANEL shall have discretion to determine (i) whether the CLAIMANT has a need for translation services, (ii) what documents and/or hearing that need relates to, and (iii) what language the document, hearing or other matter or event shall be translated into. A CLAIMANT not determined to have a need for translation services must submit all materials in English (with the exception of the request for translation services if the request includes CLAIMANT's certification to the IRP PANEL that submitting the request in English would be unduly burdensome).

In determining whether a CLAIMANT needs translation, the IRP PANEL shall consider the CLAIMANT's proficiency in spoken and written English and, to the extent that the CLAIMANT is represented in the proceedings by an attorney or other agent, that representative's proficiency

in spoken and written English. The IRP PANEL shall only consider requests for translations from/to English and the other five official languages of the United Nations (i.e., Arabic, Chinese, French, Russian, or Spanish).

In determining whether translation of a document, hearing or other matter or event shall be ordered, the IRP PANEL shall consider the CLAIMANT's proficiency in English as well as in the requested other language (from among Arabic, Chinese, French, Russian or Spanish). The IRP PANEL shall confirm that all material portions of the record of the proceeding are available in English.

In considering requests for translation, the IRP PANEL shall consider the materiality of the particular document, hearing or other matter or event requested to be translated, as well as the cost and delay incurred by translation, pursuant to ICDR Article 18 on Translation, and the need to ensure fundamental fairness and due process under ICANN Bylaws, Article 4, Section 4.3(n)(iv).

Unless otherwise ordered by the IRP PANEL, costs of need-based translation (as determined by the IRP PANEL) shall be covered by ICANN as administrative costs and shall be coordinated through ICANN's language services providers. Even with a determination of need-based translation, if ICANN or the CLAIMANT coordinates the translation of any document through its legal representative, such translation shall be considered part of the legal costs and not an administrative cost to be born by ICANN. Additionally, in the event that either the CLAIMANT or ICANN retains a translator for the purpose of translating any document, hearing or other matter or event, and such retention is not pursuant to a determination of need-based translation by the IRP PANEL, the costs of such translation shall not be charged as administrative costs to be covered by ICANN.

6. Written Statements

A CLAIMANT'S written statement of a DISPUTE shall include all claims that give rise to a particular DISPUTE, but such claims may be asserted as independent or alternative claims.

The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font. All necessary and available evidence in support of the CLAIMANT'S claim(s) should be part of the initial written submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence. The IRP PANEL may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.

In addition, the IRP PANEL may grant a request for additional written submissions from any person or entity who is intervening as a CLAIMANT or who is participating as an amicus upon the showing of a compelling basis for such request. In the event the IRP PANEL grants a request for additional written submissions, any such additional written submission shall not exceed 15 pages, double-spaced and in 12-point font.

For any DISPUTE resulting from a decision of a process-specific expert panel that is claimed to be inconsistent with ICANN's Articles of Incorporation or Bylaws, as specified at Bylaw Section 4.3(b)(iii)(A)(3), any person, group or entity that was previously identified as within a contention set with the CLAIMANT regarding the issue under consideration within such expert panel proceeding shall reasonably receive notice from ICANN that the INDEPENDENT REVIEW PROCESS has commenced. ICANN shall undertake reasonable efforts to provide notice by electronic message within two business days (calculated at ICANN's principal place of business) of receiving notification from the ICDR that the IRP has commenced.

7. Consolidation, Intervention and Participation as an *Amicus*

A PROCEDURES OFFICER shall be appointed from the STANDING PANEL to consider any request for consolidation, intervention, and/or participation as an *amicus*. Except as otherwise expressly stated herein, requests for consolidation, intervention, and/or participation as an *amicus* are committed to the reasonable discretion of the PROCEDURES OFFICER. In the event that no STANDING PANEL is in place when a PROCEDURES OFFICER must be selected, a panelist may be appointed by the ICDR pursuant to its INTERNATIONAL ARBITRATION RULES relating to appointment of panelists for consolidation.

In the event that requests for consolidation or intervention are granted, the restrictions on Written Statements set forth in Section 6 shall apply to all CLAIMANTS collectively (for a total of 25 pages exclusive of evidence) and not individually unless otherwise modified by the IRP PANEL in its discretion consistent with the PURPOSES OF THE IRP.

Consolidation

Consolidation of DISPUTES may be appropriate when the PROCEDURES OFFICER concludes that there is a sufficient common nucleus of operative fact among multiple IRPs such that the joint resolution of the DISPUTES would foster a more just and efficient resolution of the DISPUTES than addressing each DISPUTE individually. If DISPUTES are consolidated, each existing DISPUTE shall no longer be subject to further separate consideration. The PROCEDURES OFFICER may in its discretion order briefing to consider the propriety of consolidation of DISPUTES.

Intervention

Any person or entity qualified to be a CLAIMANT pursuant to the standing requirement set forth in the Bylaws may intervene in an IRP with the permission of the PROCEDURES OFFICER, as provided below. This applies whether or not the person, group or entity participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)).

Intervention is appropriate to be sought when the prospective participant does not already have a pending related DISPUTE, and the potential claims of the prospective participant stem from a common nucleus of operative facts based on such briefing as the PROCEDURES OFFICER may order in its discretion.

In addition, the Supporting Organization(s) which developed a Consensus Policy involved when a DISPUTE challenges a material provision(s) of an existing Consensus Policy in whole or in part shall have a right to intervene as a CLAIMANT to the extent of such challenge. Supporting Organization rights in this respect shall be exercisable through the chair of the Supporting Organization.

Any person, group or entity who intervenes as a CLAIMANT pursuant to this section will become a CLAIMANT in the existing INDEPENDENT REVIEW PROCESS and have all of the rights and responsibilities of other CLAIMANTS in that matter and be bound by the outcome to the same extent as any other CLAIMANT. All motions to intervene or for consolidation shall be directed to the IRP PANEL within 15 days of the initiation of the INDEPENDENT REVIEW PROCESS. All requests to intervene or for consolidation must contain the same information as a written statement of a DISPUTE and must be accompanied by the appropriate filing fee. The IRP PANEL may accept for review by the PROCEDURES OFFICER any motion to intervene or for consolidation after 15 days in cases where it deems that the PURPOSES OF THE IRP are furthered by accepting such a motion.

Excluding materials exempted from production under Rule 8 (Exchange of Information) below, the IRP PANEL shall direct that all materials related to the DISPUTE be made available to entities that have intervened or had their claim consolidated unless a CLAIMANT or ICANN objects that such disclosure will harm commercial confidentiality, personal data, or trade secrets; in which case the IRP PANEL shall rule on objection and provide such information as is consistent with the PURPOSES OF THE IRP and the appropriate preservation of confidentiality as recognized in Article 4 of the Bylaws.

Participation as an *Amicus Curiae*

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. Without limitation to the persons, groups, or entities that may have such a material interest, the following persons, groups, or entities shall be deemed to have a material interest relevant to the DISPUTE and, upon request of person, group, or entity seeking to so participate, shall be permitted to participate as an *amicus* before the IRP PANEL:

- i. A person, group or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3));
- ii. If the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP; and
- iii. If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such external person, group or entity.

All requests to participate as an *amicus* must contain the same information as the Written Statement (set out at Section 6), specify the interest of the *amicus curiae*, and must be accompanied by the appropriate filing fee.

If the PROCEDURES OFFICER determines, in his or her discretion, subject to the conditions set forth above, that the proposed *amicus curiae* has a material interest relevant to the DISPUTE, he or she shall allow participation by the *amicus curiae*. Any person participating as an *amicus curiae* may submit to the IRP Panel written briefing(s) on the DISPUTE or on such discrete questions as the IRP PANEL may request briefing, in the discretion of the IRP PANEL and subject to such deadlines, page limits, and other procedural rules as the IRP PANEL may specify in its discretion.⁴ The IRP PANEL shall determine in its discretion what materials related to the DISPUTE to make available to a person participating as an *amicus curiae*.

⁴ During the pendency of these Interim Supplementary Rules, in exercising its discretion in allowing the participation of *amicus curiae* and in then considering the scope of participation from *amicus curiae*, the IRP PANEL shall lean in favor of allowing broad participation of an *amicus curiae* as needed to further the purposes of the IRP set forth at Section 4.3 of the ICANN Bylaws.

8. Exchange of Information

The IRP PANEL shall be guided by considerations of accessibility, fairness, and efficiency (both as to time and cost) in its consideration of requests for exchange of information.

On the motion of either Party and upon finding by the IRP PANEL that such exchange of information is necessary to further the PURPOSES OF THE IRP, the IRP PANEL may order a Party to produce to the other Party, and to the IRP PANEL if the moving Party requests, documents or electronically stored information in the other Party's possession, custody, or control that the Panel determines are reasonably likely to be relevant and material to the resolution of the CLAIMS and/or defenses in the DISPUTE and are not subject to the attorney-client privilege, the work product doctrine or otherwise protected from disclosure by applicable law (including, without limitation, disclosures to competitors of the disclosing person, group or entity, of any competition-sensitive information of any kind). Where such method(s) for exchange of information are allowed, all Parties shall be granted the equivalent rights for exchange of information.

A motion for exchange of documents shall contain a description of the specific documents, classes of documents or other information sought that relate to the subject matter of the Dispute along with an explanation of why such documents or other information are likely to be relevant and material to resolution of the Dispute.

Depositions, interrogatories, and requests for admission will not be permitted.

In the event that a Party submits what the IRP PANEL deems to be an expert opinion, such opinion must be provided in writing and the other Party must have a right of reply to such an opinion with an expert opinion of its own.

9. Summary Dismissal

An IRP PANEL may summarily dismiss any request for INDEPENDENT REVIEW where the Claimant has not demonstrated that it has been materially affected by a DISPUTE. To be materially affected by a DISPUTE, a Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

An IRP PANEL may also summarily dismiss a request for INDEPENDENT REVIEW that lacks substance or is frivolous or vexatious.

10. Interim Measures of Protection

A Claimant may request interim relief from the IRP PANEL, or if an IRP PANEL is not yet in place, from the STANDING PANEL. 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 in order to maintain the status quo until such time as the opinion of the IRP PANEL is considered by ICANN as described in ICANN Bylaws, Article 4, Section 4.3(o)(iv).

An EMERGENCY PANELIST shall be selected from the STANDING PANEL to adjudicate requests for interim relief. In the event that no STANDING PANEL is in place when an EMERGENCY PANELIST must be selected, a panelist may be appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for emergency relief. 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.

Interim relief may be granted on an ex parte basis in circumstances that the EMERGENCY PANELIST deems exigent, but any Party whose arguments were not considered prior to the granting of such interim relief may submit any opposition to such interim relief, and the EMERGENCY PANELIST must consider such arguments, as soon as reasonably possible. The EMERGENCY PANELIST may modify or terminate the interim relief if the EMERGENCY PANELIST deems it appropriate to do so in light of such further arguments.

11. Standard of Review

Each IRP PANEL shall conduct an objective, de novo examination of the DISPUTE.

- a. 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 ICANN'S Articles or Bylaws.

- b. All DISPUTES shall be decided in compliance with ICANN's Articles and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
- c. 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.
- d. 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.
- e. IRPs initiated through the mechanism contemplated at Article 4, Section 4.3(a)(iv) of ICANN's Bylaws shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.

12. IRP PANEL Decisions

IRP PANEL DECISIONS shall be made by a simple majority of the IRP PANEL. If any IRP PANEL member fails to sign the IRP PANEL DECISION, the IRP PANEL member shall endeavor to provide a written statement of the reason for the absence of such signature.

13. Form and Effect of an IRP PANEL DECISION

- a. IRP PANEL DECISIONS shall be made in writing, promptly by the IRP PANEL, based on the documentation, supporting materials and arguments submitted by the parties. IRP PANEL DECISIONS shall be issued in English, and the English version will be authoritative over any translations.
- b. The IRP PANEL DECISION shall specifically designate the prevailing party as to each Claim.
- c. Subject to Article 4, Section 4.3 of ICANN's Bylaws, all IRP PANEL DECISIONS shall be made public, and shall reflect a well-reasoned application of how the DISPUTE was resolved in compliance with ICANN's Articles 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 and Bylaws at issue, and norms of applicable law.

14. Appeal of IRP PANEL Decisions

An IRP PANEL DECISION may be appealed to the full STANDING PANEL sitting en banc within 60 days of the issuance of such decision. The en banc STANDING PANEL will review such appealed IRP PANEL DECISION based on a clear error of judgment or the application of an incorrect legal standard. The en banc STANDING PANEL may also resolve any disputes between panelists on an IRP PANEL or the PROCEDURES OFFICER with respect to consolidation of CLAIMS or intervention.

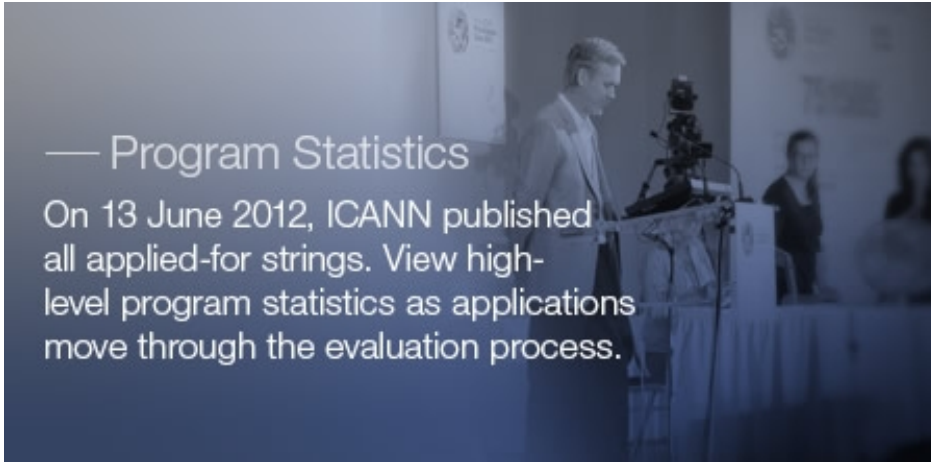
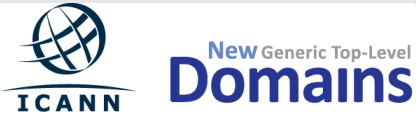
15. Costs

The IRP PANEL shall fix costs in its IRP PANEL DECISION. Except as otherwise provided in Article 4, Section 4.3(e)(ii) of ICANN's Bylaws, each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, as defined in Article 4, Section 4.3(d) of ICANN's Bylaws, including the costs of all legal counsel and technical experts.

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.

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RESPONDENT'S EXHIBIT



PROGRAM STATISTICS

Current Statistics *(Updated monthly)*

Application Statistics: Overview (as of 31 December 2019)

<u>Total Applications Submitted</u> (https://gtldresult.icann.org/application-result/applicationstatus)	1930
<u>Completed New gTLD Program</u> (/en/program-status/delegated-strings) (gTLD Delegated** - introduced into Internet)	1235
Applications Withdrawn	642
Applications that Will Not Proceed/Not Approved	41
Currently Proceeding through New gTLD Program*	12

Contention Resolution	
<u>Total Contention Sets</u> (https://gtldresult.icann.org/applicationstatus/stringcontentionstatus)	234

A note about our privacy policies and terms of service:

We have updated our privacy policies and certain website terms of service to provide greater transparency, promote simplification, and align with recent changes in privacy laws applicable to us. [Learn more.](#)

This site uses cookies to deliver an efficient user experience and to help us see how the site is used. [Learn more.](#)

Contracting	
Executed Registry Agreements (completed contracting)	1253
Registry Agreements with Specification 13	494
Registry Agreements with Code of Conduct Exemption	80
In Contracting	5

Pre-Delegation Testing (PDT)	
Passed PDT	1247

**Breakdown: Delegation Statistics

Delegated gTLDs (/en/program-status/delegated-strings) (Introduced into Internet)	1235
Select Subcategories of Delegated gTLDs (NOTE: gTLDs may fall into more than one subcategory)	
Community	53
Geographic	53
Internationalized Domain Names (IDNs)	95

gTLD Startup Statistics (as of 6 January 2020)	
Sunrise	
Completed	585
In Progress	1
Not Started	0
Claims	
Completed	696

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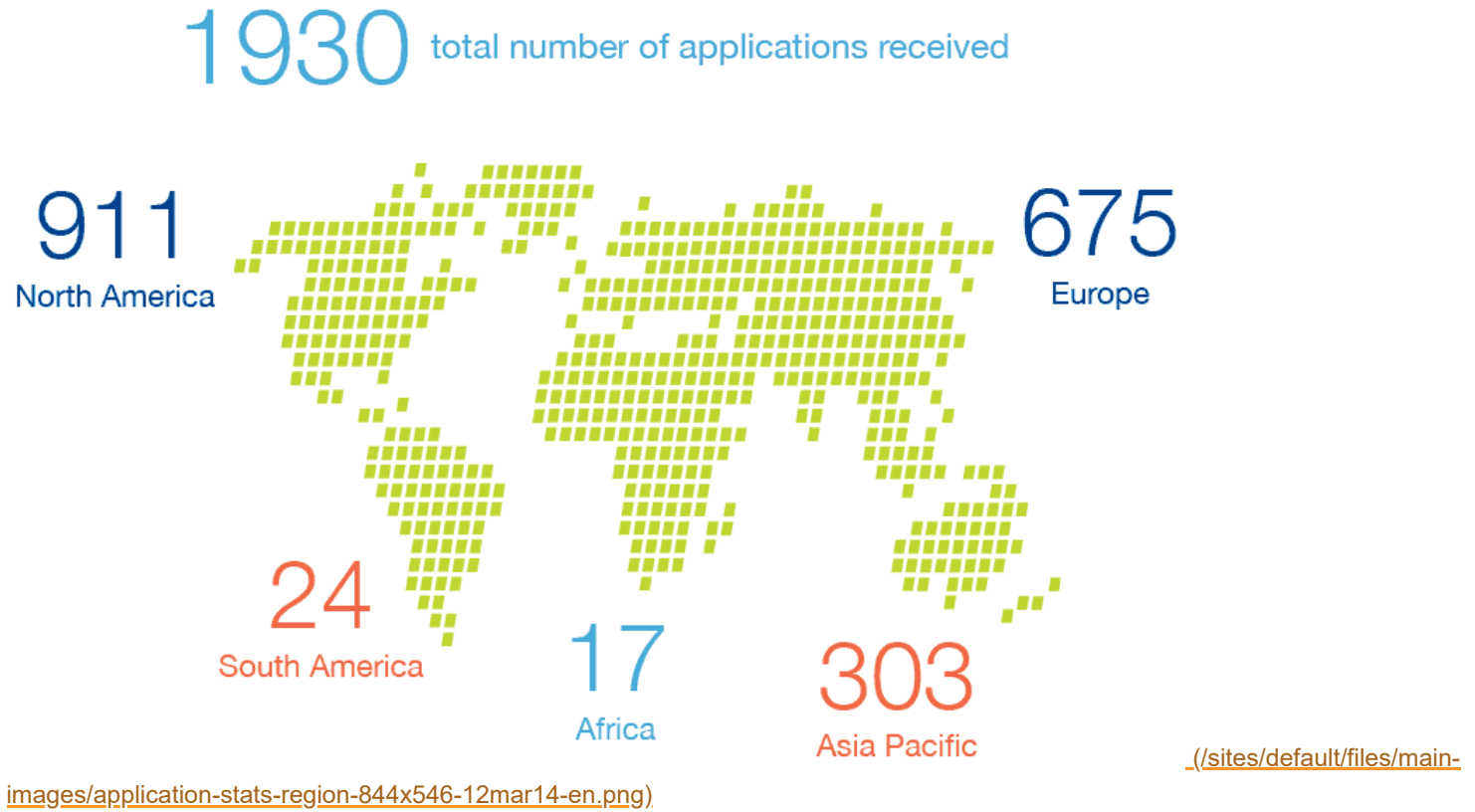
New gTLD Application Submission Statistics

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



Application Breakdown by Type

Statistics as of 13 June 2012

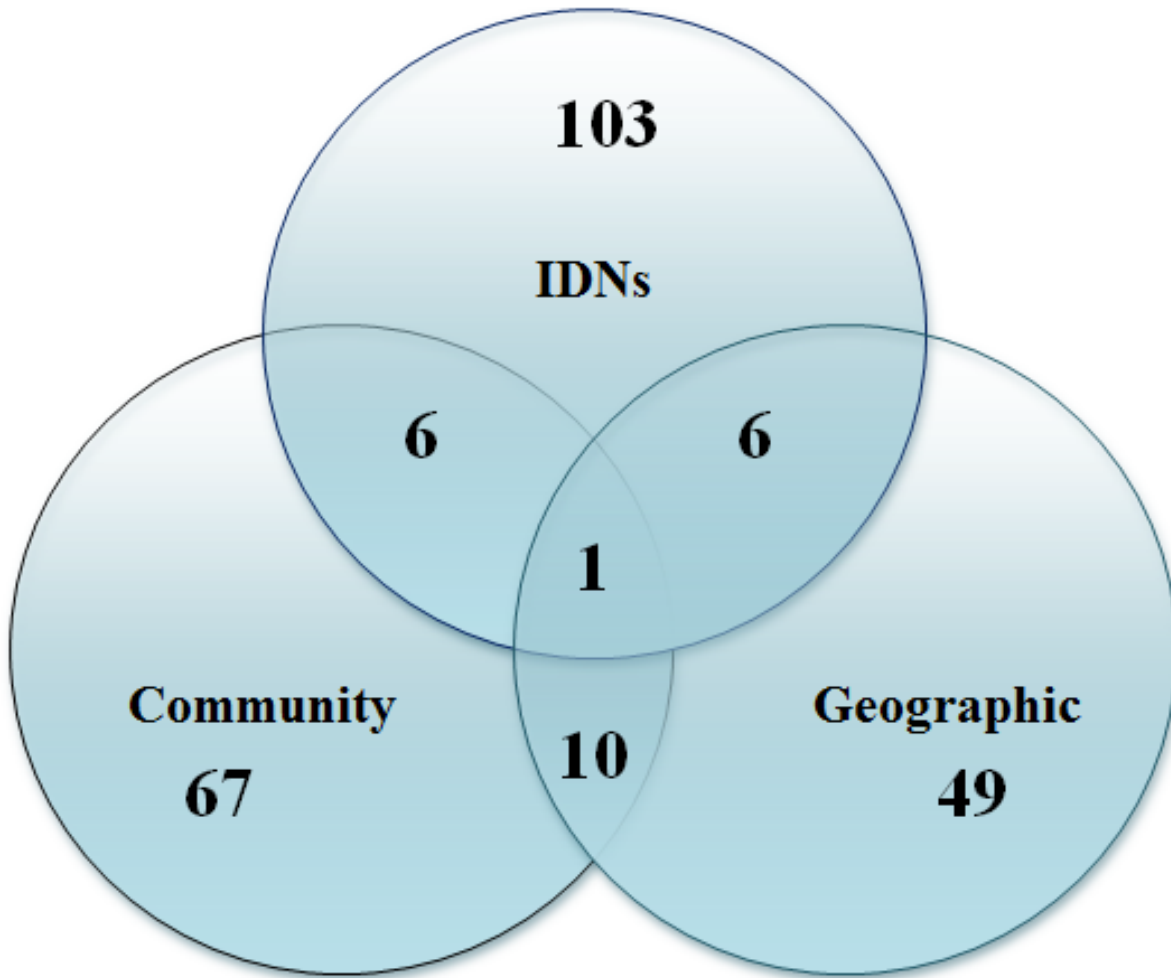
Application Totals

- Community: 84
- Geographic: 66
- Internationalized Domain Names: 116

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[./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

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R-4

RESPONDENT'S EXHIBIT

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.

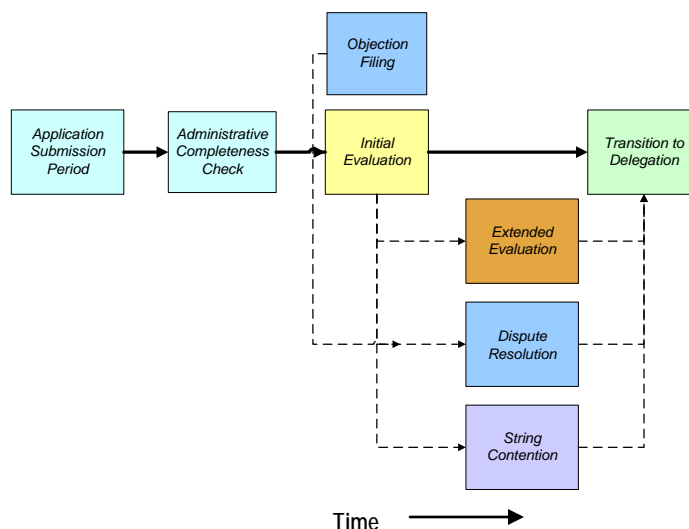


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

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.

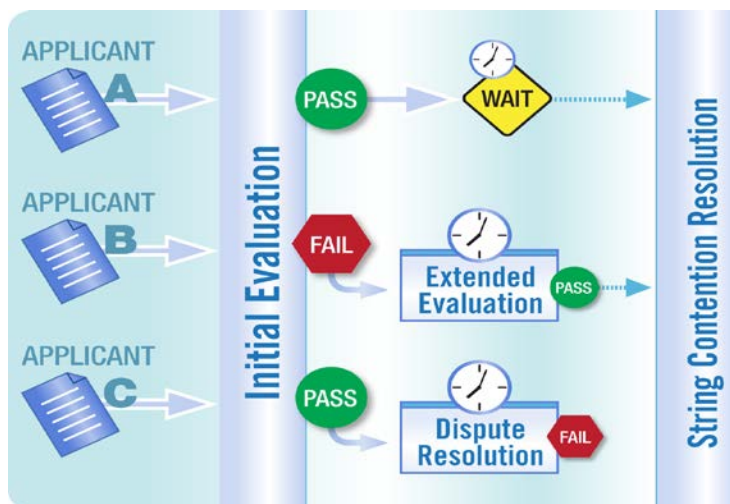


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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:

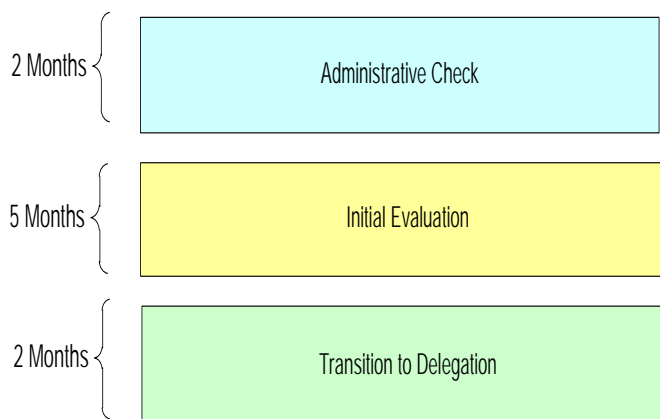


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:

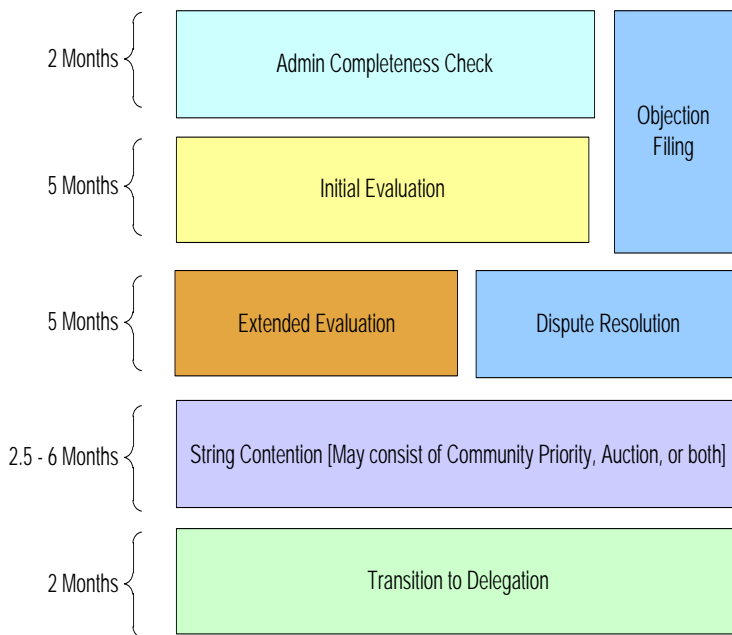


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

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 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.

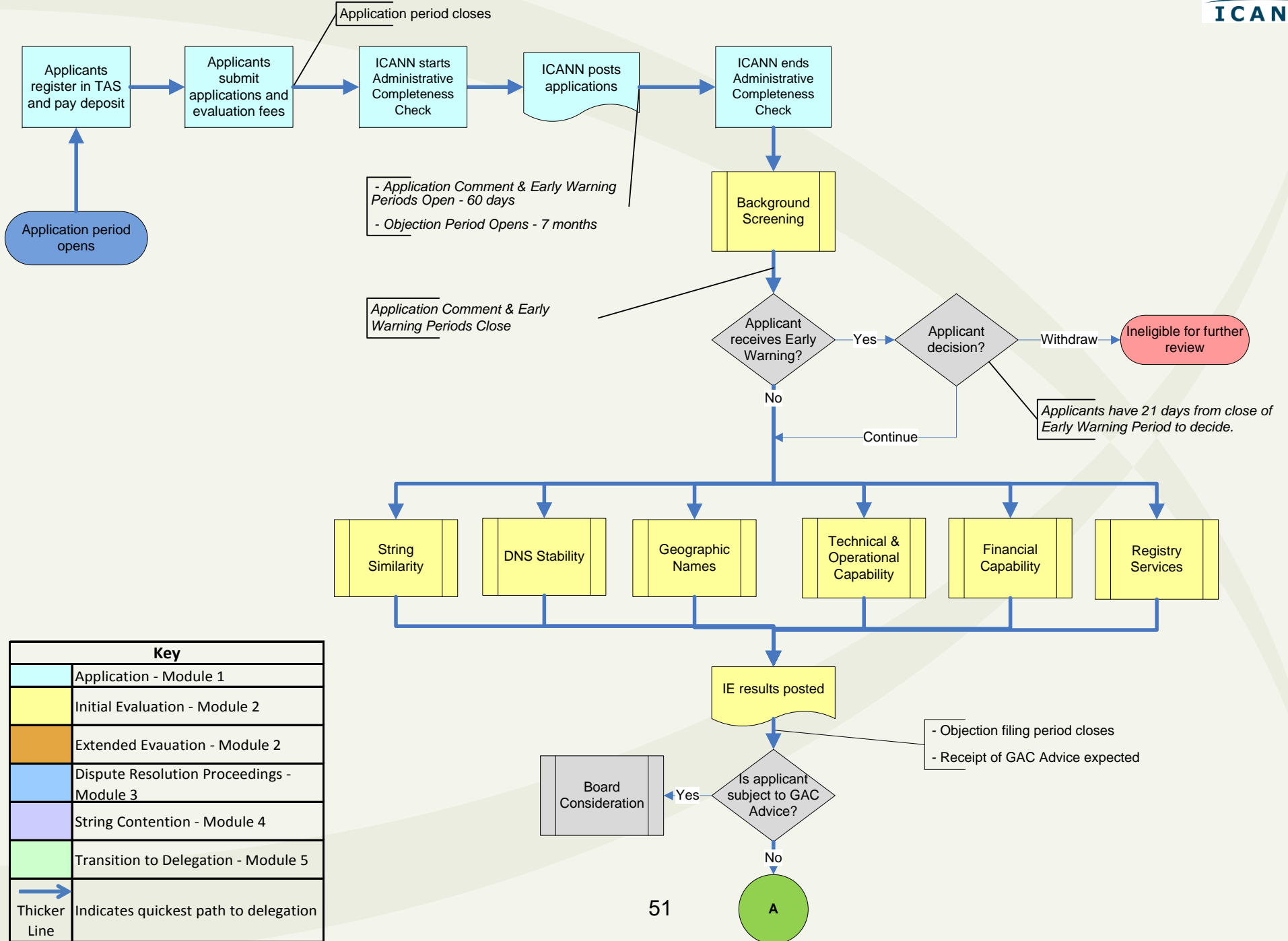
Currently, questions may be submitted via <newgtld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

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.

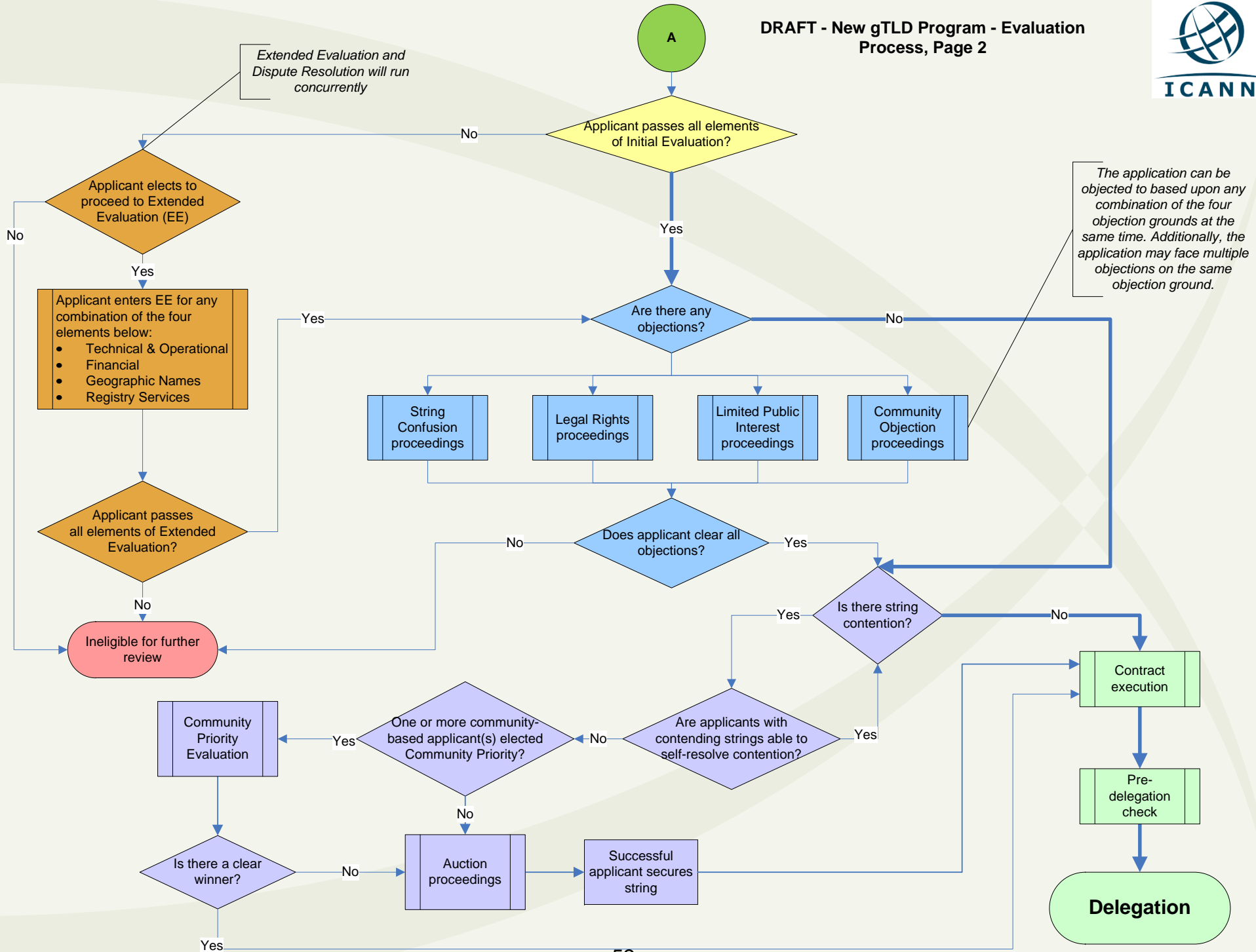


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gTLD Applicant Guidebook

(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>AFRINIC</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	رمح‌ال‌بيل‌ص‌ل‌ا	لال‌ه‌ل‌ا‌رم‌ح‌ال‌ا
ءارم‌ح‌ل‌ا‌ق‌رول‌ب‌ل‌ا	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 Names*⁶

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-bailiwick 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



Application is confirmed as complete and ready for evaluation during Administrative Completeness Check

Background Screening
Third-party provider reviews applicant's background.

Initial Evaluation – String Review

Initial Evaluation – Applicant Review

String Similarity
String Similarity Panel reviews applied-for strings to ensure they are not too similar to existing TLDs or Reserved Names.

DNS Stability
All strings reviewed and in extraordinary cases, DNS Stability Panel may perform extended review for possible technical stability issues.

Geographic Names
Geographic Names Panel determines if applied-for string is geographic name requiring government support.

Technical and Operational Capability
Technical and Operational panel reviews applicant's answers to questions and supporting documentation.

Financial Capability
Financial panel reviews applicant's answers to questions and supporting documentation.

Registry Services
Preliminary review of applicant's registry services and referral to RSTEP for further review during Extended Evaluation where necessary

Panel compares all applied-for strings and creates contention sets.

Panel confirms supporting documentation where required.

ICANN will seek to publish contention sets prior to publication of full IE results.

Does applicant pass all elements of Initial Evaluation?

Applicant elects to pursue **Extended Evaluation?**

Extended Evaluation process

Applicant continues to subsequent steps.

Ineligible for further review

Does applicant pass all elements of Extended Evaluation?

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+006F.			
	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>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<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> <ol style="list-style-type: none"> (1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element; (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; (3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and (4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function. <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> <ol style="list-style-type: none"> (1) complete knowledge and understanding of registration lifecycles and states; (2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and (3) the ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points; (3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and (4) Demonstrates an adequate level of

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<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"> o Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; o Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and o 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;

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<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>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							(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	<p>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.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of technical aspects of registry requirements; (2) an adequate level of resiliency for the registry's technical operations; (3) consistency with planned or currently deployed technical/operational solutions; (4) consistency with the overall business approach and planned size of the registry; (5) adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Technical plans consistent with the technical, operational, and financial approach as described in the application; (3) 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	<p>IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html.</p>	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"> (1) complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; (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) an ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) 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 ; (3) An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); (4) Technical plan is consistent with the technical, operational, and financial approach as described in the application; and (5) 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	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>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"> (1) 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"> (1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks); (2) Response gives consideration to probability and resource impact of contingencies identified; and (3) 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					Comments / Notes	
In local currency (unless noted otherwise)					Provide name of local currency used.	
Sec.	Reference / Formula	Start-up Costs	Live / Operational			
			Year 1	Year 2	Year 3	
I) Projected Cash Inflows and Outflows						
A) Forecasted registration volume		-	62,000	81,600	105,180	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.
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	Other cash inflows represent advertising monies expected from display ads on our website.
E) Total Cash Inflows		-	345,000	496,800	698,339	
Projected Operating Cash Outflows						
F) Labor:						Costs are further detailed and explained in response to question 47.
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):						Provide a list and associated cost for each outsourced function.
i) Hot site maintenance		5,000	7,500	7,500	7,500	Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support
ii) Partial Registry Functions		32,000	37,500	41,000	43,000	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
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	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
B) Total Fixed Operating Costs		107,700	241,750	251,870	275,844	Fixed Costs: equals Total Costs less Variable Costs
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199,700	437,000	450,800	493,260	Check that I) C equals I) N.
Ib) Break out of Critical Registry Function Operating Cash Outflows						
A) Operation of SRS		-	5,000	5,500	6,050	Commensurate with Question 24
B) Provision of Whois		-	6,000	6,600	7,260	Commensurate with Question 26
C) DNS Resolution for Registered Domain Names		-	7,000	7,700	8,470	Commensurate with Question 35
D) Registry Data Escrow		-	8,000	8,800	9,680	Commensurate with Question 38
E) Maintenance of Zone in accordance with DNSSEC		-	9,000	9,900	10,890	Commensurate with Question 43
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	-Hardware & Software have a useful life of 3 years
B) Software		32,000	18,000	24,000	11,000	
C) Furniture & Other Equipment		43,000	22,000	14,000	16,000	-Furniture & other equipment have a useful life of 5 years
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):						List and describe each identifiable type of outsourcing.
i)		-	-	-	-	List and describe each identifiable type of outsourcing.
ii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iv)		-	-	-	-	List and describe each identifiable type of outsourcing.
v)		-	-	-	-	List and describe each identifiable type of outsourcing.
vi)		-	-	-	-	List and describe each identifiable type of outsourcing.
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	413,300	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	579,300	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 Years + Cur Yr	173,000	234,000	288,000	373,000	
J) 3-year Reserve		186,000	186,000	186,000	186,000	Should equal amount calculated for Question 50
K) Other Long-term Assets		359,000	420,000	474,000	559,000	
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	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.
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	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.
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)	59,379	
VI) Sources of funds						
A) Debt:						See below for comments on funding. Revenues are further detailed and explained in response to question 48.
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	-	-	-	
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 business operations.						

Template 1 - Financial Projections: Most Likely						Comments / Notes
In local currency (unless noted otherwise)						Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Live / Operational			
			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						
	D) Change in Total Current Assets	n/a				
E) Change in Total Current Liabilities						
	F) Debt Adjustments	n/a				
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

R-4

In local currency (unless noted otherwise)		Live / Operational				Comments / Notes
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3	Provide name of local currency used.
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	Rightholders
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 DSRP 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.

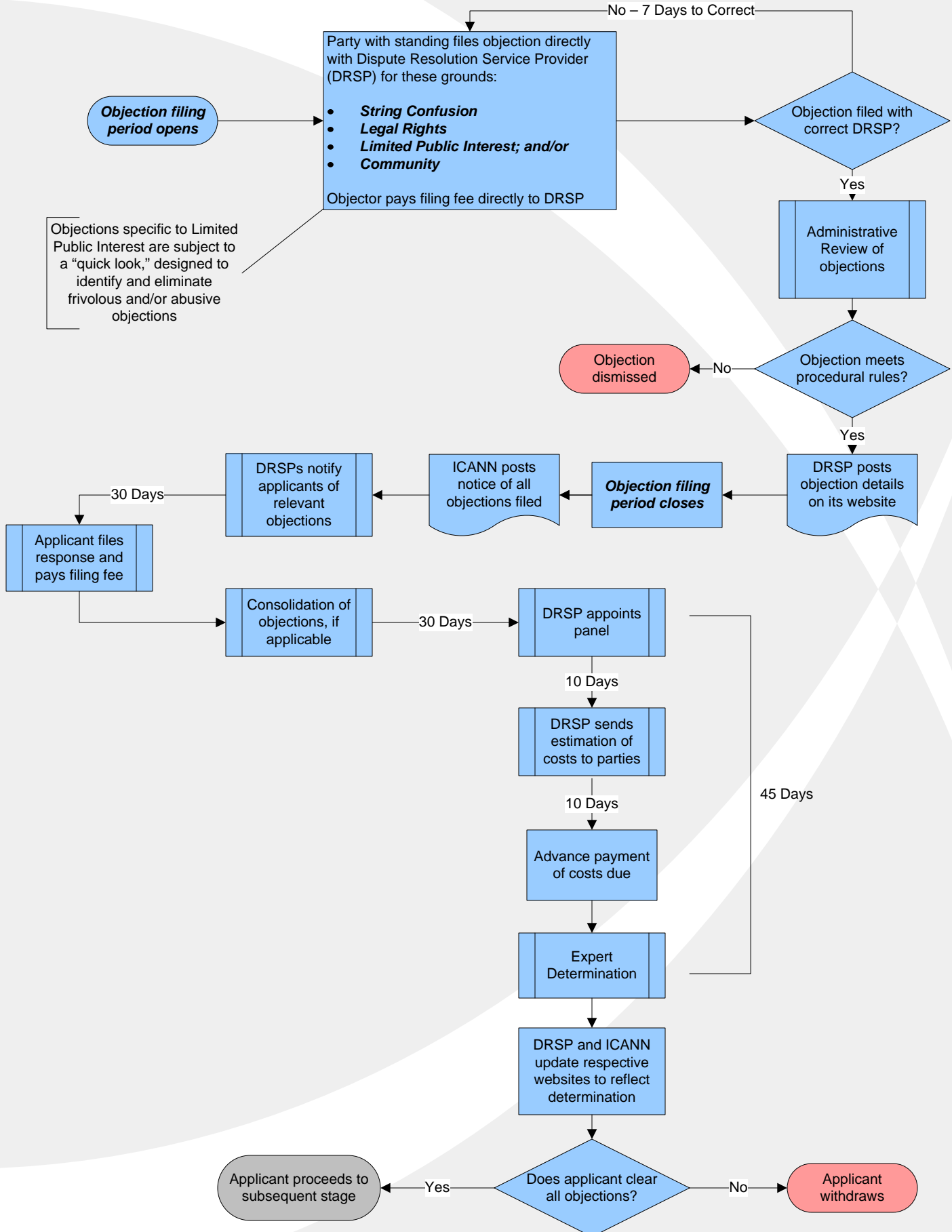
Factors that could be used by a panel in making this determination include but are not limited to:

- 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.

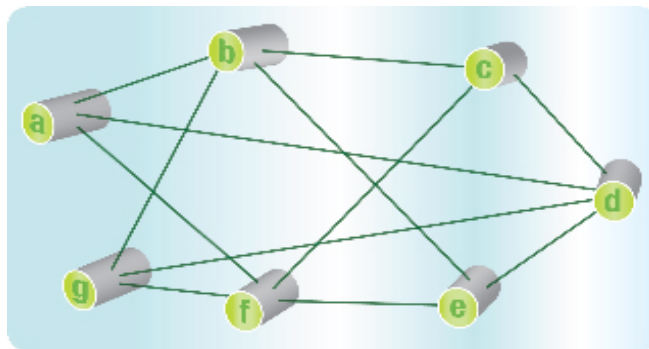


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

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.

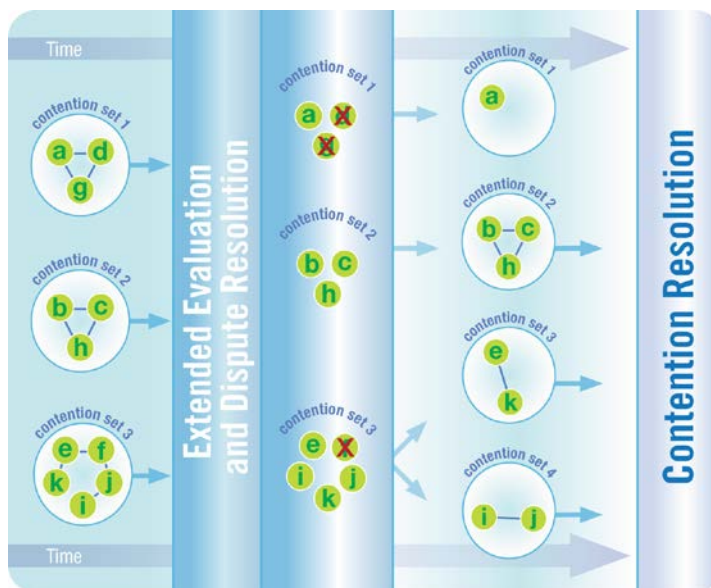


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

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.

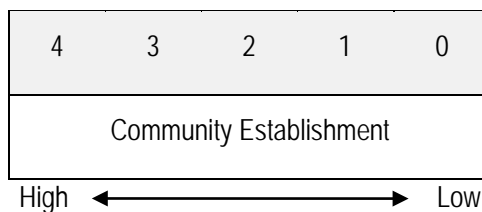
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

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

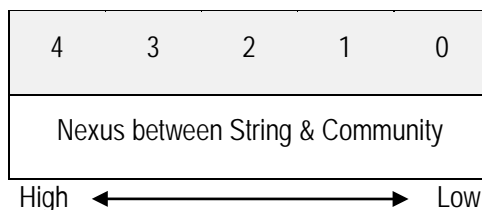
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international 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.

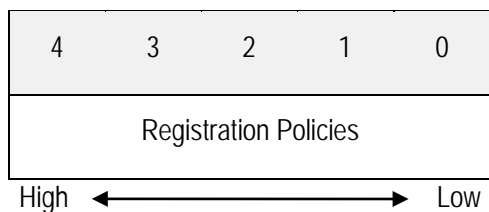
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"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

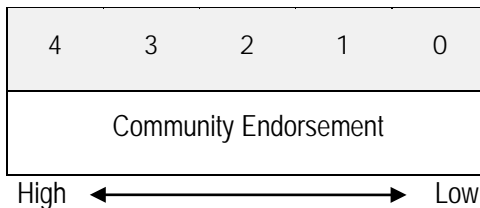
- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the 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)



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.

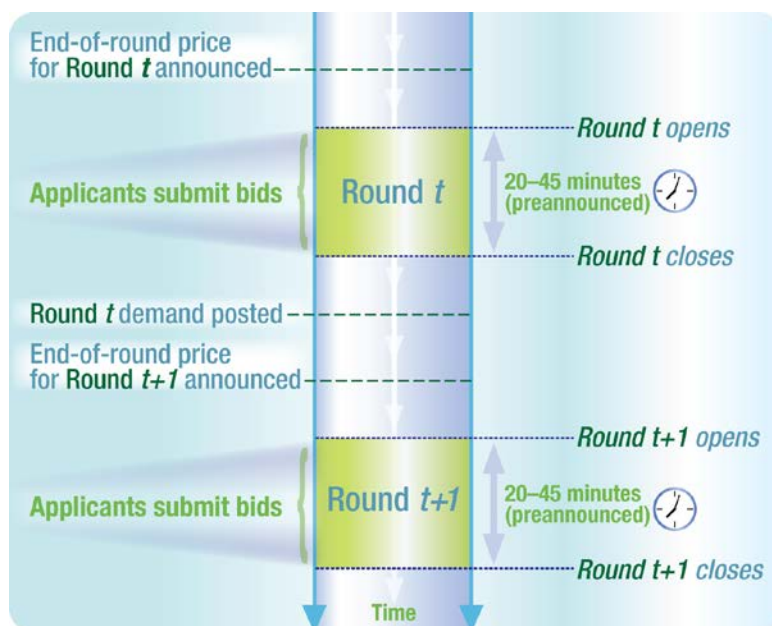


Figure 4-3 – Sequence of events during an ascending-clock auction.

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.

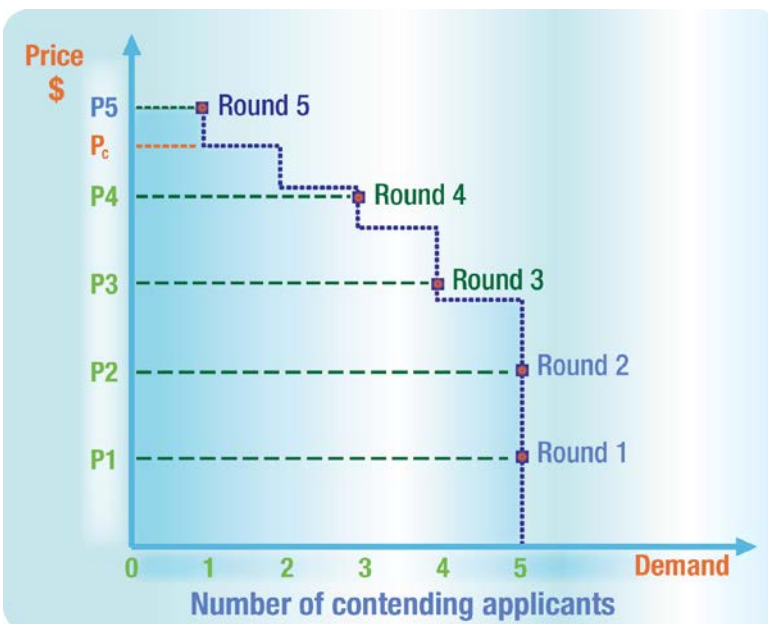


Figure 4-4 – Example of an auction for five mutually-contending applications.

- 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.

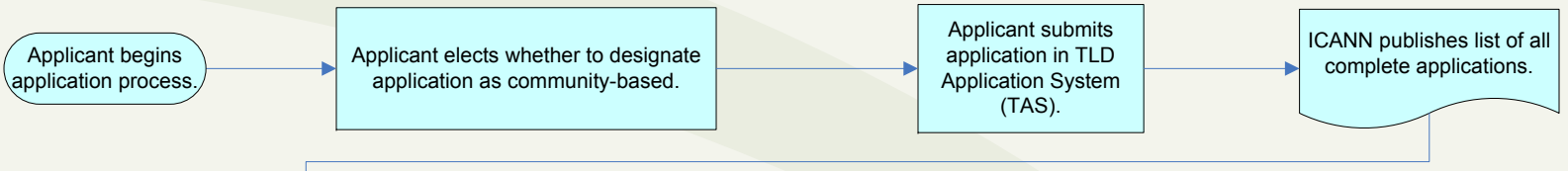
4.4 Contention Resolution and Contract Execution

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.)

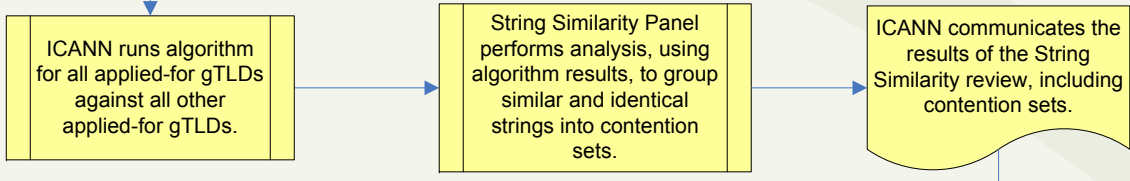
If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who 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.



Application/
Admin Check



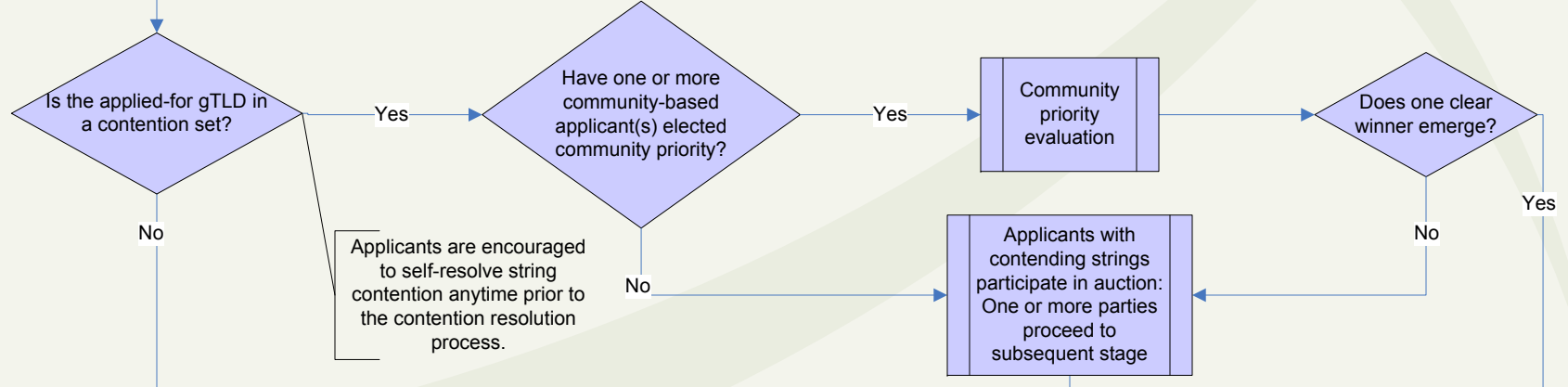
Initial Evaluation (IE)
String Review



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.

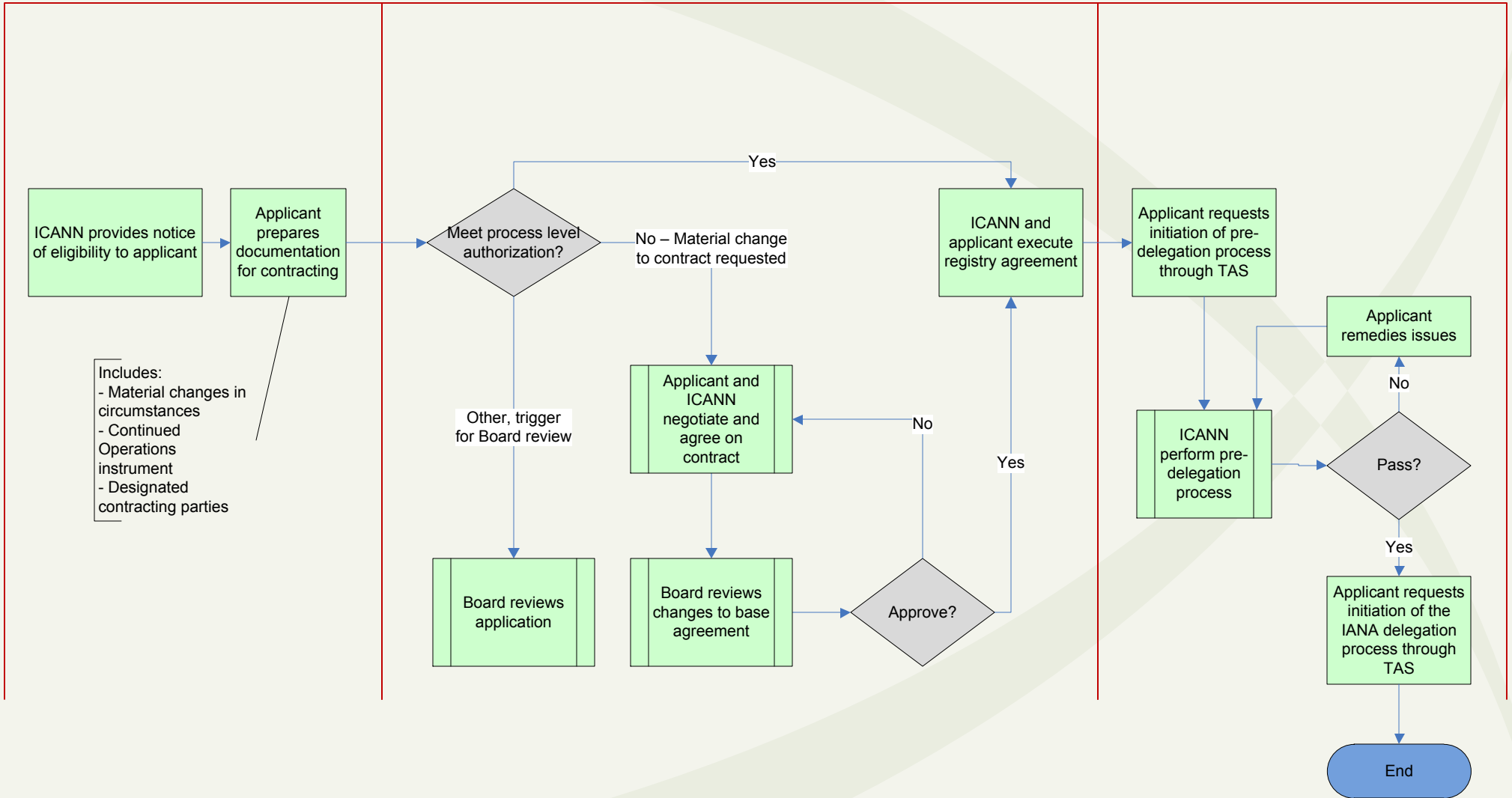
Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months



R-5

RESPONDENT'S EXHIBIT



COMMUNITY PRIORITY EVALUATION (CPE)

CPE Page Menu

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News & Views

13 December 2017 – [ICANN Organization Publishes Reports on the Review of the Community Priority Evaluation Process](https://www.icann.org/news/announcement-2017-12-13-en)
(<https://www.icann.org/news/announcement-2017-12-13-en>)

ICANN today published three reports on the review of the Community Priority Evaluation (CPE) process. The CPE Process Review was initiated at the request of the ICANN Board as part of the Board's due diligence in the administration of the CPE process. The reports can be found at the link below.

- [CPE Process Review Reports](#)

CPE Process Review

The CPE Process Review was initiated at the request of the ICANN Board as part of the Board's due diligence in the administration of the CPE process. The CPE Process Review was conducted by FTI Consulting Inc.'s (FTI) Global Risk and Investigations Practice (GRIP) and Technology Practice, and consisted of three parts: (i) reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1); (ii) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (iii) a compilation of the reference material relied upon by the CPE Provider to the extent such reference material exists for the eight evaluations which are the subject of pending Reconsideration Requests that were pending at the time that ICANN initiated the CPE Process Review (Scope 3).

The corresponding reports for each of the Scopes described above can be found below:

- [Scope 1 Report \(https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf\)](https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf) [PDF, 159 KB]
- [Scope 2 Report \(https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf\)](https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf) [PDF, 312 KB]
- [Scope 3 Report \(https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf\)](https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf) [PDF, 309 KB]

Understanding CPE

Overview

Community Priority Evaluation (CPE) is a method to resolve string contention, described in full detail in section 4.2 of the [Applicant Guidebook \(AGB\)](#) (</en/applicants/agb>). It will only occur if a community application is both in contention and elects to pursue CPE. The evaluation itself is an independent analysis conducted by a panel from the Economist Intelligence Unit (EIU). The EIU was selected for this role because it offers premier business intelligence services, providing political, economic, and public policy analysis to businesses, governments, and organizations across the globe.

As part of its process, the EIU reviews and scores a community applicant that has elected CPE against the following four criteria: Community Establishment; Nexus between Proposed String and Community; Registration Policies, and Community Endorsement. An application must score at least 14 points to prevail in a community priority evaluation, a high bar because awarding priority eliminates all non-community applicants in the contention set

as well as any other non-prevailing community applicants. For details regarding the EIU's work with ICANN as well as its evaluation process, please see the resources below:

- [CPE Panel Process Document \(http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf\)](http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf) [PDF, 314 KB] (also available along with additional information under [CPE Resources](#) below)
- [EIU Contract and SOW Information \(http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip\)](http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip)

CPE Eligibility

Fulfillment of the CPE Eligibility criteria explained below permits an applicant to begin the CPE process and ensures that applications as well as contention sets are in stable, viable states, i.e., are not at risk of an open matter affecting whether they will proceed.

Eligibility Requirements for Standard CPE Invitation

Once an application is eligible for CPE, it will be invited to CPE and have up to 21 days to accept the invitation and pay the CPE fees. The invitations will be posted to this page in the CPE Status section. The evaluation will begin no sooner than 14 days after the invitation to allow for final submission of application comments and correspondence to ICANN regarding the application.

To be eligible to begin Standard CPE Processing, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have an application status of "Active"
- be in an unresolved contention set (contention set status is either "Active" or "On-Hold" and at least one other application in the set has a status of either "Active or On-Hold"
- not have a pending change request
- not be in an active comment window for a recently approved changed request

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- have addressed all applicable GAC Advice
- not be classified in the "High Risk" category of the Name Collision Occurrence Management Framework

Eligibility Requirements for Accelerated Invitation to CPE

Once a community application has met the requirements listed below, ICANN will notify them of the option to request an Accelerated Invitation to CPE. An applicant is able to request an Accelerated Invitation to CPE when outstanding eligibility criteria do not have the potential to impact the community applicant's membership in a contention set and/or when the contention set as a whole may not have met all eligibility requirements for the standard CPE Invitation process.

After an Applicant has requested the Accelerated Invitation, the standard CPE Invitation process will commence, including posting on this web page.

To be eligible for an Accelerated Invitation to CPE, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have a status of "Active" or "On-Hold"
- be in an unresolved contention set (contention set status is either "Active" or "On-Hold" and at least one other application in the set has a status of either "Active or On-Hold")
- not have a pending change request
- not be in an active application comment window for an approved changed request
- have addressed all applicable GAC Advice

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- not be classified in the "High Risk" category of the Name Collision Occurrence Management Framework

CPE Resources

- [CPE Panel Process Document \(/en/applicants/cpe/panel-process-07aug14-en.pdf\)](/en/applicants/cpe/panel-process-07aug14-en.pdf) [PDF, 314 KB] {06 August 2014}

The Economist Intelligence Unit's Process documentation for Community Priority Evaluation is posted for informational purposes to provide transparency of the panel's evaluation process. On 14 March 2016, in an effort to provide greater transparency on the CPE process, the Panel submitted [correspondence \(https://www.icann.org/en/system/files/correspondence/abruzzo-to-weinstein-14mar16-en.pdf\)](https://www.icann.org/en/system/files/correspondence/abruzzo-to-weinstein-14mar16-en.pdf) [PDF, 52 KB] with additional information regarding the process for verifying letters of support and opposition.

- [CPE Guidelines \(/en/applicants/cpe/guidelines-27sep13-en.pdf\)](/en/applicants/cpe/guidelines-27sep13-en.pdf) [PDF 1.85 MB] {27 September 2013}

ICANN has published the CPE Guidelines produced by the Economist Intelligence Unit after considering ICANN community feedback on the first draft. The Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the scoring principles outlined in the AGB. The Guidelines are intended to increase transparency, fairness and consistency in the evaluation process.

- [Updated CPE Frequently Asked Questions \(FAQs\) \(/en/applicants/cpe/faqs-10sep14-en.pdf\)](/en/applicants/cpe/faqs-10sep14-en.pdf) [PDF, 377 KB] (10 SEPT 2014)

This document contains answers to common questions about CPE from applicants and other interested community members. The update from 19 September 2014 includes revisions to existing answers based on changes put forth in the ["Update on Application Status and Contention Sets" Advisory \(/en/applicants/advisories/application-contention-set-14mar14-en\)](/en/applicants/advisories/application-contention-set-14mar14-en).

- [CPE Processing Timeline \(/en/applicants/cpe/timeline-10sep14-en.pdf\)](/en/applicants/cpe/timeline-10sep14-en.pdf) [PDF, 54 KB] {10 SEPT 2014}

The timeline has been updated to reflect changes made in the FAQ revision from 13 Aug 2014.

CPE Status

ICANN began inviting [eligible](#) applicants to elect the CPE process on 9 October 2013. The invitation date and evaluation results are represented in the table below. **Important:** application comments and letters of support or opposition must be submitted within 14 days of the CPE Invitation Date in order to be considered by the CPE Panel. [Access the Application Comments page \(https://gtdcomment.icann.org/applicationcomment/viewcomments\)](https://gtdcomment.icann.org/applicationcomment/viewcomments).

Application ID	String	Contention Set Number	Applicant	CPE Invitation Date	Elected	Status
1-1000-62742	IMMO	99	STARTING DOT LIMITED	09 October 2013	Yes	Evaluation Complete (/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf) (17 March 2014)
1-1025-18840	TAXI	225	Taxi Pay GmbH	09 October 2013	Yes	Evaluation Complete (/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf) (17 March 2014)
1-901-9391	OSAKA	130	Interlink Co., Ltd.	06 November 2013	Yes	Evaluation Complete (/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf) (30 July 2014)
1-1723-69677	TENNIS	136	TENNIS AUSTRALIA	06 November	Yes	Evaluation Complete

			LTD	2013		(/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf) (17 March 2014)
1-1888-47714	MLS	144	The Canadian Real Estate Association	11 December 2013	Yes	Evaluation Complete (/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf) (17 March 2014)
1-1273-63351	GMBH	30	TLDDOT GmbH	19 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf) (12 June 2014)
1-880-17627	LLC	81	Dot Registry LLC	19 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf) (12 June 2014)
1-880-35979	INC	102	Dot Registry LLC	19 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf) (12 June 2014)
1-880-35508	LLP	45	Dot Registry LLC	19 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf) (12 June 2014)
1-1083-39123	RADIO	33	European Broadcasting Union (EBU)	19 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf) (10 September 2014)
1-1032-95136	HOTEL	51	HOTEL Top-Level-Domain S.a.r.l	19 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf) (12 June 2014)

1-1675-51302	ART	72	EFLUX.ART, LLC	19 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf) (10 September 2014)
1-1097-20833	ART	72	Dadotart, Inc.	20 February 2014	Yes	Evaluation Complete (/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf) (10 September 2014)
1-912-59314	ECO	22	Big Room Inc.	12 March 2014	Yes	Evaluation Complete (/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf) (7 October 2014)
1-1309-46695	KIDS	1,330	DotKids Foundation Limited	27 October 2015	Yes	Evaluation Complete (/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf) (8 April 2016)
1-1713-23699	GAY	179	dotgay llc	23 April 2014	Yes	Evaluation Complete (/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf) (7 October 2014)
1-1713-23699	GAY	179	dotgay llc	26 January 2015	RR 14-44 (https://www.icann.org/resources/pages/14-44-2014-10-22-en)	Re-Evaluation Complete (/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf) (8 October 2015)
1-959-51046	MUSIC	106	.music LLC	18 June 2014	Yes	Evaluation Complete (/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf) (7 October 2014)
1-890-52063	SHOP	1,593	GMO Registry, Inc.	8 October 2014	Yes	Evaluation Complete (/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf) (13 March 2015)

1-1830-1672	SHOP	649	Commercial Connect LLC	26 November 2014	Yes	Evaluation Complete (/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf) (21 May 2015)
1-1192-28569	MED	1,732	HEXAP SAS	3 February 2015	No	Not elected
1-1309-81322	SPA	524	Asia Spa and Wellness Promotion Council Limited	3 February 2015	Yes	Evaluation Complete (/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf) (22 July 2015)
1-1911-56672	CPA	974	American Institute of Certified Public Accountants	8 April 2015	Yes	Evaluation Complete (/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf) (3 September 2015)
1-1744-1971	CPA	1,609	CPA AUSTRALIA LTD	8 April 2015	Yes	Evaluation Complete (/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf) (3 September 2015)
1-1115-14110	MUSIC	448	DotMusic Limited	29 July 2015	Yes	Evaluation Complete (/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf) (10 February 2016)
1-1702-73085	MERCK	461	Merck Registry Holdings, Inc.	25 March 2016	Yes	Evaluation Complete (/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf) (10 August 2016)
1-980-7217	MERCK	1673	Merck KGaA	25 March 2016	Yes	Evaluation Complete (/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf) (10 August 2016)
1-1033-22687	WEBS	539	Vistaprint Limited	28 March 2016	No	Not elected

CPE Archive

News & Views Archive

Below find archival materials documenting milestones in the formation and implementation of Community Priority Evaluation, listed in reverse chronological order.

1 September 2017 – [Update on the Review of the New gTLD Community Priority Evaluation Process](https://newgtlds.icann.org/en/applicants/cpe/process-review-update-01sep17-en.pdf)

(<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-01sep17-en.pdf>) [PDF, 117 KB]

As a follow-up to the update provided on [2 June 2017](https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf) (<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>) [PDF, 405 KB], ICANN has published a subsequent update regarding the review of the CPE process. Please find the links to the announcement and update below.

- [ICANN Provides Update on Review of the Community Priority Evaluation Process](https://www.icann.org/news/announcement-2017-09-01-en) (<https://www.icann.org/news/announcement-2017-09-01-en>)
- [View Update](https://newgtlds.icann.org/en/applicants/cpe/process-review-update-01sep17-en.pdf) (<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-01sep17-en.pdf>) [PDF, 117 KB]

2 June 2017 – [Update on the Review of the New gTLD Community Priority Evaluation Process](https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf)

(<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>) [PDF, 366 KB]

As a follow-up to the update provided by Chris Disspain on [26 April 2017](https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf) (<https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>) [PDF, 405 KB], ICANN has published a subsequent update regarding the review of the CPE process. Please find the links to the announcement and update below.

- [ICANN Provides Update on Review of the Community Priority Evaluation Process](https://www.icann.org/news/announcement-4-2017-06-02-en) (<https://www.icann.org/news/announcement-4-2017-06-02-en>)
- [View Update](https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf) (<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>) [PDF, 366 KB]

10 August 2016 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 2 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](/en/applicants/cpe#invitations)

8 April 2016 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](/en/applicants/cpe#invitations)

10 February 2016 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](/en/applicants/cpe#invitations)

8 October 2015 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](/en/applicants/cpe#invitations)

3 September 2015 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 2 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

22 July 2015 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(http://newgtlds.icann.org/en/applicants/cpe#invitations\)](http://newgtlds.icann.org/en/applicants/cpe#invitations)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

21 May 2015 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

13 March 2015 – Additional CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

7 October 2014 – CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 3 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

10 September 2014 – CPE Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 3 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

10 September 2014 – CPE Eligibility Criteria, FAQs and Timeline Updated

ICANN has made minor revisions to the CPE eligibility criteria for both a standard invitation and an accelerated invitation to align with recent changes put forth in the ["Update on Application Status and Contention Sets" Advisory \(/en/applicants/advisories/application-contention-set-14mar14-en\)](#). These revisions reflect the current definitions of "active" and "on-hold" for both applications and contention sets. For more details, please see the updated [eligibility criteria \(/en/applicants/cpe#eligibility\)](#) below. The corresponding questions and answers on the [FAQ page \(/en/applicants/cpe/faqs-10sep14-en.pdf\)](#) [PDF, 377 KB] have also been updated, and the timeline has also been updated to reflect changes made in the last FAQ revision.

13 August 2014 – CPE Frequently Asked Questions (FAQs) Updated

ICANN has updated the CPE FAQs. The update includes revisions to existing answers based on lessons learned over the past nine months of CPE operations as well as the addition of answers to questions regarding Accelerated Invitation to CPE.

- [View CPE FAQs \(/en/applicants/cpe/faqs-13aug14-en.pdf\)](#) [PDF, 119 KB]

7 August 2014 – Community Priority Evaluation (CPE) Panel Process Document Released

ICANN has published the Economist Intelligence Unit's (EIU) process documents for Community Priority Evaluation (CPE). This document provides detail of the process the EIU employs to perform the CPE.

- [View CPE Panel Process Document \(/en/applicants/cpe/panel-process-07aug14-en.pdf\)](#) [PDF, 314 KB]

30 July 2014 – Additional Community Priority Evaluation (CPE) Result Released

ICANN has published the Community Priority Evaluation (CPE) Results for 1 application, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

12 June 2014 – Additional Community Priority Evaluation (CPE) Results Released

ICANN has published the Community Priority Evaluation (CPE) Results for 5 applications, and updated application and contention set statuses accordingly.

- [View CPE results \(/en/applicants/cpe#invitations\)](#)
- [View Contention Set Status \(https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus\)](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus)

28 May 2014 – Accelerated Invitation to Elect CPE

In effort to maintain program momentum, ICANN has enhanced the CPE invitation process to allow for community applicants to begin the CPE process earlier. The new process provides the community applicant the ability to Opt-In to a CPE invite sooner than the standard Eligibility Criteria. If they qualify, the community applicant can request an invitation to elect CPE. This would allow them to initiate the CPE process sooner than current requirements allow. Select the following link for more information about the process

- [View Eligibility Criteria for Accelerated Invitation to Elect CPE](#)

18 March 2014 – First Community Priority Evaluation (CPE) Results Released

ICANN has published the first four results of the Community Priority Evaluation (CPE) process.

- [View CPE results](#)

25 October 2013 – Additional Community Priority Evaluation Resources Available

Community Priority Evaluation FAQs and a CPE processing timeline are now available.

- [View Resources](#)

09 October 2013 – CPE Invitations Sent to Eligible Applicants

Find out which applicants have been invited and where their applications are in the process. This information will be updated regularly as invitations are sent and evaluations are performed and completed.

- [Read the Announcement \(/en/announcements-and-media/announcement-27sep13-en\)](#)
- [View CPE Invitations](#)

27 September 2013 – Final Community Priority Evaluation Guidelines Published

The Economist Intelligence Unit finalized its CPE Guidelines after considering ICANN community feedback. The Guidelines have been made public to ensure quality, consistency and transparency in the evaluation process.

- [Read the Announcement \(/en/announcements-and-media/announcement-27sep13-en\)](#)
- [Download the CPE Guidelines \(/en/applicants/cpe/guidelines-27sep13-en.pdf\)](#) [PDF, 1.85 MB]

10 September 2013 – CPE Teleconference Content Available

ICANN holds a teleconference to discuss the details of Community Priority Evaluation with applicants.

- [Teleconference Recording \(http://audio.icann.org/new-gtlds/cpe-10sep13-en.mp3\)](http://audio.icann.org/new-gtlds/cpe-10sep13-en.mp3) [MP3, 15.2 MB]
- [Additional Questions & Answers \(http://newgtlds.icann.org/en/applicants/cpe/podcast-qa-10sep13-en.pdf\)](http://newgtlds.icann.org/en/applicants/cpe/podcast-qa-10sep13-en.pdf) [PDF, 546 KB]

09 September 2013 – Feedback on Draft CPE Guidelines

Applicants respond to ICANN's call for input on the Community Priority Evaluation Guidelines created by panel firm EIU.

- [Draft CPE Guidelines \(/en/applicants/cpe/guidelines-16aug13-en.pdf\)](#)
- [Community Feedback \(/en/applicants/cpe#guidelines\)](#)

16 August 2013 – CPE Draft Guidelines & Community Review

EIU, the CPE panel firm, develops a set of guidelines based on the criteria in the Applicant Guidebook to be used in the evaluation process. Applicants and community members are invited to provide feedback.

- [Announcement: Community Priority Evaluation Guidelines Posted for Community Review and Input \(/en/announcements-and-media/announcement-4-16aug13-en\)](/en/announcements-and-media/announcement-4-16aug13-en)
- [Community Priority Evaluation \(CPE\) Guidelines \(/en/applicants/cpe/guidelines-16aug13-en.pdf\)](/en/applicants/cpe/guidelines-16aug13-en.pdf) [PDF, 803 KB]

16 August 2013 – CPE Resources

ICANN publishes a set of resources to guide eligible applicants through the Community Priority Evaluation process.

- [Community Priority Evaluation Resources \(/en/applicants/cpe#resources\)](/en/applicants/cpe#resources)

14 June 2013 – Community Priority Evaluation Early Election

ICANN offers a means for applicants to indicate their intent to elect for Community Priority Evaluation prior to the launch of CPE operations.

- [Community Priority Evaluation: Now Open for Early Election \(/en/announcements-and-media/announcement-4-14jun13-en\)](/en/announcements-and-media/announcement-4-14jun13-en)

CPE Resources Archive

- [Draft CPE Guidelines \(/en/applicants/cpe/guidelines-16aug13-en.pdf\)](/en/applicants/cpe/guidelines-16aug13-en.pdf) [PDF, 803 KB] (Published 16 August 2013)
Economist Intelligence Unit (EIU), the firm selected to manage Community Priority Evaluation, published a set of draft Guidelines that panelists will use to score Community applicants. Before finalizing, applicants and the community were invited to review and provide feedback.
- Community Feedback on Draft CPE Guidelines is available for review below:
 - [At-Large Advisory Committee \(ALAC\) \(http://atlarge.icann.org/en/correspondence/statement-cpe-guidelines-09sep13-en.pdf\)](http://atlarge.icann.org/en/correspondence/statement-cpe-guidelines-09sep13-en.pdf) [PDF, 252 KB]
 - [Big Room Inc. \(/en/applicants/cpe/guidelines-comment-big-room-02sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-big-room-02sep13-en.pdf) [PDF, 267 KB]
 - [Community TLD Applicant Group \(CTAG\) \(/en/applicants/cpe/guidelines-comment-ctag-29aug13-en.pdf\)](/en/applicants/cpe/guidelines-comment-ctag-29aug13-en.pdf) [PDF, 315 KB]
 - [Donuts Inc. \(/en/applicants/cpe/guidelines-comment-extend-donuts-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-extend-donuts-20sep13-en.pdf) [PDF, 41 KB]
 - [Donuts Inc. \(/en/applicants/cpe/guidelines-comment-donuts-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-donuts-20sep13-en.pdf) [PDF, 394 KB]
 - [DotMusic Limited \(/en/applicants/cpe/guidelines-comment-dotmusic-07sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-dotmusic-07sep13-en.pdf) [PDF, 581 KB]
 - [Dot Registry, LLC \(/en/applicants/cpe/guidelines-comment-dot-registry-04sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-dot-registry-04sep13-en.pdf) [PDF, 390 KB]
 - [.music llc \(/en/applicants/cpe/guidelines-comment-music-06sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-music-06sep13-en.pdf) [PDF, 155 KB]
 - [Radix, Top Level Domain Holdings / Minds & Machines, Famous Four Media, Fegistry, LLC \(/en/applicants/cpe/guidelines-comment-radix-minds-machines-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-radix-minds-machines-20sep13-en.pdf) [PDF, 108 KB]
 - [Radix, Top Level Domain Holdings / Minds & Machines, Famous Four Media, Fegistry, LLC \(/en/applicants/cpe/guidelines-comment-redline-radix-minds-machines-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-redline-radix-minds-machines-20sep13-en.pdf) [PDF, 316 KB]
 - [Ray Fassett \(/en/applicants/cpe/guidelines-comment-nexus-20sep13-en.pdf\)](/en/applicants/cpe/guidelines-comment-nexus-20sep13-en.pdf) [PDF, 760 KB]
 - [TLDDOT GmbH \(.GmbH Top-Level-Domain\) \(/en/applicants/cpe/guidelines-comment-tlddot-gmbh-30aug13-en.pdf\)](/en/applicants/cpe/guidelines-comment-tlddot-gmbh-30aug13-en.pdf) [PDF, 48 KB]

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RESPONDENT'S EXHIBIT



PREPARING EVALUATORS FOR THE NEW GTLD APPLICATION PROCESS

by Michael Salazar | 22 November 2011

The names of the global firms that will serve as the evaluation panels for new generic Top Level Domain (gTLD) applications were recently announced during the ICANN 42 Dakar meeting.

As Program Director for the [New gTLD Program \(http://newgtlds.icann.org/\)](http://newgtlds.icann.org/), responsible for the design and deployment of the New gTLD Application Processing Program and managing the process as it takes flight, I am extremely proud of the selections we have made. All of the organizations chosen are highly qualified, global, and are respected experts in the areas for which they have been selected.

Whom did we select?

We followed a thorough, fair, detailed process to select the evaluation panels. The process, which is described on our website under "[Call for Applicant Evaluation Panel Expressions of Interest \(http://www.icann.org/en/announcements/announcement-25feb09-en.htm\)](http://www.icann.org/en/announcements/announcement-25feb09-en.htm)" began in February of 2009. When I came on board in July 2009 I quickly understood the heightened level of interest in providing services for this relatively new Program. In all, twelve global firms formally submitted responses. Out of that pool, we selected: [The Economist Intelligence Unit \(http://www.eiu.com\)](http://www.eiu.com), [Ernst & Young \(http://www.ey.com\)](http://www.ey.com), [InterConnect Communications \(http://www.icc-uk.com\)](http://www.icc-uk.com) (partnering with the [University College London \(http://www.ucl.ac.uk\)](http://www.ucl.ac.uk)), [Interisle Consulting Group \(http://www.interisle.net\)](http://www.interisle.net), [JAS Global Advisors \(https://www.jasadvisors.com\)](https://www.jasadvisors.com), and [KPMG \(http://www.kpmg.com\)](http://www.kpmg.com).

These firms will work together in various combinations to evaluate applications during the process as follows:

String Reviews

- **String Similarity** - InterConnect Communications/University College London
- **DNS Stability** - Interisle Consulting Group
- **Geographic Names** - The Economist Intelligence Unit and InterConnect Communications/University College London

Applicant Reviews

- **Technical and Operational** - Ernst & Young, JAS Global Advisors, and KPMG
- **Financial Capability** - Ernst & Young, JAS Global Advisors, and KPMG
- **Registry Services** - Interisle Consulting Group
- **Community Priority** - The Economist Intelligence Unit and InterConnect Communications

Why is there more than one firm for each of the evaluation types? Three reasons:

- To provide sufficient bandwidth to conduct the number of necessary evaluations,
- To provide an alternate channel to avoid conflicts of interest,
- To provide for continued competition among service providers to ensure quality and value going forward.

All of the firms exhibit characteristics that are important to the integrity of this process. For example, KPMG and Ernst & Young both have large global footprints and can effectively scale to ensure timely and culturally sensitive processing of applications. Their strong and long history in providing audit, tax, and advisory services makes them well suited to serve as the panels for financial and technical/operational evaluations. JAS Global Advisors has a decade of experience in due diligence, Internet security, and global IT operations as well as an intimate knowledge of ICANN. The Economist Intelligence Unit, the sister organization of *The Economist*, incorporates a solid understanding of global corporate and government processes. InterConnect Communications, in conjunction with the University College

London brings an internationally recognized and diverse linguistics resources offering an abundance of subject matter expertise. And finally, Interisle Consulting Group has a very specific, excellent subject matter expertise in the DNS.

How are we ensuring an effective and efficient evaluation effort?

Ensuring that we have an effective and efficient evaluation effort is one of the most important aspects of building this program - and this starts with how we are preparing the evaluation panels.

The first step begins with simulation exercises. Currently, my team is conducting simulation exercises using mock applications. The simulation exercises have been instrumental in testing the evaluation process, understanding the level of effort to review an application, and equally as important, to calibrate the analysis across the firms.

The next step is building and implementing a robust training program. We are finalizing a training program that all evaluators are required to complete before performing an evaluation. Any individual serving on a panel will need to complete the training program prior to starting. The training program seeks to ensure consistency across all processes and scoring methods so that all applications are evaluated equally.

Finally, we are implementing a Quality Control program to ensure that applications have followed the same evaluation process and have been evaluated consistently. I strongly believe that the Quality Control function is a paramount component of the Program. In addition to performing the critical task of ensuring consistency, Quality Control will enable us to identify areas for improvement. These will in turn create initiatives that will bring enhanced effectiveness to the overall program as well as improvements in costs as we consider future rounds.

How will ICANN address any conflicts of interest?

Conflict of interest is an area that ICANN takes very seriously as it impacts the integrity of the Program. In fact, our processes are built to avoid and adequately deal with potential conflicts of interest. For example, where feasible, we have multiple firms providing services making sure that no evaluators have a conflict with a particular application.

I helped craft applicable language in the Applicant Guidebook and have made the topic the subject of contract negotiations with each firm reinforcing the importance of avoiding conflict of interest (inherent or perceived). There is also a code of conduct that we have asked each firm to abide. Some of the guidelines under the code of conduct restrict the evaluators from speaking at meetings or conferences on the topic of New gTLDs and interacting with entities or individuals that have identified themselves as potential applicants of the New gTLD Program. See [Module 2 of the Applicant Guidebook \(http://newgtlds.icann.org/applicants/agb\)](http://newgtlds.icann.org/applicants/agb) (Section 2.4.3 Code of Conduct Guidelines for Panelists) for more information on the Code of Conduct and Conflict of Interest guidelines.

The New gTLD Application Program is a major undertaking for ICANN and the global Internet community. We are very excited to get this program underway. Stay tuned for additional announcements as we continue to prepare for launch on 12 January 2012.

If you have any questions about the gTLD Program, the evaluation process or the evaluation firms selected, please send your questions to:

[newgtld@icann.org \(mailto:newgtld@icann.org\)](mailto:newgtld@icann.org)

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RESPONDENT'S EXHIBIT

COMMUNITY PRIORITY EVALUATION PANEL AND ITS PROCESSES

Overview

At the time of submitting the new gTLD application, applicants had the opportunity to designate themselves as a community-based application, as prescribed in the section 1.2.3 of the Applicant Guidebook (AGB).

Community Priority Evaluation (CPE) is defined in section 4.2 of the AGB, and allows a community based-application to undergo an evaluation against the criteria as defined in section 4.2.3 of the AGB, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus win the contention set.

Only community-based applicants are eligible to participate in a community priority evaluation. A determination by a community priority panel, appointed by ICANN, must be made before a community name is awarded to an applicant. This determination will be based on the string and the completeness and validity of supporting documentation.

There are two possible outcomes to a Community Priority Evaluation:

- Determination that the application met the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Prevailed.
- Determination that the application did not meet the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Did not prevail.

Section 4.2.2 of the AGB prescribes that the Community Priority Evaluations will be conducted by an independent panel. ICANN selected the Economist Intelligence Unit (EIU) as the panel firm for Community Priority Evaluations.

The Economist Intelligence Unit

The Economist Intelligence Unit (EIU) was selected as a Panel Firm for the gTLD evaluation process. The EIU is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 500 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The evaluation process respects the principles of fairness, transparency, avoidance of potential conflicts of interest, and non-discrimination. Consistency of approach in scoring applications is of particular importance. In this regard, the Economist Intelligence Unit has more than six decades of experience building evaluative frameworks and benchmarking models for its clients, including governments, corporations, academic institutions and NGOs. Applying scoring systems to complex questions is a core competence.

EIU evaluators and core team

The Community Priority Evaluation panel comprises a core team, in addition to several independent¹ evaluators. The core team comprises a Project Manager, who oversees the Community Priority Evaluation project, a Project Coordinator, who is in charge of the day-to-day management of the project and provides guidance to the independent evaluators, and other senior staff members, including The Economist Intelligence Unit’s Executive Editor and Global Director of Public Policy. Together, this team assesses the evaluation results. Each application is assessed by seven individuals: two independent evaluators, and the core team, which comprises five people.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators, including the core team, have ensured that no conflicts of interest exist.
- All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures.
- EIU evaluators are highly qualified, they speak several languages and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.
- Language skills and knowledge of specific regions are also considered in the selection of evaluators and the assignment of specific applications.

CPE Evaluation Process

The EIU evaluates applications for gTLDs once they become eligible for review under CPE.

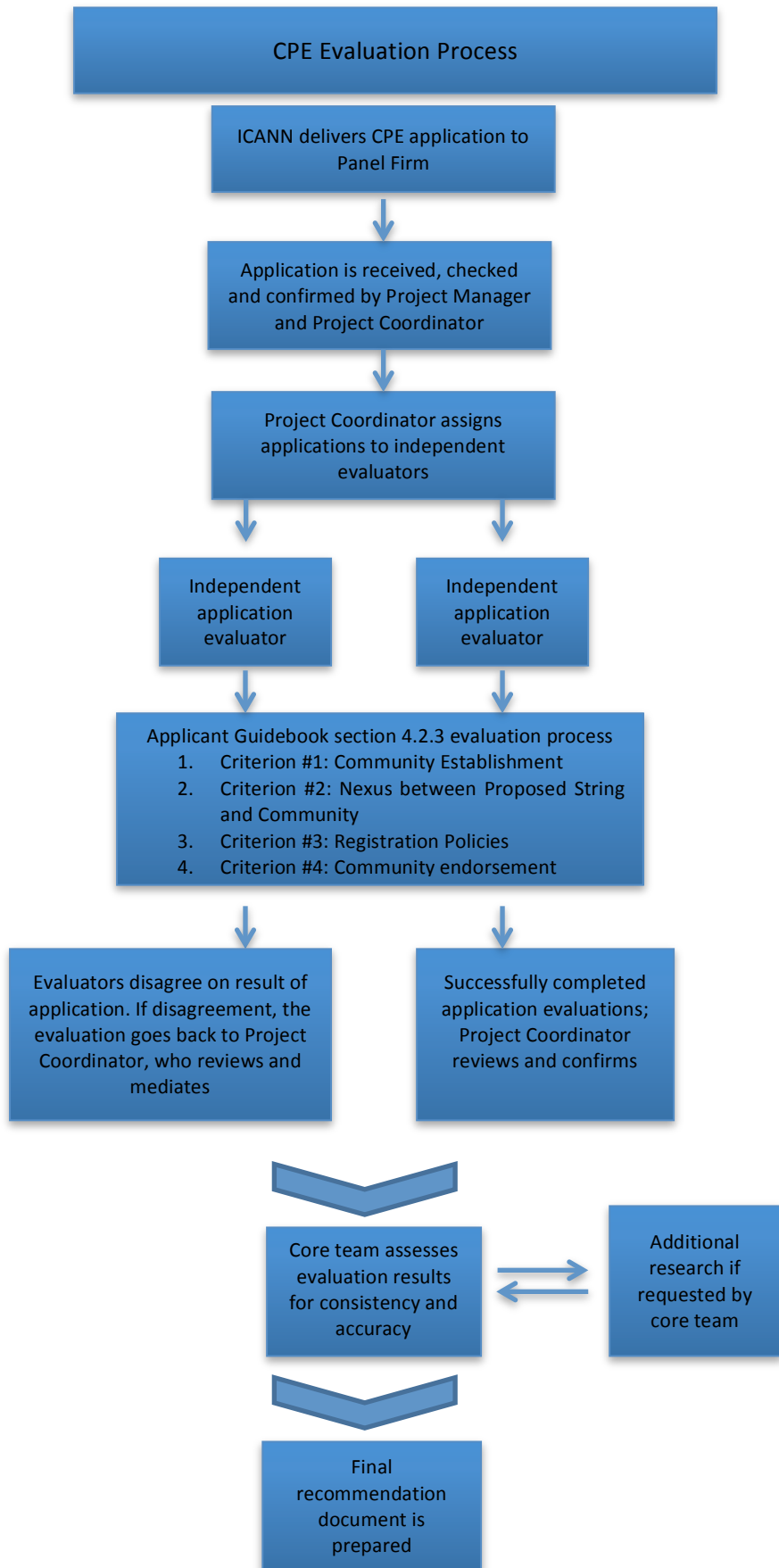
The evaluation process as described in section 4.2.3 of the Applicant Guidebook and discussed in the CPE Guidelines document is described below:

- The Panel Firm’s Project Manager is notified by ICANN that an application for a gTLD is ready for CPE, and the application ID and public comments are delivered to the EIU. The EIU is responsible for gathering the application materials and other documentation, including letter(s) of support and relevant correspondence, from the public ICANN website. The EIU Project Manager reviews the application and associated materials, in conjunction with the EIU Project Coordinator. The Project Coordinator assigns the application to each of two evaluators, who work independently to assess and score the application.
- Each evaluator reviews the application and accompanying documentation, such as letter(s) of support and opposition. Based on this information and additional independent research, the evaluators assign scores to the four CPE criteria as defined in the Applicant Guidebook.
- As part of this process, one of the two evaluators assigned to assess the same string is asked to verify the letters of support and opposition. (Please see “Verification of letter(s) of support and opposition” section for further details.)
- When evaluating an application the CPE Panel also considers the public application comments. The public comments are provided to EIU by ICANN following the close of the 14-day window associated with the CPE invitation. For every comment of support/opposition received, the designated evaluator assesses the relevance of the organization of the poster along with the content of the comment. A separate verification of the comment author is not performed as the Application Comments

¹ The term “independent” means that the evaluators do not have any conflict of interest with CPE applicants. It also means that the evaluators sit outside the core EIU team; they provide individual evaluation results based on their assessment of the AGB criteria, application materials, and secondary research without any influence from core team members.

system requires that users register themselves with an active email account before they are allowed to post any comments. However, the evaluator will check the affiliated website to ascertain if the person sending the comment(s) is at that entity/organization named, unless the comment has been sent in an individual capacity.

- Once the two evaluators have completed this process, the evaluation results are reviewed by the Project Coordinator, who checks them for completeness and consistency with the procedures of the Applicant Guidebook.
- If the two evaluators disagree on one or more of the scores, the Project Coordinator mediates and works to achieve consensus, where possible.
- The Project Director and Project Coordinator, along with other members of the core team, meet to discuss the evaluators' results and to verify compliance with the Applicant Guidebook. Justifications for the scores are further refined and articulated in this phase.
- If the core team so decides, additional research may be carried out to answer questions that arise during the review, especially as they pertain to the qualitative aspects of the Applicant Guidebook scoring procedures.
- If the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified.
- When the core team achieves consensus on the scores for each application, an explanation, or justification, for each score is prepared. A final document with all scores and justifications for a given application, including a determination of whether the application earned the requisite 14 points for prevailing, is presented to ICANN.
- The Economist Intelligence Unit works with ICANN when questions arise or when additional process information may be required to evaluate an application.
- The Panel Firm exercises consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case.



Verification of letter(s) of support and opposition

As part of this CPE evaluation process, one of the two evaluators assigned to assess the same string verifies the letters of support and opposition. This process is outlined below:

- On a regular basis, the EIU reviews ICANN's public correspondence page (<http://newgtlds.icann.org/en/program-status/correspondence>) for recently received correspondence to assess whether it is relevant to an ongoing evaluation. If it is relevant, the public correspondence is provided to the evaluators assigned to the evaluation for review.
- For every letter of support/opposition received, the designated evaluator assesses both the relevance of the organization and the validity of the documentation. Only one of the two evaluators is responsible for the letter verification process.
- With few exceptions, verification emails are sent to every entity that has sent a letter(s) of support or opposition to validate their identity and authority.
- The exceptions noted above regarding sending verification letter(s) include but may not be limited to:
 - If there are no contact details included in the letter(s). However, the evaluator will attempt to obtain this information through independent research.
 - If the person sending the letters(s) does not represent an organization. However, if the content of the letter(s) suggests that the individual sending a letter has sent this letter(s) on behalf of an organization/entity the evaluator will attempt to validate this affiliation.
- The verification email for letter(s) of support/opposition requests the following information from the author of the letter:
 - Confirmation of the authenticity of the organization(s) letter.
 - Confirmation that the sender of the letter has the authority to indicate the organization(s) support/opposition for the application.
 - In instances where the letter(s) of support do not clearly and explicitly endorse the applicant, the verification email asks for confirmation as to whether or not the organization(s) explicitly supports the community based application.
- To provide every opportunity for a response, the evaluator regularly contacts the organization for a response by email and phone for a period of at least a month.
- A verbal acknowledgement is not sufficient. The contacted individual must send an email to the EIU acknowledging that the letter is authentic.

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RESPONDENT'S EXHIBIT

ICANN (Internet Corporation for Assigned Names and Numbers) Provides Update on Review of the Community Priority Evaluation Process



LOS ANGELES – 1 September 2017 – The Internet Corporation for Assigned Names and Numbers (ICANN (Internet Corporation for Assigned Names and Numbers)) today issued an [update](https://newgtlds.icann.org/en/applicants/cpe) (<https://newgtlds.icann.org/en/applicants/cpe>) on the review of the Community Priority Evaluation (CPE) process.

Community Priority Evaluation is a method to resolve string contention, described in full detail in section 4.2 of the [Applicant Guidebook \(AGB\)](https://newgtlds.icann.org/en/applicants/agb) (<https://newgtlds.icann.org/en/applicants/agb>). The evaluation determines if the community based application qualifies to earn priority and eliminate all non-community applicants in the contention set as well as any other non-prevailing community applicants. In CPE, the application is evaluated against the following four criteria: Community Establishment; Nexus between Proposed String and Community; Registration Policies, and Community Endorsement. The evaluations were conducted by the Economist Intelligence Unit (EIU). The EIU was selected for this role because it offers premier business intelligence services, providing political, economic, and public policy analysis to businesses, governments, and organizations across the globe.

At various times in the implementation of the New gTLD (generic Top Level Domain) Program, the ICANN (Internet Corporation for Assigned Names and Numbers) Board has considered aspects of CPE process, including certain concerns that some applicants have raised regarding the process. On [17 September 2016](https://www.icann.org/resources/board-material/resolutions-2016-09-17-en) ([/resources/board-material/resolutions-2016-09-17-en](https://www.icann.org/resources/board-material/resolutions-2016-09-17-en)), the ICANN (Internet Corporation for Assigned Names and Numbers) Board directed the President and CEO, or his designees, to undertake a review of the process by which ICANN (Internet Corporation for Assigned Names and Numbers) has interacted with the CPE provider. In his [letter of 26 April 2017 to concerned parties](https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-) ([/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-](https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-)

[process-26apr17-en.pdf](#)) [PDF, 405 KB], Chris Disspain, the Chair of the Board Governance Committee, provided additional information about the scope and status of the review. Below is additional information about the review, as well as the current status of the CPE process review. On 2 June 2017 (<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>), the ICANN (Internet Corporation for Assigned Names and Numbers) organization published an update on the Review.

Below is the current status of the Review since the last update.

Current Status of the Review

The 2 June 2017 update

(<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>) made clear that the Review is being conducted in two parallel tracks by FTI Consulting Inc.'s (FTI) (<http://www.fticonsulting.com/>) Global Risk and Investigations Practice (GRIP) and Technology Practice. The work of the first track, which focuses on gathering information and materials from the ICANN (Internet Corporation for Assigned Names and Numbers) organization, has been completed. The work of the second track, which focuses on gathering information and materials from the CPE provider, is still ongoing. The interview process of the CPE provider personnel that had involvement in CPEs has been completed. FTI is also working with the CPE provider to obtain the reference materials for the evaluations that are the subject of pending Reconsideration Requests (</resources/pages/accountability/reconsideration-en>). The CPE provider has been producing documents on a rolling basis. FTI is currently evaluating whether the CPE provider's production is complete. Once the underlying information and data collection is complete, FTI anticipates that it will be able to inform ICANN (Internet Corporation for Assigned Names and Numbers) of its findings within two weeks.

Recently, the ICANN (Internet Corporation for Assigned Names and Numbers) Board and the ICANN (Internet Corporation for Assigned Names and Numbers) organization have received numerous inquiries for documentation and information about the Review. These inquiries have been and will continue to be addressed through ICANN (Internet Corporation for Assigned Names and Numbers)'s Documentary Information Disclosure Policy (DIDP), and are published on the DIDP page at

<https://www.icann.org/resources/pages/governance/transparency-en>
([/resources/pages/governance/transparency-en](https://www.icann.org/resources/pages/governance/transparency-en)).

The ICANN (Internet Corporation for Assigned Names and Numbers) Board recognizes the desire by many to conclude this Review and proceed with the process. The ICANN (Internet Corporation for Assigned Names and Numbers) Board also looks forward to concluding the Review and proceeding as appropriate.

For more information about the CPE process, please visit

<https://newgtlds.icann.org/en/applicants/cpe>
(<https://newgtlds.icann.org/en/applicants/cpe>).

More Announcements

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Receives Letter from California Attorney General Regarding .ORG Change of Control](#)
([/news/announcement-2020-01-30-en](#))

[ICANN66 Fellowship Program Post-Meeting Report Now Available](#)
([/news/announcement-2020-01-28-en](#))

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Launches Dr. Tarek Kamel Award and Opens Nomination for ICANN \(Internet Corporation for Assigned Names and Numbers\) Community Excellence Award](#)
([/news/announcement-2-2020-01-27-en](#))

[Register Now to Participate in the 7th Middle East DNS \(Domain Name System\) Forum](#) ([/news/announcement-2020-01-27-en](#)).

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RESPONDENT'S EXHIBIT

New gTLD Program Consulting Agreement

This Consulting Master Services Agreement (together with the Exhibits and Attachments hereto, this "Agreement") is effective as of July 26, 2011 (the "Effective Date"), by and between the Internet Corporation for Assigned Names and Numbers ("ICANN"), a California nonprofit public benefit corporation, with its principal offices located at 4676 Admiralty Way, Suite 330, Marina del Rey, CA, USA 90292 and The Economist Intelligence Unit, NA, Incorporated, with its principal offices located at 750 Third Avenue, 5th Floor, New York, NY 10017, hereinafter referred to as "Contractor".

WHEREAS, Contractor and ICANN desire to enter into an agreement for the performance by Contractor of certain professional consulting services in connection with activities being conducted by ICANN.

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SERVICES: Contractor shall provide to ICANN such professional consulting services as are set forth in statements of work (each a "Statement of Work") signed by and in a form acceptable to both parties, which shall set forth the manner of the work which will be provided to ICANN pursuant to this Agreement (the "Services") and the products and materials to be produced by Contractor pursuant to the Services (the "Products"). Any Services provided hereunder shall be rendered by Contractor in a manner consistent with industry standards, and shall be provided in accordance with all applicable laws. Contractor's Services shall not be exclusive to ICANN, provided that during the term of Contractor's engagement hereunder, Contractor will not render services that prevent, interfere or conflict with, or delay the prompt performance of the Services.

2. TERM: Contractor shall render the Services on the date or dates set forth on any Statements of Work entered into hereunder.

3. COMPENSATION: Subject to all the provisions of this Agreement, including, but not limited to, the "Supplemental Terms" (attached hereto as Exhibit A) and any and all Statements of Work, ICANN agrees to pay Contractor as full and complete consideration for Contractor's services hereunder, and Contractor agrees to accept, the sum as set out in the applicable Statement of Work, payable in US Dollars for the Services, which shall be paid in accordance with the payment schedule set forth in such Statement of Work.

4. RIGHTS:

(a) In consideration of the amounts payable by ICANN pursuant to Section 3, and subject to Section 4(b), Contractor assigns to ICANN exclusive ownership rights, in perpetuity of all copyright in and to the Products.

(b) Notwithstanding any provision of this Agreement, any and all rights (including without limitation copyright, trademarks and rights in data) in and to any content, data, brands and materials included in the Products that are in existence prior to the commencement of the Services to be provided under any and all Statements of Work (the "Pre-Existing Materials") shall not be transferred to ICANN and shall remain the exclusive property of Contractor or its licensors. Contractor grants to ICANN a non-exclusive, perpetual, royalty free license (including the right to sublicense to other parties) to use, reproduce, modify and distribute any Pre-Existing Materials on condition that: (i) such Pre-Existing Materials are used as part of the Products they are provided within and only as required in order to use the Products; and (ii) no modification shall be made that misrepresents or distorts the content or meaning of such Pre-Existing Materials.

(c) The transfer in Section 4(a) shall, subject to Section 4(b), include the right to apply for any and all patents arising from the Products and to register any copyright subsisting therein (collectively, the "Legal Rights")

(d) Save as set out in any applicable Statement of Work, Contractor will not be entitled to any royalty, commission or other payment with respect to the Products or Legal Rights in addition to the fees payable for the services to be provided under such Statement of Work.

(e) Contractor warrants that all Products will be Contractor's original work and do not infringe any copyrights, trade secrets, trademarks, patents or other proprietary rights of any third party.

5. INDEPENDENT CONTRACTOR STATUS: Contractor acknowledges and agrees that Contractor is an Independent Contractor and that Contractor's employees or agents, if any, are not employees or agents of ICANN for any purpose, including but not limited to national or local withholding or employer taxation obligations. Contractor agrees to indemnify and hold ICANN harmless (including attorney's fees and costs incurred by ICANN) should Contractor fail to meet Contractor's obligations with respect to its employees with regard to the payment or withholding of social security and other taxes, federal and state (or other such political or governmental subdivision) income taxes, unemployment insurance, and similar items should ICANN be held liable or responsible therefore. Contractor retains the sole right to control or direct the manner in which the Services are to be performed. Without limiting the foregoing, ICANN retains the right to inspect, to stop work, to prescribe alterations, and generally supervise Contractor's work to insure its conformity with the applicable Statement of Work. Contractor acknowledges that Contractor has no authority for or on behalf of ICANN to make, enter into or amend any contracts or agreements or to take any action which would impose liability on ICANN, without the express written consent of an authorized officer of ICANN. Contractor represents to ICANN that Contractor is engaged in an independent calling and will comply with all laws regarding business permits and licenses that may be required to carry out Contractor's obligations under this Agreement.

6. IMMIGRATION LAW: With respect to each of Contractor's employees who render services to ICANN hereunder, Contractor shall be responsible for compliance with all applicable immigration laws, including the U.S. Immigration Reform and Control Act of 1986, and with all employment eligibility verification provisions required by law.

7. INTERPRETATION: In the event of a conflict between: (i) this Agreement; and (ii) any Statement(s) of Work, the terms of the applicable Statement of Work shall prevail.

[signature page follows]

The parties shall indicate their acceptance of this Agreement by signing in the appropriate space provided below.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: AKRAM ATALLAH
Signature

AKRAM ATALLAH, COO
Print Name and Title

Date: 8/9/11

THE ECONOMIST INTELLIGENCE UNIT, NA, INCORPORATED

By: [Signature]
Signature

[Signature]
Print Name and Title

Date: 7/20/2011

EXHIBIT A
SUPPLEMENTAL TERMS

1. **RIGHTS OBLIGATIONS:** Except as set forth in the applicable Statement of Work, Contractor agrees that ICANN shall have the exclusive right, but not the obligation, to register copyright and file applications for patents throughout the world to protect ICANN's Legal Rights in and to the Products and that Contractor shall, upon the request of ICANN, perform (at no cost to Contractor) such legal acts and execute and deliver to ICANN, any such documents, applications and assignments reasonably requested by ICANN to register ICANN's Legal Rights in and to the Products.

2. **FORCE MAJEURE:** In the event of an occurrence of an event of force majeure, as the term is generally understood, ICANN shall have the right to suspend this Agreement and shall have the right, but not the obligation, to extend this Agreement by the length of any such suspension. If an event of force majeure continues for eight (8) consecutive weeks, ICANN shall have the right to terminate this Agreement.

3. **WARRANTIES:** Contractor represents and warrants to ICANN as follows:
 - (a) Contractor is fully authorized to enter into, and perform its obligations under this Agreement. This Agreement creates lawful, valid, and binding obligations, enforceable against Contractor in accordance with its terms.

 - (b) Contractor has the right to grant all rights granted herein, including but not limited to all necessary literary, artistic, musical and/or intellectual property rights, and is free to enter into and fully perform this Agreement.

 - (c) The exercise of rights granted herein, the performance of the Services and the delivery of the Products will not infringe on any of the following rights of any third party: copyright, trademark, or other intellectual property rights.

 - (d) Contractor has not entered and shall not enter into any arrangement or agreement that will interfere or conflict with the rights granted to ICANN hereunder.

Confidential Business Information

Confidential Business Information

5. CONFIDENTIALITY

(a) Each party acknowledges that it may disclose Confidential Information (as defined below) to the other in connection with this Agreement. The party receiving the Confidential Information will: (i) maintain it in confidence, except to the extent necessary to carry out the purposes of this Agreement, in which event confidentiality and use restrictions will be imposed upon the parties to whom such disclosures are made; (ii) use at least the same degree of care in maintaining its secrecy as it uses in maintaining the secrecy of its own Confidential Information, but in no event less than a reasonable degree of care; (iii) at the disclosing party's option, destroy or return all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the Confidential Information to the disclosing party promptly following the earlier of (A) such party's request, (B) completion of the intended use of the Confidential Information, or (C) termination of this Agreement; and (iv) not use the Confidential Information other than for purposes of fulfilling its obligations under this Agreement. "Confidential Information" means all proprietary, secret or confidential information or data relating to either of the parties and its operations, employees, products or services, and any Personal Information. "Personal Information" means personally identifiable information relating to such party's employees, consumers and potential consumers. Each party will notify

the other party immediately upon discovery of any lost or altered Confidential Information.

(b) Information will not be considered Confidential Information to the extent, but only to the extent, that such information: (i) is already known to the receiving party free of any restriction at the time it is obtained from the other party; (ii) is subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) becomes publicly available through no wrongful act of either party; (iv) is independently developed by one party without reference to any Confidential Information of the other; or (v) is required to be disclosed by law, regulation, court order or subpoena, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure. The parties agree also that the existence and terms of this Agreement are confidential and shall not be disclosed by either party without prior consent in writing by the other party.

6. SURVIVING OBLIGATIONS: The parties' representations, warranties, and indemnity obligations shall remain in effect following the termination or expiration of this Agreement.

7. ASSIGNMENT: Neither party may without prior consent in writing assign this Agreement or any of its rights or obligations hereunder.

8. REMEDIES: In recognition of the relative risks and benefits of this Agreement to both ICANN and Contractor, ICANN agrees that, to the fullest extent permitted by law, except for claims for indemnification under Section 4, any liability of Contractor (including its consultants, employees, and agents) for damages to ICANN shall be limited to an amount equal to the total amount paid to Contractor pursuant to this Agreement. EXCEPT FOR CLAIMS FOR INDEMNIFICATION UNDER SECTION 4, IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER EITHER PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. TERMINATION:

(a) Each Party shall have the right to terminate this Agreement or any Statement of Work for convenience. Termination under this provision will be effective thirty (30) days after written notice by one party to the other; provided, that ICANN will be required to make payment for all work in progress and Products actually delivered under any active Statement of Work in the event of a termination of this Agreement or the applicable Statement of Work pursuant to this Section 9(a); and, provided, further, that, without prejudice to the generality of Section 7 of the Agreement to which these Supplemental Terms are attached, the termination provisions of each Statement of Work, if any, will supersede this Section 9(a).

(b) Each party shall have the right to terminate this Agreement if such party has a good faith belief, based on the facts then available, that the other party has engaged in any of the following conduct: fraud, misappropriation or embezzlement of funds, or gross misconduct. Termination under this provision shall be effective immediately upon receipt of notice by the relevant party.

(c) Other Provisions: Either party shall have the right to terminate this Agreement pursuant to other provisions contained throughout this Agreement, including but not limited to Section 2 (if ICANN) of these Supplemental Terms. Nothing contained within this provision shall negate or override its rights to terminate contained within other provisions herein, and it may elect at its option the most favorable applicable termination provision or provisions contained within this Agreement.

10. DEFAULT:

(a) If either party fails, refuses or neglects to perform any of its material obligations hereunder, for any reason other than incapacity, such party shall be in "default" of this Agreement. If either party refuses or states that it will refuse to comply with any of its material obligations hereunder, such refusal or statement may be treated by the other party as an immediate default, regardless of whether the time for performance of such obligation or obligations has arrived. Further, a party may, at any time, make a written request for the other party to confirm in writing its intentions and willingness to comply with its obligations hereunder, either generally or with respect to any particular matter. If, within five (5) days from delivery of such request at the address for notices set forth herein (exclusive of Saturdays, Sundays and federal holidays), the recipient of the request fails to deliver the requested information to the other party, such failure may be treated by such other party as an immediate default.

(b) Either party may suspend this Agreement with respect to performance of its obligations while any default of the other party continues.

11. CURING PROVISION: Neither party shall bring or make any claim that the other party has breached any of the provisions hereunder unless such party has first made a written demand to cure such failure, and the other party has not satisfied the obligations within ten (10) business days of receipt of such demand. The written demand shall specify the provision claimed to be breached, the date such obligation or performance was to have been satisfied and any other identifying specifics.

12. MISCELLANEOUS:

(a) No Implied Waiver: No failure on the part of ICANN or Contractor to exercise and no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude the exercise of any other right, power or privilege.

(b) Counterparts: This Agreement may be executed in two or more counterparts (and by different parties on separate counterparts) each of which shall be an original, but all of which together shall constitute one and the same instrument.

(c) No Violation of Law: If any provision of this Agreement shall be deemed invalid or unenforceable as written, it shall be construed, to the greatest extent possible, in a manner which shall render it valid and enforceable, and any limitations on the scope or duration of any such provision necessary to make it valid and enforceable shall be deemed to a part hereof; no invalidity or unenforceability shall affect any other portion of this Agreement.

(d) Choice of Law and Submission to Jurisdiction: This Agreement shall be governed by applicable U.S. federal law and by the laws of the State of California applicable to contracts entered into and to be wholly performed within the State of California. Contractor and ICANN hereby submit and consent to the jurisdiction of the State and Federal Courts located in Los Angeles County, California, USA.

(e) Paragraph Headings: Paragraph headings contained in this Agreement are for convenience and shall not be considered for any purpose in construing this Agreement.

13. NOTICES: Any notice given under this Agreement will be in writing and will be effective (a) upon receipt if (i) delivered by hand or (ii) sent via overnight mail by a nationally recognized express delivery service; or (b) three (3) days after deposit in the U.S. mail, postage prepaid, certified mail return receipt requested, when addressed as follows:

To ICANN:
Internet Corporation for Assigned Names
and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292

Attn: General Counsel

To Contractor:
The Economist Intelligence Unit, NA,
Incorporated
750 Third Avenue, 5th Floor, New York,
NY 10017

Attn: Contracts Manager, Americas

with a copy to:

Group General Counsel, The Economist
Group, 25 St James's Street, London
SW1 A 1HG

14. ENTIRE AGREEMENT: This Agreement cancels and supersedes all prior negotiations and understandings between ICANN and Contractor relating hereto. This Agreement is not valid or binding unless and until in writing and signed by a duly authorized officer of ICANN and Contractor. No amendment, modification, extension, release, discharge or waiver of this Agreement, or any provision hereof, shall be valid or binding unless in writing and signed by a duly authorized officer of ICANN and Contractor. No oral agreement shall be binding on ICANN or Contractor unless and until reduced to writing and signed by a duly authorized officer of ICANN and Contractor.

Appendix 1
Form of Notice and Acknowledgement

[Name of Third Party]
Address Attention:

The advice, recommendations and information in the document included with this notice were prepared for the sole benefit of the Internet Corporation for Assigned Names and Numbers (ICANN), based on the specific facts and circumstances of ICANN, and its use is limited to the scope of The Economist Intelligence Unit, NA, Incorporated's ("EIU") engagement for ICANN. It has been provided to you for informational purposes only and you are not authorized by EIU to rely upon it and any such reliance by you or anyone else shall be at your or their own risk. You acknowledge and agree that EIU accepts no responsibility or liability in respect of the advice, recommendations or other information in such document to any person or organization other than ICANN. You shall have no right to disclose the advice, recommendations or other information in such document to anyone else without including a copy of this notice and, unless disclosure is required by law or to fulfill a professional obligation required under applicable professional standards, obtaining a signed acknowledgement of this notice from the party to whom disclosure is made and you provide a copy thereof to ICANN and EIU. You acknowledge and agree that you will be responsible for any damages suffered by EIU as a result of your failure to comply with the terms of this notice.

Please acknowledge your acceptance of the foregoing by signing and returning to us a copy of this letter.

Very truly yours,

ICANN

By: _____
Name:
Title:

Accepted and Agreed to on this ___ day of ___, 20__ by:
[Name of Third Party]

By: _____
Name:
Title:

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RESPONDENT'S EXHIBIT



APPLICATION DETAILS

[View Application Update History \(/applicationstatus/applicationdetails:viewapplicationchangehistory/1562?t:ac=1562\)](/applicationstatus/applicationdetails:viewapplicationchangehistory/1562?t:ac=1562)

Please Note: The information on this page relating to the applicant, including contact information, reflects the information provided during the application phase of the New gTLD Program. Contact information is not maintained for withdrawn applications. Additionally, the information for TLDs that have contracted with ICANN may no longer be current as this information is not maintained on this page post delegation and does not necessarily reflect the current Registry information. For a current list of Registries and Registry contact information, please visit <https://www.icann.org/resources/pages/registries/registries-agreements-en> (<https://www.icann.org/resources/pages/registries/registries-agreements-en>) and <https://www.icann.org/resources/pages/listing-2012-02-25-en> (<https://www.icann.org/resources/pages/listing-2012-02-25-en>), respectively.

Application ID: 1-1032-95136

String: HOTEL ([download public portion of application \(/applicationstatus/applicationdetails:downloadapplication/1562?t:ac=1562\)](/applicationstatus/applicationdetails:downloadapplication/1562?t:ac=1562))

Applicant: HOTEL Top-Level-Domain S.a.r.l

Prioritization Number: 1751

Address: 68, av. de la Liberté Luxembourg - 1930 LU

Web Site: <http://www.dothotel.info>

Primary Contact: Philipp Grabensee

Phone Number: +491778898685

Email: pgrabensee@afilias.info

Attachments (13):

Caution: these files were prepared and submitted by a party other than ICANN, and ICANN is not responsible for the content. The files could contain scripts or embedded links that might execute or open automatically. You should make sure your operating system and applications (including antivirus definitions if applicable) are fully updated. Proceed at your own risk.

- [20f \(Q20f_HOTEL_support-AHLA-USA.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/106390?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/106390?t:ac=1562)
- [20f \(Q20f_HOTEL_support-CHA-China.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/106392?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/106392?t:ac=1562)
- [20f \(Q20f_HOTEL_support-GHA-Global Luxury Hotels.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/106393?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/106393?t:ac=1562)
- [20f \(Q20f_HOTEL_support-IHRA-Global-Association.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/106389?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/106389?t:ac=1562)
- [20f \(Q20f_HOTEL_support_HOTREC_Europe.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/106391?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/106391?t:ac=1562)
- [24 \(24_SRS_Performance.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/24680?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/24680?t:ac=1562)
- [24 \(24_figures.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/73113?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/73113?t:ac=1562)
- [25 \(25_EPP.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/24713?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/24713?t:ac=1562)
- [25 \(25a_XML_Request_Response.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/73122?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/73122?t:ac=1562)
- [25 \(25b-INFO_EPP_RFC_OTC_criteria_v1-6-1.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/73123?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/73123?t:ac=1562)
- [26 \(26_figures.pdf\) \(/applicationstatus/applicationdetails:downloadattachment/73128?t:ac=1562\)](/applicationstatus/applicationdetails:downloadattachment/73128?t:ac=1562)

- [27 \(27_Registration Lifecycle.pdf\)](/applicationstatus/applicationdetails:downloadattachment/24899?t:ac=1562) (/applicationstatus/applicationdetails:downloadattachment/24899?t:ac=1562)
- [27 \(27_figures.pdf\)](/applicationstatus/applicationdetails:downloadattachment/73131?t:ac=1562) (/applicationstatus/applicationdetails:downloadattachment/73131?t:ac=1562)

Application Status: On-hold

Evaluation Result: Pass IE ([IE Report \(http://newgtlds.icann.org/en/program-status/application-results/ie-1-1032-95136-en.pdf\)](http://newgtlds.icann.org/en/program-status/application-results/ie-1-1032-95136-en.pdf))

GAC EW: [GAC EW \(https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings\)](https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings)

Contention Resolution Status: [On Hold \(/applicationstatus/applicationdetails:viewcontentionsetimage?t:ac=1562\)](/applicationstatus/applicationdetails:viewcontentionsetimage?t:ac=1562)

Contention Resolution Result: Prevailed Contention ([CPE Report \(http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf\)](http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf))

R-11

RESPONDENT'S EXHIBIT

Contention Set: **HOTEL**

**CONTENTION SET ON-HOLD
PENDING ACCOUNTABILITY MECHANISM**

1-1032-95136 [HOTEL], HOTEL Top-Level-Domain S.a.r.l prevailed in Community Priority Evaluation.
This determination removes string contention.

On hold
Pending Accountability Mechanism

HOTEL
1-1032-95136
HOTEL Top-Level-Domain S.a.r.l

Will Not Proceed
Community Priority Evaluation

HOTEL
1-1059-97519
DotHotel Inc.

Will Not Proceed
Community Priority Evaluation

HOTEL
1-1500-16803
Spring M cCook, LLC

Will Not Proceed
Community Priority Evaluation

HOTEL
1-1181-77853
dot Hotel Limited

Will Not Proceed
Community Priority Evaluation


HOTEL
1-1249-36568
Despegar Online SRL


Will Not Proceed
Community Priority Evaluation


HOTEL
1-927-25198
Top Level Domain Holdings Limited


Will Not Proceed
Community Priority Evaluation


HOTEL
1-1913-57874
Fegistry, LLC

Direct 

Indirect 

Application has prevailed and is no longer in contention 

Application remains in contention set 

Application will not proceed 

R-12

RESPONDENT'S EXHIBIT

Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

This form is provided to assist a requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requester Information

1. Name: Despegar Online SRL,

Address: Contact Information Redacted

Contact Information Redacted

Email: Contact Information Redacted

AND

2. Name: DotHotel Inc.,

Address: Contact Information Redacted

Contact Information Redacted

Email: Contact Information Redacted

AND

3 Name: dot Hotel Limited,

Address: Contact Information Redacted

Email: Contact Information Redacted

AND

4. Name: Fegistry, LLC,

Address: Contact Information Redacted

Email: Contact Information Redacted

AND

5. Name: Spring McCook, LLC,

Address: Contact Information Redacted

Email: Contact Information Redacted

AND

6. Name: Top Level Domain Holdings Limited,

Address: Contact Information Redacted

Email: Contact Information Redacted

(Requester, herein)

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

2. Request for Reconsideration of (check one only):

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

Requester was notified by public posting at <http://newgtlds.icann.org/en/applicants/cpe#invitations> on or about 12 June 2014 that the application for the new gTLD .hotel (1-1032-95136) by HOTEL Top-Level-Domain s.a.r.l had prevailed in an award of community priority after Community Priority Evaluation. Requester seeks to have that decision by the Community Priority Evaluation panel reconsidered.

4. Date of action/inaction:

The date of the CPE panel is 11 June 2014; the date of its public posting is approximately 12 June 2014.

5. On what date did you become aware of the action or that action would not be taken?

Requester became aware of the action on or about 13 June 2014

6. Describe how you believe you are materially affected by the action or inaction:

Requester is a group of applicants in a contention set with other applicants for .hotel. If the decision to award community priority to application 1-1032-95136 stands, it will require Requesters' standard (non-community) applications to be abandoned or withdrawn. The Applicant Guidebook ("AGB") states at page 4-9:

"It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be."

"Qualified" in this context means that the application has been awarded community priority status. The elimination of Requester's applications will cause Requester to lose its current investment of

time, money and other resources in its applications, notwithstanding the availability of a small application fee refund. More significantly, it deprives Requester of the opportunity to run the .Hotel TLD, which represent loss of a financial and business opportunity to Requestor.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The purpose behind the community application is expressly to fend off legitimate competition from business operators in competition with the standard hotel booking model. Community applicants are required to file evidence of support from their so-called community. This applicant has filed support from commercial trade associations dependent on maintaining the current commercial model.

The Applicant's principal supporter is the IH&RA (International Hotel and Restaurant Association).

The IH &RA said, in its supporting letter:

We fully support dotHOTEL's Eligibility Criteria as defined in ISO 18513 to establish a verified and secure domain name space exclusively for the hotel industry. Thus, .hotel domain names will help to increase direct bookings by which profit margins of hotels rise and to reduce dependency from OTAs.

The Hotrec association (a trade association supporting both the restaurant and hotel trades in Europe) said this:

"... hotels all over Europe are concerned to lose more and more control over their rates, distribution channels and the hotel product itself to the so-called Online Travel Agencies or OTAs. With dotHOTEL's Eligibility Criteria for a verified and secure domain name space exclusively for the hotel industry as defined in ISO 18513, .hotel domain names will help to increase direct bookings by which profit margins of hotels rise and to reduce dependency from OTAs."

The Global Hotel Alliance said:

"....hotels all over the union are concerned to lose more and more control over their rates, distribution channels and the hotel product itself to the so called Other Travel Agencies or OTAs. With dotHotel's eligibility criteria for a verified and secure domain name space exclusively for the hotel industry as defined in ISO 18513 .hotel domain names will help to increase direct bookings by which profit margins of hotels rise and to reduce dependency on OTAs."

The application is plainly a purely commercial move by heavily invested commercial entities to increase their profits, and to head off competition from developing threats to their market, presented by the growth of the OTA business model.

Other parties affected by the decision therefor include all of the world's OTAs, and all of the

world's customers of hotel products that will be deprived of competitive business opportunities in relation to hotel bookings.

8. Detail of Board or Staff Action – Required Information

Introduction

Requester submits that the Community Priority Evaluation Panel (“Panel”) failed to properly perform its functions as set out in the AGB.

Before describing the failures of the Panel, Requester makes two procedural comments.

First, there is no doubt that ICANN’s Reconsideration process applies to the decisions of external providers such as the Panel. As noted by the Board Governance Committee (“BGC”) in the recent tennis decision:

“ICANN has previously determined that the reconsideration process can properly be invoked for challenges to expert determinations rendered by panels formed by third party service providers, such as the EIU, where it can be stated that the Panel failed to follow established policies or processes in reaching its determination, or that staff failed to follow its policies or processes in accepting that determination.”¹

Second, the Requester appreciates that on Reconsideration by the BGC, the Requester bears the burden of proving that the Panel has failed to follow some policy or process that it should have done, and is not a challenge to the accuracy or validity of any of the Panel’s conclusions. The Requester apprehends the BGC position that disagreeing with the conclusion of the Panel is not sufficient grounds for reconsideration. As the BGC noted in the tennis Decision on reconsideration:

“In challenging the Panel’s Report, the Requester does not identify any process or policy or standard that the Panel misapplied in scoring element 2-A. Instead, the Requester simply objects to the Panel’s substantive conclusion, arguing that “[t]he community as defined [in the Application] specifically includes the global tennis community.” (Request at 4.) Such substantive disagreement with the Panel’s findings is not a proper basis for reconsideration.”²

In this case, however, there are 3 instances where the Panel has not followed the AGB policy and processes for conducting CPE.

Further, the Panel, and ICANN staff have breached more general ICANN policies and procedures in the conduct of this CPE.

Breaches of the AGB rules on Community Priority Evaluation.

¹ See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

²

<https://www.icann.org/en/system/files/files/determination-tennis-au-29apr14-en.pdf>

1. Failure to identify a “Community”.

The AGB sets out at para 4.2.3 the rules for community priority. In doing so, the drafting practice has been to set out a rule, in this criteria for awarding points, then to provide definitions of the terms used in the criteria, and then guidelines on how to apply the definitions and interpret the criteria. The Economist Intelligence Unit (EIU) published further “guidelines” in August 2013, to which we will refer.

The AGB set out 4 criteria, worth a score of 4 points each. These criteria were divided into subparts carrying various scores. An applicant was required to score 14 points out of the possible 16 to prevail in this evaluation

Criterion 1 is entitled “Community establishment”, and is divided into 2 components A -“Delineation” and B - Extension”. The criteria for these are set out at page 4-10, and then the definition section follows. The very first definition that is required to be understood and applied to the criterion is whether or not there is a community involved in the application. That definition comes first, and logically is a pre-requisite to the later steps of seeing how well delineated that community is, or how old it is, etc. The first question that has to be asked is “Is there a community that meets the definition of “community” under these rules”? If there is not, then the rest of the analysis is unnecessary, as the applicant should fail at the first hurdle.

The Panel did not attempt this analysis, in breach of the requirements of the policy and process for CPE.

The definition of community begins by noting that it means more than its Latin origins in “*communitas*” meaning fellowship, but observing that it still implies “more of cohesion than a mere commonality of interest”. Not testing whether there was a community at all under this definition is critical, as it is readily apparent from the evidence and the application text that a “mere commonality of interest” is precisely what links the applicant and its supporters, without any of the “cohesion” that a true community under this definition must have. This is not a disagreement about a finding by the Panel on this topic; the Panel did not consider this definition, nor apply the test for “community” required.

The definitions of “community” go on to refer to 3 further conditions that must be satisfied for a finding that a community existed.

They are:

- (2) an awareness and recognition of a community among its members;
- (3) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and
- (4) extended tenure or longevity—non-transience—into the future.

The Panel did refer to these definitions, but failed to consider the first and vital question of whether there was first a cohesive community, bound together by more than a mere commonality of interest. Had it considered the matter, it would have appreciated that the applicants definition, rather than showing cohesion, depended instead on coercion; every hotelier is deemed a member of this community, even though they have never heard of it, and would not chose to join it if asked, but are nevertheless deemed to be a member of it. Compulsory membership, and deemed memberships seem to be the opposite of the kind of community that is worth of the protection and reward of the

CPE process. However, as the Panel has simply omitted to consider cohesiveness, the matter can be reconsidered.

Failure to consider self-awareness and recognition of the community

The Panel report begins with the Panel being confused or mistaken about the criteria for the first criterion – Delineation. It says:

“Delineation

Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition, and there must be awareness and recognition of a community (as defined by the applicant) among its members.”

In fact, the requirements of delineation are (in summary) that it must (1) be clearly delineated, (2) be organized, and (3) be pre-existing before 2007. The Panel got one out of the three requirements correct.

It will be observed that the Panel has imported the test for determining whether there is a “community” – self-awareness that the group is a community - into the test for “delineation”. With respect, that is an error of process that further invalidates the findings.

Even if it were not, and self awareness and recognition are considered with Delineation, the actual response given under that enquiry about “self awareness and recognition” shows that the Panel does not understand the test that is to be applied. The response given by the Panel: *“This is because the community is defined in terms of its association with the hotel industry and the provision of specific hotel services.”* is a response directed only at the delineation issue, which is how the Panel posed the question, not as part of the “self-awareness” and “beyond mere commonality of interest” tests that goes into the definition of community. The Panel has not considered, and has therefore not concluded that the community has the requisite self-awareness and self-recognition to be a community for the purposes of CPE.

We observe, for the record, that the above quote is an almost meaningless statement even in the context of discussing delineation. The phrase is substantially repeated in relation to community longevity, where it is equally meaningless.

What is required is a showing by evidence that members of the alleged community regard themselves as members of a defined community, which is recognised as such by the members, and by people outside the community. Simply operating a hotel anywhere in the world might make one a member of the same trade, having a similar common interest. One cannot declare that even hoteliers who have never heard of the associations supporting this applicant, operating in different countries from where these associations operate, are nevertheless members of a community with them, simply because they are in the same trade, and because there is an ISO definition of what a hotel is.

This is a very important issue for the AGB itself, which noted in its Guidelines:

All (referring to possible types of communities) 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

We invite the BGC to find that this is a failure to consider the issue of self-awareness and recognition, which does not arise from “association with the hotel industry” or “provision of hotel services” at all. That is, there has not been a consideration of the issue of self-awareness and recognition, if the response is on an entirely separate and distinct matter.

It is important to note that the Panel finds that the alleged community is clearly delineated, because there is an ISO definition of “hotel”, and because every hotel is a member of the alleged community. The Panel says: *‘The string “Hotel” is an internationally agreed word that has a clear definition of its meaning: According to DIN EN ISO 18513:2003, “A hotel is an establishment with services and additional facilities where accommodation and in most cases meals are available.”’*³

The Panel then proceeds through the proper requirements of Delineation, which it names accurately – organisation and existence before 2007.

Failure to apply test for Uniqueness

The next major consideration is that of Nexus- the link between the string and the purported Community. This is broken down in 2 parts: Nexus, worth 3 points and Uniqueness worth one point. To get 3 points under Nexus an applicant has to show that the string is either

- (a) an exact match of the community name, or
- (b) is a well know short form of the community name, or
- (c) is an abbreviation of the community name.

An applicant who cannot score 3 points under those options, can score 2 points if it can show that the string “identifies” the community – but in a way that does not equate with the 3 conditions above. “Identify” is defined in the AGB as meaning *“...that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community”*.

The AGB Guidelines say on this: *“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.”*

Uniqueness is defined in the AGB as where the *“String has no other significant meaning beyond*

³ There is some confusion in the Application itself, which defines hotels by reference to the ISO definition then appears to hold that the “establishments” themselves are members of the Community. For present purposes we proceed on the basis that while a hotel may be a defined establishment, the alleged community is made up of the people and enterprises that run the hotels, and also the associations that such people form among themselves.

identifying the community described in the application.”

The Panel reports that the Applicant scored 2 points on Nexus, as the string “identifies” the community. It explained itself thus: *“The string nexus (sic) closely describes the community, without overreaching substantially beyond the community. The string identifies the name of the core community members (i.e. hotels and associations representing hotels).”*

We observe that there is no evidence put forward for this claim, which remains an unsupported assertion by the Applicant, and that no web searches are reported, as recommended by the EIU to explore the issue. In particular, no evidence is given of how non-members of the community regard the string, and whether or not they associate the string “hotel” with the community of hoteliers seeking the TLD. It is manifestly obvious that it is also wrong in fact; the word “hotel” describes a place for obtaining lodging, not the hoteliers (Marriott, Sheraton, Crowne Plaza) and not their trade associations (IH&RA, HotRec, GHA).

The Panel then considered “Uniqueness”.

It held: *“The Community Priority Evaluation panel determined that the application met the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the string has no other significant meaning beyond identifying the community described in the application.”*

We remind the BGC that the Panel has itself already cited, and relied upon a definition of the string that has a meaning significantly different than the one just quoted. In determining that there was a delineated community, the Panel relied on the ISO definition of “hotel” – namely: *‘The string “Hotel” is an internationally agreed word that has a clear definition of its meaning: According to DIN EN ISO 18513:2003, “A hotel is an establishment with services and additional facilities where accommodation and in most cases meals are available.’*’

Patently, the word “hotel” has another “significant meaning” apart from identifying a community – it means a place where a customer can purchase lodgings.

The Panel has not followed ICANN policy or process in arriving at the conclusion that the string has “no other significant meaning beyond identifying the community” because it has itself cited a significant other meaning, and relied on that other meaning (that the word means “an establishment with services and additional facilities where accommodation and in most cases meals are available”) in order to measure and find Delineation.

This is not a disagreement about a conclusion – this is a demonstration of a failure of process by the Panel. It cannot use the significant meaning of “hotel” under an ISO definition for one purpose (a finding under delineation), then deny that meaning and say there is “no other significant meaning” for the purposes of finding Uniqueness.

The point is an obvious one. There is no demonstrated “community”, merely a business association of traders from the developed world with a common business interest. They wish to defeat the kind of competition and innovation that the ICANN program was intended to stimulate. The word

“hotel” means to most of the world what the ISO definition says it means- a place for lodging and meals. To assert that it means to most people the association of business enterprises that run the hotels is unsubstantiated and absurd.

Breaches of other ICANN Principles

Under Article 7 of the Affirmation of Commitments *“ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.”*

Under Article 1, Mission and Core Values of the ICANN Bylaws (11 Apr. 2013) at Clause 2.8 ICANN commits to the core value of *“Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.”*

Under Article III, Section 1 of the Bylaws ICANN commits: *“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.”*

Under Article IV, Clause 2.20, the purpose of Reconsideration is to: *“...to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.”*

Requestor submits that various aspects of the CPE process breach, or risk breaching, these fundamental provisions. All of the members of the Requestor group (and there are others) are competing applicants for the .hotel TLD. CPE is a process by which all were “materially affected” but in which a number of elements of basic fairness seem to be lacking. Although CPE is not set up as an *inter partes* contest, there are a number of features which are prejudicial to standard applicants, including:

(a) Insufficient material was made available to them as to who the Panelist was, and their qualifications. Several instances of possible conflict of interest involving Dispute Resolution Providers have arisen during the course of the new gTLD rollout to date. The way to ensure there is no criticism of the process, and to prevent actual conflicts is to ensure full notification of all details is provided to affected parties.

(b) There is no publication of the materials to be examined by the Panel. It is possible for the Panel to request further information during CPE, but it is not clear whether any, and if so what, material was sought and what was provided. Communications made between the Applicant and the CPE panel during the evaluation process should be made public. In relation to any such material, standard applicants should have some way of providing counter balancing material for the panel’s consideration.

(c) Insufficient analysis and reasons were given on how the Panelist reached their decision in the CPE report: (<http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>). By way of example, a crucial issue in CPE is the whether or not there is a self-aware, well recognized

“hotel community” entitled to the special privileges that the AGB provides.

Far from providing the “*thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.*” On this crucial issue the Panel says only this:

“This is because the community is defined in terms of its association with the hotel industry and the provision of specific hotel services.”

This is relatively nonsensical in the context of an allegedly global community. No evidence for the existence of this community was provided at all. Given the importance of this finding, and the impact on the affected parties, a thorough rationale should be provided, with the sources of data and information relied upon spelled out.

While the BGC takes the apparent view that the quality of decision-making is not available for reconsideration, the parties are denied “...*meaningful access to a review process that ensures fairness while limiting frivolous claims.*” Simply noting that the Panel has asked the question that the AGB requires, without regard to whether the answer has any relevance to the question posed is not reconsideration, and is not a fair assessment of whether ICANN policies and processes have been applied *neutrally and objectively, with integrity and fairness.*

9. What are you asking ICANN to do now?

Requester requests that the current finding that the Applicant has prevailed in CPE should be set aside. The Application should be remitted to the Panel for re-examination, with the Panel directed to have regard to the matters raised in the reconsideration request, and any further direction from the BGC. [JN: Should we ask for the necessary information here or do a separate info request?]

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

Requestor is a group of applicants in ICANN new gTLD program. Each of the members of the group is affected by the finding in CPE of which Reconsideration is sought

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

X Yes

No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties?

Yes

Explain.

The parties are members of the same contention set, all being applicants for a .hotel TLD

Do you have any documents you want to provide to ICANN?

No

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

Jay Westerdahl

6/28/2014

Signature

Date

R-13

RESPONDENT'S EXHIBIT

Reconsideration Request

Regarding Action Contrary to Established ICANN Policies Pertaining to Community Objections to New gTLD Applications

Introductory Summary

i. The Requestors identified below, as parties “adversely affected by” an “ICANN action ... that contradict[s] established ICANN policy,” respectfully submit this request for reconsideration (“Request”) to the Board Governance Committee (“BGC”). Bylaws Art. IV § 2.2(a). Requestors ask the BGC to reconsider action by ICANN staff denying a request for production of documents (“RFP”) made by Requestors pursuant to ICANN’s Documentary Information Disclosure Policy (“DIDP”). The DIDP serves to implement ICANN’s charge to “operate to the maximum extent feasible in an open and transparent manner ... consistent with procedures designed to ensure fairness,” *id.* Art. III § 1, and its refusal to honor the RFP betrays that founding principle.

ii. The RFP seeks information pertaining to a report (“Report”) by an unidentified panel which performed a Community Priority Evaluation (“CPE”) concerning a community-based application (“Application”), by HOTEL Top-Level-Domain s.a.r.l. (“Hotel TLD”), for the new generic top-level domain <.HOTEL> (the “String”). In its Report, the CPE panel concluded that the Application had satisfied the CPE criteria sufficiently to earn community priority. As a consequence, Requestors – each of which also had applied for the String – became excluded from competing for it.

iii. Dismayed by this result, Requestors undertook by their RFP to ascertain the identity and qualifications of the CPE panel, information regarding panelist selection, and the panelists’ communications among themselves and/or with Hotel TLD or ICANN relating to or having any material bearing upon the Report. The RFP would determine, among other things, whether the anomalous CPE ruling resulted from improper selection or training of, or influence upon, the panel. Notwithstanding its commitment to transparency, fairness, independence and non-discrimination, ICANN attempts to shield

this important information from scrutiny by those directly and adversely affected by the CPE panel's decision. Reconsideration properly lies to remedy ICANN's obstinacy as contrary to its own documented policies.

1. Requestor Information

- a. **Name:** Despegar Online SRL
Address: Contact Information Redacted
Email: Contact Information Redacted
- b. **Name:** Radix FZC
Address: Contact Information Redacted
Email: Contact Information Redacted
- c. **Name:** Famous Four Media Limited
Address: Contact Information Redacted
Email: Contact Information Redacted
- d. **Name:** Fegistry, LLC
Address: Contact Information Redacted
Email: Contact Information Redacted
- e. **Name:** Donuts Inc.
Address: Contact Information Redacted
Email: Contact Information Redacted
- f. **Name:** Minds + Machines
Address: Contact Information Redacted
Email: Contact Information Redacted

The foregoing are referred to collectively herein as “Requestors.” This Request is submitted on behalf of Requestors by:

Counsel: John M. Genga, Don C. Moody
The IP and Technology Legal Group, P.C.
dba New gTLD Disputes

Address: Contact Information Redacted

Email: Contact Information Redacted

2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

3.1. Requestors seek reconsideration of ICANN's denial of the RFP. As a “principal element of ICANN's approach to transparency and information disclosure,” the DIDP is “intended to ensure that information contained in documents concerning ICANN's operational activities ... is made available to the public unless there is a compelling reason for confidentiality.” See <https://www.icann.org/resources/pages/didp-2012-02-25-en>. ICANN's refusal to provide documents responsive to the RFP violates this policy and the transparency touted as a “core value” established to guide its actions. Bylaws Art. I § 7, Art. III § 1.

3.2. ICANN provided for reconsideration to remedy “staff actions” that so “contradict” such “established ICANN policies.” *Id.* Art. IV § 2.2(a). It becomes acutely important where, as here, enforcing the transparency principle would reveal whether ICANN or its agents have violated other policies, such as:

- “[S]ustain[ing] ... and promoting competition,” *id.* Art. I §§ 5, 6;
- “Making decisions by applying documented policies neutrally and objectively, with integrity and fairness,” *id.* Art. I § 8;
- “Remaining accountable to the Internet community,” *id.* Art. I § 10; and

- Not “apply[ing] its standards, policies, procedures, or practices inequitably or singl[ing] out any particular party for disparate treatment,” *id.* Art. II § 3.

Requestors urge the BGC to act to assure compliance with these critical policies by reconsidering ICANN's response to the RFP and directing that it produce all documents responsive to it.

4. Date of action:

ICANN's RFP response (the “Response”) bears the date of 3 September 2014.

5. On what date did you become aware of the action?

The URL reflects posting of the Response on 4 September 2014 – <https://www.icann.org/resources/pages/20140804-01-2014-09-04-en> – and Requestors first became aware of it on that date.

6. Describe how you believe you are materially affected by the action:

6.1. Under the New gTLD Applicant Guidebook (“Guidebook” or “AGB”), “a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be.” AGB § 4.2.3 at 4-9. “Qualified” in this context means an application that attains community status as a result of CPE. *Id.* Because Hotel TLD prevailed in CPE, Requestors can no longer compete for the String.

6.2. The action of the CPE panel thus materially – indeed, terminally – affected Requestors. As such, they sought reconsideration of the CPE findings, contending that “the Panel has not followed the AGB policy and process for conducting CPE” as set forth in the Guidebook. <https://www.icann.org/en/system/files/files/request-despegar-online-et-al-28jun14-en.pdf> at 5-10.

6.3. Requestors also at that time claimed breach of other ICANN principles from the Bylaws and other governing documents, including ICANN's commitments to:

- “provide a ... reasoned explanation of decisions,”

- make decisions “by applying documented policies neutrally and objectively,” and
- “operate ... in an open and transparent manner.”

Id. at 10, *citing* ICANN's Affirmation of Commitments Art. 7 and Bylaws Arts. I § 2.8 and III § 1. The CPE process violated these tenets by (i) not making available the identities or qualifications of the panelists, (ii) not disclosing all materials considered by the panel, and (iii) not giving sufficient analysis and reasons for the panel's decision. *Id.* at 10-11.

6.4. The BGC construed Requestors' position in that prior matter as contesting the substance of the panel's determination, which it held insufficient for reconsideration. See <https://www.icann.org/en/system/files/files/determination-despegar-online-et-al-22aug14-en.pdf> at 7, 8, 9. It also ruled that the Guidebook does not require the panel to reveal the information that Requestors had sought, so that it did not violate any “established policy” of ICANN in not making such disclosures. *Id.* at 10-11.

6.5. Meanwhile, Requestors attempted to determine by their RFP whether the qualifications, selection, training and potential influence over the panel may have violated established ICANN policies pertaining, for example, to non-discrimination, neutrality, accountability and objective, fair application of documented policies. ICANN's refusal to provide the requested information obstructs Requestors' efforts to determine if it or the panel overstepped such policies, which would give them a basis for reconsideration or other review that this Tribunal previously had found lacking.

6.6. The overarching principle of transparency exists to ensure that ICANN and its agents comply with its other policies. Parties prevented from making such inquiries cannot enforce rights that they do not know they have or obtain remedies for violations they do not know have occurred. ICANN's sweeping rejection of the RFP has adversely affected Requestors in this material respect, entitling them to reconsideration here.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

7.1. Without true transparency and accountability, the Internet community, for whose benefit ICANN operates,¹ can have no confidence that the organization with which it has entrusted the stewardship of the DNS in fact adheres to the principles upon which that trust rests. The DIDP process enables ICANN's multiple stakeholders to verify such compliance, and to correct transgressions and their consequences if and when they occur.

7.2. The underlying CPE determination has wiped out six capable competitors for a highly sought-after piece of Internet "real estate." Particularly when ICANN opens new swaths of the namespace, preferring a single party over another – or, as in this case, many others – not only restricts competition in that single instance, but also can discourage it in the future.

7.3. Also, a number of applicants have filed on a community basis and have gone through or await invitation to CPE. Similar results can occur and parties should have the ability – and ostensibly do, through DIDP – to discover whether the processes affecting them took place in accordance with ICANN's own foundational principles.

7.4. Nor does this concern stop with CPE or even the new gTLD program as a whole. It can arise in connection with any ICANN action or inaction that impacts any of its constituency. All such affected parties may suffer if lapses in transparency go unchecked. The potential for recurrence further supports reconsideration now.

8. Detail of Board or Staff Action – Required Information

Staff Action: Refusal to produce documents responsive to the RFP, which contravenes ICANN's transparency doctrine and may mask other potential policy violations. Pertinent facts and procedural history appear in the "Detailed Explanation"

¹ See ICANN Articles of Incorporation § 4.

portion of this section. The policy abuses constituting grounds for reconsideration are discussed at greater length in Section 10, *infra*.

Board action: Not applicable; Requestors do not seek reconsideration of any Board action of which they are aware.

Provide the Required Detailed Explanation here:

8.1. Requestors all submitted standard applications for the String, and Hotel TLD applied for it as an asserted community. <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>. Hotel TLD thereafter received and accepted an invitation to undergo CPE. <http://newgtlds.icann.org/en/applicants/cpe#status>.

8.2. According to the just-cited webpage, “application comments and letters of support or opposition must be submitted within 14 days of the CPE Invitation Date in order to be considered by the CPE Panel.” *Id.* Opposing statements are published. See <https://gtldcomment.icann.org/applicationcomment/viewcomments>. Several Requestors, voicing concerns shared by all of them, filed oppositions to awarding Hotel TLD community priority.²

8.3. Hotel TLD posted a public response to the various opposition comments. <https://gtldcomment.icann.org/applicationcomment/commentdetails/12399>. Requestors do not know if Hotel TLD had any other communications, *ex parte* or otherwise, with ICANN, the CPE panel or anyone else involved in the CPE process.

8.4. Nor do Requestors have any information as to who served on the panel, what qualifications they had, how they got selected, and what communications they had internally or with ICANN, Hotel TLD or any other person concerning their evaluation. The panel issued its Report dated 11 June 2014, posted 12 June, finding that the Hotel TLD Application had satisfied the Guidebook-prescribed community criteria sufficiently

² See, e.g., <https://gtldcomment.icann.org/applicationcomment/commentdetails/12391>; <https://www.icann.org/en/system/files/correspondence/levy-to-willett-03mar14-en.pdf>; <https://www.icann.org/resources/correspondence/patetta-to-icann-2014-03-05-en>.

to gain community priority. See **Annex A** hereto. This determination removed all of Requestors' applications from the .HOTEL contention set, AGB at 4-9, and left Hotel TLD a completely unencumbered path to delegation of the String.

8.5. As stated above, Requestors sought reconsideration of the Report as contrary to certain ICANN policies. The BGC did not agree, and denied the request. Links to the request and ruling, dated 28 June and 22 August 2014, respectively, appear in paragraphs 6.2 and 6.4, *supra*.

8.6. Requestors sent their 4 August 2014 RFP, **Annex B**, to didp@icann.org, the email address specified by ICANN for service of such requests. It sought documents identified verbatim as follows:

8.6.1. All correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication ("Communications") between individual member [sic] of ICANN's Board or any member of ICANN Staff and the Economist Intelligence Unit³ or any other organization or third party involved in the selection or organisations of the CPE Panel for the Report, relating to the appointment of the Panel that produced the Report, and dated with the 12 month period preceding the date of the Report;

8.6.2. The curriculum vitaees ("CVs") of the members appointed to the CPE Panel;

8.6.3. All Communications (as defined above) between the CPE Panel and/or ICANN, directly related to the creation of the Report; and

8.6.4. All Communications (as defined above) between the CPE Panel and/or Hotel TLD or any other party prior with a material bearing on the creation of the Report.

³ The EIU is the third party organization selected by and contracted with ICANN to evaluate all community-based applications invited to CPE.

Id. at 1. The RFP further outlined how the information requested above, defined as the “Requested Information” in the RFP,⁴ “does not meet any of the defined conditions under the DIDP for non-disclosure ...” *Id.* at 1-2.

8.7. ICANN’s 3 September 2014 Response to the RFP, **Annex C**, posted on its website on 4 September, stated that ICANN did not have certain of the documents requested, yet admitted it had others but would not produce them due to claimed protections against disclosure specified in the DIDP. More specifically:

8.7.1. Claiming that, for the sake of “independence of the process and evaluation, ICANN ... is not involved with the selection ... of ... individual evaluators” and does not have “information about who the evaluators on any individual panel may be,” the Response represents that ICANN “does not have any CVs for the CPE Panel ... [or] ... regarding the appointment of the specific CPE Panel for the .HOTEL CPE,” responsive to the requests reproduced above in paragraphs 8.6.1 and 8.6.2. App. C at 2. However, the Response *admits* that ICANN *does* have “documentation with the EIU for the performance of its role ... as it relates to the .HOTEL CPE,” but asserts that those documents satisfy “certain of the Defined Conditions of Nondisclosure set forth in the DIDP.” *Id.*

8.7.2. Requestors do not agree with ICANN’s asserted bars to disclosure. ICANN should not interpose such obstacles to access without providing a factual basis to determine if its claimed privileges have any merit. *At minimum*, the BGC should review the asserted protections and independently determine if they have any supportable grounds. Regardless, it should order production for the reasons set forth in Section 10 below.

8.7.3. With regard to the third item of the RFP, repeated at paragraph 8.6.3 above, ICANN represents that it “does not have any communications ...

⁴ Requestors define other capitalized herein, such as “Report” and “Hotel TLD,” to have the same meanings as in the RFP.

with the evaluators that identify the scoring for any individual CPE ..., [so] does not have documents of this type.” Requestors do not dispute that ICANN cannot produce what it does not have. However, again, ICANN does concede that it has some documents responsive to this RFP – namely, “communications with persons from EIU who are not involved in the scoring of a CPE, but otherwise assist in a particular CPE ...” Requestors should have access to such documentation, but ICANN again refuses to produce it on grounds *stated* in the DIDP but not *established* in the Response.

8.7.4. ICANN states that it also has documents responsive to the fourth category of the RFP, paragraph 8.6.4 above, constituting “Communications between the CPE Panel and Hotel TLD or any other party bearing on the creation of the Report.” Specifically, while ICANN claims to have “limited the ability for requestors or other interested parties to initiate direct contact with the panels,” it does concede that “the CPE Panel goes through a validation process regarding letters of support or opposition” as a matter of “direct communications,” and that “from time to time ICANN is cc’d on the CPE Panel’s verification emails.” The Requestors properly seek those direct communications. The “verification process” could conclude that such communications are not appropriate, but could also reveal that the panel accepts certain communications that it should not. Even rejected communications, if reviewed, could potentially influence the panel or expose some policy violation.

As argued more fully below, transparency demands production of the Requested Information. Without it, ICANN has no accountability to its stakeholders or the public, and offers no assurance of compliance with its own policies on which its constituents rely in maintaining ICANN’s role overseeing the DNS.

9. What are you asking ICANN to do now?

Applicant respectfully requests that the BGC:

9.1. Independently evaluate the legitimacy of ICANN's claimed grounds for withholding the Requested Information;

9.2. Regardless of whether certain protections against disclosure arguably exist, find that production of the Requested Information would serve policy interests that override any claimed basis for non-disclosure; and

9.3. Order ICANN to produce the Requested Information, subject to a protective order if the BGC deems it appropriate to facilitate production while preserving any potential confidentiality concerns.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

10.1. Requestors have been adversely affected by the actions of ICANN staff in refusing to comply with the RFP. They have both procedural standing to make this Request and the substantive right to have it granted.

a) Requestors have standing to make this Request.

10.2. Requestors have been "adversely affected by ... one or more staff actions or inactions that contradict established ICANN policy" This fact gives it standing within the meaning of Bylaws Art. IV § 2.2(a).

10.3. According to the form reconsideration request used here, a requestor must "demonstrate material harm and adverse impact" by the following measures:

10.3.1. *A loss or injury, financial or non-financial.* Requestors have described this in Section 6, *supra*. Namely, they have shown that ICANN's refusal to produce the Requested information has deprived them of the ability to determine if the underlying CPE process for the Application violated established ICANN policies that would provide a basis for challenging the process and either (i) redoing it with a properly constituted, trained, neutral and independent panel

free from undue influence, or (ii) reversing the result altogether as unsupported and resulting from improper conduct (if that is found to be the case).

10.3.2. *A direct and causal connection between the loss or injury and the staff action or inaction that is the basis of the Request.* Staff's rejection of the RFP has directly caused the injury. Without the Requested Information, Requestors cannot determine if they have a basis for review of the CPE under Article IV of the Bylaws.

10.3.3. *The relief requested must be capable of reversing the harm alleged.* Ordering disclosure directly reverses the harm stemming from nondisclosure.

By all measures, Requestors have standing to make this Request. They satisfy the procedural threshold of "material" and "adverse" impact in the form of specific injury, causation of that injury by ICANN staff action, and the ability of this proceeding to remedy that harm.

b) ICANN's obstinate Response to the RFP violates its own transparency policy and potentially conceals transgressions of other established policies.

10.4. As part of its "core values," ICANN provides for "[e]mploying open and transparent policy development mechanisms that ... promote well-informed decisions based on expert advice" Bylaws Art. I § 7. The Bylaws devote the entirety of their Article III to the subject of transparency.

10.5. As Article I, section 7 expressly acknowledges, transparency has as a key purpose the promotion of well-informed decisions. Requestors do not find the decision of the CPE panel in the underlying case well-informed, could only communicate their opposition to community priority in a public forum, and now know by ICANN's Response to the RFP that certain non-public communications did occur involving it, the EIU, the panel and other parties pertaining to the panel's role and its Report.

10.6. What do those communications show? Only ICANN and the other parties to them know. Requestors certainly do not. Nor does the public, which needs ICANN to act transparently to assure itself that ICANN is faithfully discharging its duties to:

- Promote competition, Bylaws Art. I §§ 2.5, 2.6;
- Apply polices documented in the AGB for the introduction of new TLDs and the determination of community priority neutrally, objectively and fairly, *id.* §§ 2.7, 2.8, Articles § 3;
- Apply controlling standards equitably, without singling out anyone for disparate and adverse treatment, Bylaws Art. II § 3;
- Act without bias, Bylaws Art. IV § 3.4.a, c; and
- Operate for the benefit of and remain accountable to the Internet community as a whole, Articles § 4, Bylaws Art. I § 10.

Transparency helps assure adherence as much as possible to all polices relevant to a particular situation, and the correction of lapses in such observances if and to the extent they occur.

10.7. Regardless of what the Requested Information may show, it should be disclosed. If it reveals anything from a “hiccup” to a “smoking gun,” accountability dictates that Requestors have the opportunity to use that information to obtain whatever relief it may make available. If it establishes the Report and process leading up to it as “squeaky clean,” transparency will have served the purpose of maintaining the parties’ and others’ confidence in ICANN and its systems.

10.8. Given the essential function of transparency and the many other policies implicated by it, this matter meets the substantive standards for reconsideration. The Response to the RFP as it stands now does not satisfy that threshold policy, making this Request proper and remedial action appropriate as set forth in Section 9 above.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

Yes; all have lost the opportunity to compete for the String, and ICANN's withholding of information – which could reveal a policy violation giving them a basis for review of the CPE determination – harms them all equally.

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

R-14

RESPONDENT'S EXHIBIT

Approved Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

This page is available in:

English |

العربية (<http://www.icann.org/resources/board-material/resolutions-2016-03-10-ar>) |

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中文 (<http://www.icann.org/resources/board-material/resolutions-2016-03-10-zh>)

10 Mar 2016

1. **Consent Agenda:**

a. **Approval of Board Meeting Minutes**

b. **Appointment of F-Root Server Operator Representative to the RSSAC (Root Server System Advisory Committee)**

Rationale for Resolution 2016.03.10.02

c. **Appointment of Independent Auditors**

Rationale for Resolution 2016.03.10.03

d. **Investment Policy Update**

Rationale for Resolution 2016.03.10.04

e. **Next Steps for the Internationalized Registration Data (WHOIS (WHOIS (pronounced "who is"; not an acronym))) Final Report**

Rationale for Resolutions 2016.03.10.05 – 2016.03.10.07

f. **Board Member Mentorship Program**

Rationale for Resolution 2016.03.10.08

g. **USG IANA (Internet Assigned Numbers Authority) Stewardship Transition – Additional FY16 Expenses and Funding**

Rationale for Resolution 2016.03.10.09

h. **Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting**

i. **Thank You to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting**

j. **Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting**

2. **Main Agenda:**

a. **Consideration of .ECO and .HOTEL IRP Declaration**

Rationale for Resolutions 2016.03.10.10 – 2016.03.10.11

b. **IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal from ICG (IANA Stewardship Transition Coordination Group)**

Rationale for Resolution 2016.03.10.12 – 2016.03.10.15

c. **Proposal from CCWG on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability**

Rationale for Resolution 2016.03.10.16 – 2016.03.10.19

d. **Thank You to Staff**

1. **Consent Agenda:**

a. **Approval of Board Meeting Minutes**

Resolved (2016.03.10.01), the Board approves the minutes of the 3 February 2016 Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

b. Appointment of F-Root Server Operator Representative to the RSSAC (Root Server System Advisory Committee)

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the establishment of a Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) with the role to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the operation, administration, security, and integrity of the Root Server System of the Internet.

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for appointment by the Board of Directors of RSSAC (Root Server System Advisory Committee) members based on recommendations from the RSSAC (Root Server System Advisory Committee) Co-Chairs.

Whereas, the RSSAC (Root Server System Advisory Committee) Co-Chairs recommended for consideration by the Board of Directors the appointment of a representative from the F-root server operator to the RSSAC (Root Server System Advisory Committee).

Resolved (2016.03.10.02), the Board of Directors appoints to the RSSAC (Root Server System Advisory Committee) the representative from F-root server F-root server operator, Brian Reid, through 31 December 2018.

Rationale for Resolution 2016.03.10.02

In May 2013, the root server operators (RSO) agreed to an initial membership of RSO representatives for RSSAC (Root Server System Advisory Committee), and each RSO nominated an individual. The Board of Directors approved the initial membership of RSSAC (Root Server System Advisory Committee) in July 2013 with staggered terms.

Jim Martin, the F-root server operator representative, served an initial two-year term, which expired on 31 December 2015. On

2 December 2015, the Board of Directors re-appointed him to a full, three-year term expiring on 31 December 2018.

The F-root server operator, Internet Systems Consortium, has requested to change its representative from Jim Martin to Brian Reid for the remainder of the term.

The appointment of this RSSAC (Root Server System Advisory Committee) member is not anticipated to have any fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers), though there are budgeted resources necessary for ongoing support of the RSSAC (Root Server System Advisory Committee).

This resolution is an organizational administrative function for which no public comment is required. The appointment of RSSAC (Root Server System Advisory Committee) members contributes to the commitment of ICANN (Internet Corporation for Assigned Names and Numbers) to strengthening the security, stability, and resiliency of the DNS (Domain Name System).

c. Appointment of Independent Auditors

Whereas, Article XVI of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws (<http://www.icann.org/general/bylaws.htm>) (/general/bylaws.htm) requires that after the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) must be audited by certified public accountants, which shall be appointed by the Board.

Whereas, the Board Audit Committee has discussed the engagement of the independent auditor for the fiscal year ending 30 June 2016, and has recommended that the Board authorize the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms.

Resolved (2016.03.10.03), the Board authorizes the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms as the auditors for

the financial statements for the fiscal year ending 30 June 2016.

Rationale for Resolution 2016.03.10.03

The audit firm BDO LLP and BDO member firms were engaged for the annual independent audits of the fiscal year ending 30 June 2014 and the fiscal year ending 30 June 2015. Based on the report from staff and the Audit Committee's evaluation of the work performed, the committee has unanimously recommended that the Board authorize the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms as ICANN (Internet Corporation for Assigned Names and Numbers)'s annual independent auditor for the fiscal year ended 30 June 2016 for any annual independent audit requirements in any jurisdiction.

The engagement of an independent auditor is in fulfillment of ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations to undertake an audit of ICANN (Internet Corporation for Assigned Names and Numbers)'s financial statements. This furthers ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability to its Bylaws and processes, and the results of the independent auditors work will be publicly available. There is a fiscal impact to the engagement that has already been budgeted. There is no impact on the security or the stability of the DNS (Domain Name System) as a result of this appointment.

This is an Organizational Administrative Function not requiring public comment.

d. Investment Policy Update

Whereas, the Board Finance Committee requested that an outside expert review the Investment Policy to ensure it is appropriate for ICANN (Internet Corporation for Assigned Names and Numbers).

Whereas, the outside expert completed a review of the ICANN (Internet Corporation for Assigned Names and Numbers)

Investment Policy and concluded that overall the Investment Policy continues to support well the conservative philosophy of ICANN (Internet Corporation for Assigned Names and Numbers)'s investment strategy.

Whereas, the outside expert recommends that a few modifications be made to the Investment Policy to enhance and clarify some provisions, but do not change the overall investment strategy.

Resolved (2016.03.10.04), the Board endorses and adopts the ICANN (Internet Corporation for Assigned Names and Numbers) Investment Policy as revised.

Rationale for Resolution 2016.03.10.04

In furtherance of its due diligence in regards to ICANN (Internet Corporation for Assigned Names and Numbers)'s Investment Policy ("Policy"), the Board Finance Committee (BFC) requested staff to engage an investment consulting firm to review the Policy. For this purpose, ICANN (Internet Corporation for Assigned Names and Numbers) used the services of Bridgebay Investment Consultant Services ("Bridgebay"), which had also performed the previous review of the Policy in 2011 and 2014. As a result of its review process, Bridgebay recommended a few modifications to the Policy, intended to: (i) clarify the description of the Policy's risk profile; (ii) add low-risk allowable assets (money market funds); and (iii) clarify the flexible approach, for rebalancing the assets in accordance with the strategic allocation, and extended the range of allowable investment to enable the manager to increase fixed income for defensive purposes. Bridgebay also made additional suggested revisions to language, including items such as: clarification of required securities grades and update of the accounting standard name for fair value measurements. Bridgebay presented comments, analysis and the suggested changes to the Policy to the BFC during its meeting of 2 February 2016. These limited Policy modifications will enable the investment manager to optimize its asset allocation strategy for ICANN (Internet Corporation for

Assigned Names and Numbers)'s Reserve Fund in a conservative, risk-controlled manner.

Adopting the suggested modifications is expected to be in the best interest of ICANN (Internet Corporation for Assigned Names and Numbers) and the ICANN (Internet Corporation for Assigned Names and Numbers) community in that it is meant to enhance and clarify certain aspects of ICANN (Internet Corporation for Assigned Names and Numbers)'s investment strategy. This action is not expected to have any fiscal impact, or any impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

e. Next Steps for the Internationalized Registration Data (WHOIS (WHOIS (pronounced "who is"; not an acronym))) Final Report

Whereas, in 2012, the Board adopted (</en/groups/board/documents/resolutions-08nov12-en.htm#1.a>) an Action Plan (</en/groups/board/documents/briefing-materials-1-08nov12-en.pdf>) [PDF, 265 KB] to address the recommendations of the first WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team, calling for ICANN (Internet Corporation for Assigned Names and Numbers) to (i) continue to fully enforce existing consensus policy and contractual conditions relating to WHOIS (WHOIS (pronounced "who is"; not an acronym)), and (ii) create an expert working group to determine the fundamental purpose and objectives of collecting, maintaining and providing access to gTLD (generic Top Level Domain) registration data, to serve as a foundation for a Board-initiated GNSO (Generic Names Supporting Organization) policy development process (PDP (Policy Development Process)).

Whereas, the WHOIS (WHOIS (pronounced "who is"; not an acronym)) Policy Review Team, in the WHOIS (WHOIS (pronounced "who is"; not an acronym)) RT Final Report (</en/system/files/files/final-report-11may12-en.pdf>), [PDF, 1.44

MB] highlighted the need to define requirements and develop data models with the following recommendations:

"ICANN (Internet Corporation for Assigned Names and Numbers) should task a working group..., to determine appropriate internationalized domain name registration data requirements and evaluate available solutions; at a minimum, the data requirements should apply to all new gTLDs, and the working group should consider ways to encourage consistency of approach across the gTLD (generic Top Level Domain) and (on a voluntary basis) ccTLD (Country Code Top Level Domain) space..."

And

"The final data model, including (any) requirements for the translation or transliteration of the registration data, should be incorporated in the relevant Registrar and Registry agreements ..."

Whereas, to address these WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team recommendations, the Action Plan (/en/groups/board/documents/briefing-materials-1-08nov12-en.pdf) [PDF, 265 KB] called for a series of activities aimed at developing policies and a technical data model and framework for internationalizing WHOIS (WHOIS (pronounced "who is"; not an acronym)), including,

- i. Convening of an expert working group (known as the IRD Working Group) to determine the requirements for the submission and display of internationalized registration data.
- ii. A GNSO (Generic Names Supporting Organization) Policy Development Process (PDP (Policy Development Process)) to determine whether translation or transliteration of contact information is needed.

Whereas, in September 2015, the Board approved (/resources/board-material/resolutions-2015-09-28-en#1.b) a

new consensus policy developed by the GNSO (Generic Names Supporting Organization) related to the translation and transliteration of WHOIS (WHOIS (pronounced "who is"; not an acronym)) contact data, for which the implementation planning is currently underway.

Whereas the IRD Working Group produced the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>), [PDF, 268 KB] that includes the Data Model requested by the Board, and principles and requirements for internationalizing registration data (such as WHOIS (WHOIS (pronounced "who is"; not an acronym)))).

Resolved (2016.03.10.05), the Board hereby receives the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] and thanks the IRD Working Group for the significant effort and work exerted that produced the proposed data model for internationalizing registration data as reflected in the IRD Final Report.

Resolved (2016.03.10.06), the Board requests that the GNSO (Generic Names Supporting Organization) Council review the broader policy implications of the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] as they relate to other GNSO (Generic Names Supporting Organization) policy development work on WHOIS (WHOIS (pronounced "who is"; not an acronym)) issues, and, at a minimum, forward the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] as an input to the GNSO (Generic Names Supporting Organization) PDP (Policy Development Process) on the Next Generation Registration Directory Services to Replace WHOIS (WHOIS (pronounced "who is"; not an acronym)) that is currently underway.

Resolved (2016.03.10.07), the President and CEO, or his designee(s), is directed to work with the implementation review team for the new consensus policy on translation and transliteration to consider the IRD Working Group's data model and requirements and incorporate them, where appropriate, to

the extent that the IRD's recommendations are consistent with, and facilitate the implementation of the new consensus policy on translation and transliteration.

Rationale for Resolutions 2016.03.10.05 - 2016.03.10.07

Why is the Board addressing the issue?

This resolution continues the Board's attention to the implementation of the Action Plan (</en/groups/board/documents/briefing-materials-1-08nov12-en.pdf>) [PDF, 265 KB] adopted by the Board in response to the WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team's recommendations (</en/system/files/files/final-report-11may12-en.pdf>). [PDF, 1.44 MB] This resolution arises out of a series of efforts identified in the Action Plan commenced at the Board's request with the aim of internationalizing WHOIS (WHOIS (pronounced "who is"; not an acronym)) contact data. It also facilitates the implementation of the recently adopted and related consensus policy on translation and transliteration of WHOIS (WHOIS (pronounced "who is"; not an acronym)) data approved (</resources/board-material/resolutions-2015-09-28-en#1.b>) by the Board on 28 September 2015.

What is the proposal being considered?

Under the Affirmation of Commitments (AoC), ICANN (Internet Corporation for Assigned Names and Numbers) is committed to enforcing its existing policy relating to WHOIS (WHOIS (pronounced "who is"; not an acronym)) (subject to applicable laws), which "requires that ICANN (Internet Corporation for Assigned Names and Numbers) implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS (WHOIS (pronounced "who is"; not an acronym)) information...." The AoC obligates ICANN (Internet Corporation for Assigned Names and Numbers) to organize no less frequently than every three years a community review of WHOIS (WHOIS (pronounced "who is"; not an acronym)) policy and its implementation to assess the extent to which WHOIS

(WHOIS (pronounced "who is"; not an acronym)) policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. Under this timeline, the second WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team is to be convened in late 2016.

In 2012, the first WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team recommended in its Final Report (/en/system/files/files/final-report-11may12-en.pdf) [PDF, 1.44 MB] that the Board take measures to improve WHOIS (WHOIS (pronounced "who is"; not an acronym)). Its findings state: "work needs to proceed with priority in coordination with other relevant work beyond ICANN (Internet Corporation for Assigned Names and Numbers)'s ambit, to make internationalized domain name registration data accessible." In response, the Board adopted a two-prong approach that simultaneously directed ICANN (Internet Corporation for Assigned Names and Numbers) to (1) implement improvements to the current WHOIS (WHOIS (pronounced "who is"; not an acronym)) system based on the Action Plan (/en/groups/board/documents/briefing-materials-1-08nov12-en.pdf) [PDF, 265 KB] that was based on the recommendations of the WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team, and (2) launch a new effort, achieved through the creation of the Expert Working Group, to focus on the purpose and provision of gTLD (generic Top Level Domain) directory services, to serve as PDP (Policy Development Process) on the Next Generation Registration Directory Services to Replace WHOIS (WHOIS (pronounced "who is"; not an acronym)) commenced in January 2016 with a call for volunteers (/news/announcement-2016-01-04-en).

The effect of the Board's action today, i.e. forwarding the IRD Final Report (https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf) [PDF, 268 KB] to the GNSO (Generic Names Supporting Organization) for appropriate follow-up policy work, is aimed at internationalizing WHOIS (WHOIS (pronounced "who is"; not an acronym)) contact data, as part of the Action Plan (/en/groups/board/documents/briefing-materials-1-08nov12-en.pdf), [PDF, 265 KB] in order to improve WHOIS (WHOIS

(pronounced "who is"; not an acronym)) and enable non US-ASCII script to be included in WHOIS (WHOIS (pronounced "who is"; not an acronym)) records. At a minimum, the PDP (Policy Development Process) on the Next Generation Registration Directory Services to Replace WHOIS (WHOIS (pronounced "who is"; not an acronym)) should take into account the IRD Final Report recommendations.

Today's action also instructs the President and CEO to consider the IRD's technical data model & non-policy related requirements, as appropriate, as part of the implementation of the new consensus policy on translation and transliteration of registration data, to the extent that its findings are consistent with the new consensus policy, and facilitate its implementation.

What factors did the Board find to be significant?

Internationalization of the Internet's identifiers is a key ICANN (Internet Corporation for Assigned Names and Numbers) priority. Much of the currently accessible domain name registration data (DNRD) (previously referred to as WHOIS (WHOIS (pronounced "who is"; not an acronym)) data) is encoded in free form US-ASCII script. This legacy condition is convenient for WHOIS (WHOIS (pronounced "who is"; not an acronym)) service users who are sufficiently familiar with languages that can be submitted and displayed in US-ASCII to be able to use US-ASCII script to submit registration data, make and receive queries using that script. However, this data is less useful to the WHOIS (WHOIS (pronounced "who is"; not an acronym)) service users who are only familiar with languages that require script support other than US-ASCII for correct submission or display.

The data model recommended by in the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] creates a standard framework for submitting and displaying internationalized registration data and facilitates the implementation of the new consensus policy on translation and transliteration of contact data.

What significant materials did the Board review?

The Board reviewed the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] and other briefing materials submitted by staff.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, or budget)?

The work to improve and internationalize WHOIS (WHOIS (pronounced "who is"; not an acronym)) is not expected to require additional resources beyond those included in the Board-approved FY16 Operating Plan and Budget, and the FY17 Operating Plan and Budget, when adopted.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

This action is not expected to have an immediate impact on the security, stability or resiliency of the DNS (Domain Name System), though the outcomes of this work may result in positive impacts, since improvements in the accessibility of WHOIS (WHOIS (pronounced "who is"; not an acronym)) in multiple scripts and dialogues may enable the resolution of technical issues affecting the security, stability or resiliency of the DNS (Domain Name System).

Is public comment required prior to Board action?

As this is a continuation of prior Board actions, this is an Organizational Administrative Action, for which public comment is not necessary prior to adoption.

f. Board Member Mentorship Program

Whereas, on 3 February 2016, the ICANN (Internet Corporation for Assigned Names and Numbers) Board approved the initial set of key performance indicators (KPIs) to measure the Board Performance and Improvement efforts as per the

recommendations of the Final Report of the Second Accountability and Transparency Review Team (ATRTR2) published on 31 December 2013.

Whereas, the initial set of KPIs encompasses, among other things, the measurement of the effectiveness and success of a New Board Mentorship Program.

Whereas, the Board is engaged in an ongoing process to develop comprehensive and holistic practices to enhance its performance and measure its effectiveness and improvement efforts over time.

Whereas, the Board recognizes the importance of establishing programs aiming at guiding and supporting the Board members' on-boarding and development processes to improve the Board members' individual skills set and the Board's collegial performance.

Whereas the Board Mentorship Program will ease new Board members into the culture of ICANN (Internet Corporation for Assigned Names and Numbers), as well as into the specifics of their roles.

Whereas the Board Governance Committee (BGC) has recommended that the Board adopt the New Board Mentorship Program as a voluntary-basis program.

Resolved (2016.03.10.08), the Board adopts the New Board Mentorship Program set forth in Attachment A to the Reference Materials to this Board Paper, and agrees with the BGC that the Board Mentorship Program should be assessed, evaluated and reviewed to adapt to the need of the Board to consistently improve its performance over time.

Rationale for Resolution 2016.03.10.08

The implementation of recommendations (/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf) [PDF, 3.46 MB] from the Second Accountability and Transparency Review

Team (ATRT2) began in June 2014, shortly after the Board accepted the recommendations.

Since then, the Board Governance Committee, as per Section I.A of the its charter (see <https://www.icann.org/resources/pages/charter-06-2012-02-25-en> ([/resources/pages/charter-06-2012-02-25-en](https://www.icann.org/resources/pages/charter-06-2012-02-25-en))) has been tasked to review comprehensively the Board's performance and to develop relevant and substantive programs and practices to support the individual and the collegial improvement efforts and to measure their effectiveness over time.

Mentoring programs are globally recognized as useful practices to enhance productivity and performance and to facilitate the settlement of new recruits into the Organization. Additionally, the mentorship enables experienced, highly competent people to pass their expertise on to others who need to acquire specified skills, in particular, mentoring encourages the development of leadership competencies that are highly desirable at Board level.

Adopting this new Board Mentorship Program will have no direct fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) or the community, and will not have an impact of the security, stability and resiliency of the domain name system.

This is an Organization Administrative Function that does not require public comment.

g. USG IANA (Internet Assigned Numbers Authority) Stewardship Transition – Additional FY16 Expenses and Funding

Whereas, the Board has approved an expense budget envelopes to support the IANA (Internet Assigned Numbers Authority) Stewardship Transition Project ("Project") during FY15 and FY16, and all approved budget envelopes will have been used after the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting 55 in Marrakech.

Whereas, a Project Cost Support Team is being implemented to produce Project expense estimates for the remainder of FY16 and for FY17 for the Project.

Whereas, it is projected that further Project expenses of up to approximately US\$1.5 million will be incurred while the Project Cost Support Team is producing cost estimates.

Whereas, the Board Finance Committee met on 3 March 2016 and has approved to recommend to the Board to approve an additional Project expense budget envelope of up to US\$1.5 million to cover Project expenses while the Project Cost Support Team is working to produce estimates.

Resolved (2016.03.10.09), the Board approves a budget envelope of up to US\$1.5 million, as an interim measure, to cover the costs of the Project to be incurred until the first estimate is produced, to be funded through a fund release from the Reserve Fund.

Rationale for Resolution 2016.03.10.09

The IANA (Internet Assigned Numbers Authority) Stewardship Transition is a major initiative to which the ICANN (Internet Corporation for Assigned Names and Numbers) Community as a whole is dedicating a significant amount of time and resources. ICANN (Internet Corporation for Assigned Names and Numbers)'s support for the community's work towards a successful completion of the Project (including both the USG IANA (Internet Assigned Numbers Authority) Stewardship transition proposal development and the Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability's work) is critical for ICANN (Internet Corporation for Assigned Names and Numbers).

Considering its exceptional nature and the significant amount of costs anticipated to be incurred, the funding of this Project could not be provided through the Operating Fund. Accordingly, when the Board approved the FY15 and FY16 Operating Plans and Budgets, it included the anticipated funding of the transition

initiative costs through a corresponding withdrawal from the Reserve Fund.

The Board previously approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US\$7 million for the USG IANA (Internet Assigned Numbers Authority) Stewardship Transition ("The Project") to be funded by the Reserve Fund. As the Project used this entire budget envelope by the end of November 2015, the Board approved additional funding of US\$4.5 million on 2 February 2016 to allow the project to be funded through the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting 55 in Marrakech.

The Board reiterates its 25 June 2015 statement that the Board is "committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN (Internet Corporation for Assigned Names and Numbers) by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged." (See <https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c> ([/resources/board-material/resolutions-2015-06-25-en#2.c](https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c))).

As the community work relative to the accountability track of the Project is expected to continue, further expenses are expected through the remainder of FY16 and during FY17. The implementation planning for other parts of the Project will also continue. Separately, in order to improve visibility on and control of the expenses for this type of project in partnership with the community, a Project Costs Support Team is being formed to produce costs estimates for future work.

The Board Finance Committee has determined that an additional budget envelope of approximately US\$1.5 million needs to be approved by Board to allow ICANN (Internet Corporation for Assigned Names and Numbers) to incur further Project expenses for a short period of time after the end of the

ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting. This will give the necessary time to the project cost support team to produce estimates. These estimates will then be used by the Board to consider and approve a budget envelope for a longer period of time forward.

As this initiative's expenses and funding are approved by the Board, the ICANN (Internet Corporation for Assigned Names and Numbers) Board is now approving as an additional interim measure a budget envelope of up to US\$1.5 million to be funded through a release from the Reserve Fund to cover the estimated costs to be incurred after the end of the ICANN (Internet Corporation for Assigned Names and Numbers) 55 meeting until such time a cost estimate will be ready. The Board will be asked to approve an additional expense budget envelope for the remainder of FY16, on the basis of the estimated future expenses produced by the Project Cost Support Team.

This action will not have a direct impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

h. Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting

The Board wishes to extend its thanks to the local host organizer, ANRT, for its support.

i. Thank You to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting

The Board wishes to thank the following sponsors: Verisign, Inc., Nominet UK, NCC Group, PDR Solutions FZC, China Internet Network Information Center (CNNIC), Public Interest Registry, CentralNic, Afilias plc, Radix FZC, Rightside, dotistanbul, fmai, .MA and Office National Des Aeroports.

j. **Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting**

The Board expresses its deepest appreciation to the scribes, interpreters, audiovisual team, technical teams, and the entire ICANN (Internet Corporation for Assigned Names and Numbers) staff for their efforts in facilitating the smooth operation of the meeting.

The Board would also like to thank the management and staff of the Palmeraie Conference Center and Hotels for providing a wonderful facility to hold this event. Special thanks are extended to Patrick Lebufno, Director General Delegee, Palmeraie Conference Center and Hotels; Boubker Bernoussi, Director of Convention Services for Palmeraie Conference Center and Hotels; Loubna El Mekkaoui, Sales Manager for Palmeraie Conference Center and Hotels; Mohamed Aziz, Director, Food and Beverage; Hassan Agouzoul, Executive Chef; Hafsa Aitouhan, Event Manager; and Jamal Drifi, Banquet Director.

2. Main Agenda:

a. **Consideration of .ECO and .HOTEL IRP Declaration**

Whereas, on 12 February 2016, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRPs relating to .HOTEL and .ECO.

Whereas, the Panel declared ICANN (Internet Corporation for Assigned Names and Numbers) to be the prevailing party in both IRPs, and, among other things, declared that the Board's actions or inactions did not in any way violate ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws. (See Final Declaration, ¶¶ 151-156, <https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf> ([/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf](https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf))).) [PDF, 2.16 MB]

Whereas, while the Panel declared ICANN (Internet Corporation for Assigned Names and Numbers) to be the prevailing party in both the .HOTEL and .ECO IRPs, the Panel also suggested that: (1) the Board consider additional measures be added in the future to increase the consistency and predictability of the CPE process and third-party provider evaluations; (2) the Board encourage ICANN (Internet Corporation for Assigned Names and Numbers) staff to be as specific and detailed as possible in responding to requests made pursuant to ICANN (Internet Corporation for Assigned Names and Numbers)'s Documentary Information Disclosure Policy (DIDP); (3) the Board affirm, when appropriate, that ICANN (Internet Corporation for Assigned Names and Numbers)'s activities are conducted through open and transparent processes in conformance with Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation; and (4) the Board respond to a letter from the .HOTEL Claimants regarding the portal configuration issue as soon as feasible.

Whereas, in accordance with Article IV, section 3.21 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, the Board has considered the Panel's Final Declaration.

Resolved (2016.03.10.10), the Board accepts the following findings of the Panel's Final Declaration: (1) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC v. ICANN (Internet Corporation for Assigned Names and Numbers) IRP; (2) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the Little Birch, LLC and Minds + Machines Group Limited v. ICANN (Internet Corporation for Assigned Names and Numbers) IRP; (3) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and Bylaws; (4) the Board (including the Board Governance Committee) acted consistently with the Articles of Incorporation and Bylaws; (5) the parties shall each bear their

own expenses including legal fees; and (6) the IRP costs shall be divided between the parties in a 50% (claimants) / 50% (ICANN (Internet Corporation for Assigned Names and Numbers)) proportion.

Resolved (2016.03.10.11), the Board notes the Panel's suggestions, and: (1) directs the President and CEO, or his designee(s), to ensure that the New gTLD (generic Top Level Domain) Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third-party provider evaluations; (2) encourages ICANN (Internet Corporation for Assigned Names and Numbers) staff to be as specific and detailed as possible in responding to DIDP requests, particularly when not disclosing requested documents; (3) affirms that, as appropriate, ICANN (Internet Corporation for Assigned Names and Numbers) will continue to ensure that its activities are conducted through open and transparent processes in conformance with Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation; and (4) directs the President and CEO, or his designee(s), to complete the investigation of the issues alleged by the .HOTEL Claimants regarding the portal configuration as soon as feasible and to provide a report to the Board for consideration following the completion of that investigation.

Rationale for Resolutions 2016.03.10.10 – 2016.03.10.11

Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC (collectively, ".HOTEL Claimants") filed a request for an Independent Review Process (IRP) challenging the Community Priority Evaluation (CPE) Panel Report finding that the one community application for .HOTEL prevailed in CPE (the ".HOTEL IRP"). Specifically, the .HOTEL Claimants filed Reconsideration Request 14-34 seeking reconsideration of the CPE Panel Report, and Reconsideration Request 14-39 seeking reconsideration of ICANN (Internet Corporation for Assigned Names and Numbers) staff's determination, pursuant to the Documentary Information Disclosure Policy (DIDP), that certain documents

related to the CPE Panel Report were not appropriate for disclosure under the DIDP Defined Conditions for Nondisclosure. The Board Governance Committee (BGC) denied Reconsideration Requests 14-34 and 14-39, finding that the .HOTEL Claimants had not stated proper grounds for reconsideration. The .HOTEL IRP challenged the denial of Reconsideration Requests 14-34 and 14-39, and argued that the Board should have take further action with respect to the CPE Panel Report.

Little Birch LLC and Minds + Machines Group Limited (collectively, ".ECO Claimants") filed an IRP Request challenging the CPE Panel Report finding that the one community application for .ECO prevailed in CPE (the ".ECO IRP"). Specifically, the .ECO Claimants filed Reconsideration Request 14-46, seeking reconsideration of the CPE Panel Report. The BGC denied Reconsideration Request 14-46, finding that the .ECO Claimants had not stated proper grounds for reconsideration. The .ECO IRP challenged the denial of Reconsideration Request 14-46, and alleged that ICANN (Internet Corporation for Assigned Names and Numbers) "has failed to act with due diligence and failed to exercise independent judgment" in "adopting" the CPE Panel Report, and requested that ICANN (Internet Corporation for Assigned Names and Numbers) be "required to overturn the CPE in relation to .eco and allow the .ECO Claimants' applications to proceed on their own merits."

On 12 May 2015, the .HOTEL and the .ECO IRPs were consolidated under a single IRP Panel (Panel). The Panel held a telephonic hearing on 7 December 2015. On 12 February 2016, the three-member Panel issued its Final Declaration. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the Board adopts the findings of the Panel, which are summarized below, and can be found in full at <https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf> ([/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf](https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf)). [PDF, 2.16 MB]

The Panel found that the "analysis, which the Panel is charged with carrying out in this IRP, is one of comparing the actions of the Board with the Articles of Incorporation and Bylaws, and declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws." (Final Declaration at ¶ 58.)

Using the applicable standard of review, the Panel found that: (1) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the *Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC v. ICANN (Internet Corporation for Assigned Names and Numbers)* IRP; (2) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the *Little Birch, LLC and Minds + Machines Group Limited v. ICANN (Internet Corporation for Assigned Names and Numbers)* IRP; (3) the Board (including the Board Governance Committee) acted consistently with the Articles of Incorporation and Bylaws; (4) the parties shall each bear their own expenses including legal fees; and (5) the IRP costs shall be divided between the parties in a 50% (claimants) / 50% (ICANN (Internet Corporation for Assigned Names and Numbers)) proportion. (See Final Declaration at ¶¶ 151, 154-156, 160.)

More specifically, the Panel found that the .HOTEL IRP "was always going to fail given the clear and thorough reasoning adopted by the BGC in its denial" of Reconsideration Requests 14-34 and 14-39. (Final Declaration at ¶ 155.) And, "[a]s for the .eco IRP, it is clear that the Reconsideration Request [14-46] was misconceived and was little more than an attempt to appeal the CPE decision. Again, therefore, the .eco IRP was always going to fail." (Final Declaration at ¶ 156.)

It should be noted that, while ruling in ICANN (Internet Corporation for Assigned Names and Numbers)'s favor and denying both IRPs, the Panel did make some observations and suggestions for the Board's consideration. In particular, while recognizing that the New gTLD (generic Top Level Domain) Program is near its end "and there is little or nothing that ICANN (Internet Corporation for Assigned Names and Numbers) can do now," the Panel suggested that a system be

put in place to ensure that CPE evaluations are conducted "on a consistent and predictable basis by different individual evaluators," and to ensure that ICANN (Internet Corporation for Assigned Names and Numbers)'s core values "flow through... to entities such as the EIU." (*Id.* at ¶¶ 147, 150.) The Panel also noted that ICANN (Internet Corporation for Assigned Names and Numbers) staff could have better explained its determination that certain requested documents were subject to the Defined Conditions for Nondisclosure in the Documentary Information Disclosure Policy (DIDP). (*Id.* at ¶ 110.) The Panel also suggested that "to the extent possible, and compatible with the circumstances and the objects to be achieved by ICANN (Internet Corporation for Assigned Names and Numbers)" in taking a particular decision (*Id.* at ¶ 145), the Board affirm that ICANN (Internet Corporation for Assigned Names and Numbers) carries out its activities "through open and transparent processes" pursuant to Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation. In addition, the Panel encouraged ICANN (Internet Corporation for Assigned Names and Numbers) to respond to a letter from the .HOTEL Claimants regarding the portal configuration issue as soon as feasible. (*Id.* at ¶ 134.)

The Board acknowledges the foregoing suggestions by the Panel. The Board has considered the suggestions and notes that it will ensure that the New gTLD (generic Top Level Domain) Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third-party provider evaluations. The Board also affirms that ICANN (Internet Corporation for Assigned Names and Numbers), as appropriate, will continue to ensure that its activities are conducted through open and transparent processes in conformance with Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation. The Board also encourages ICANN (Internet Corporation for Assigned Names and Numbers) staff to be as specific and detailed as possible in responding to DIDP requests, particularly when determining that requested documents will not be disclosed. In this regard, the Board notes that the Cross

Community Working Group (CCWG) on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability has identified that reviewing and enhancing the DIDP is one of the topics that it will address in Workstream 2. This work, which will be further framed starting at the ICANN55 meeting in Marrakech, is likely to include review of the scope of the DIDP Defined Conditions for Nondisclosure.

Finally, with respect to the Panel's recommendation that ICANN (Internet Corporation for Assigned Names and Numbers) respond to a letter from the .HOTEL Claimants regarding the portal configuration issue as soon as feasible, the Board notes that staff has informed the Board that it is nearing the end of its investigation of this matter. The Board is recently in receipt of two letters from Claimants regarding the portal configuration issue, dated 1 March 2016 and 8 March 2016, respectively. Staff has provided the Board with an update of its investigation into the issues set forth in the letters. The Board has directed the President and CEO, or his designee(s) to complete its investigation into this matter as soon as feasible. The Board notes that out of a matter of equity and fairness, the investigation should include the opportunity for all relevant parties to be heard. The Board expects the staff will prepare a report for the Board following the completion of its investigation, at which time the Board will consider the .HOTEL Claimants request for cancellation of HOTEL Top-Level Domain S.a.r.l.'s application for .HOTEL.

As required, the Board has considered the Final Declaration. As this Board has previously indicated, the Board takes very seriously the results of one of ICANN (Internet Corporation for Assigned Names and Numbers)'s long-standing accountability mechanisms. Accordingly, and for the reasons set forth in this Resolution and Rationale, the Board has accepted the Panel's Final Declaration as indicated above. Adopting the Panel's Final Declaration will have no direct financial impact on the organization and no direct impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

R-15

RESPONDENT'S EXHIBIT

New gTLD (generic Top Level Domain) Applicant and GDD Portal Update

This page is available in:

English |

العربية (<http://www.icann.org/news/announcement-2015-03-01-ar>) |

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Português (<http://www.icann.org/news/announcement-2015-03-01-pt>)

in f    

ICANN (Internet Corporation for Assigned Names and Numbers) temporarily took its New gTLD (generic Top Level Domain) Applicant and GDD portals offline on 27 February 2015 to investigate a reported security issue. Access to, and data in, these portals is limited to New gTLD (generic Top Level Domain) Program applicants and New gTLD (generic Top Level Domain) registry operators. Under certain circumstances an authenticated portal user could potentially view data of, or related to, other users.

There is currently no indication that this issue resulted in any actual exposure of data to an unauthorized party. There is also no indication that anyone other than those authorized to access the portal did so.

We are working to implement a solution to the reported issue and bring the portals back online. We are also continuing to investigate whether any data was exposed to an unauthorized user.

As more information becomes available we will report on our findings and publish updates at www.icann.org/news/ ([/news](http://www.icann.org/news/)) and <http://newgtlds.icann.org/en/announcements-and-media/latest> (<http://newgtlds.icann.org/en/announcements-and-media/latest>).

More Announcements

[ICANN66 Fellowship Program Post-Meeting Report Now Available \(/news/announcement-2020-01-28-en\)](#)

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Launches Dr. Tarek Kamel Award and Opens Nomination for ICANN \(Internet Corporation for Assigned Names and Numbers\) Community Excellence Award \(/news/announcement-2-2020-01-27-en\)](#)

[Register Now to Participate in the 7th Middle East DNS \(Domain Name System\) Forum \(/news/announcement-2020-01-27-en\)](#)

[Second Security \(Security – Security, Stability and Resiliency \(SSR\)\), Stability \(Security, Stability and Resiliency\), and Resiliency \(Security Stability & Resiliency \(SSR\)\) \(SSR2\) Review Team Draft Report \(/news/announcement-2020-01-24-en\)](#)

R-16

RESPONDENT'S EXHIBIT

New gTLD Applicant and GDD Portal Issue: Questions & Answers / Information for RySG

INFORMATION REQUESTED BY THE REGISTRY STAKEHOLDER GROUP

(Discussed on 10 June 2015 at 20:00 UTC Registry Stakeholder Call)

Reporting and Communications

Q1: When did ICANN become aware of the incidents?

A1: As [previously reported](#), a user notified us on 27 February.

Q2: How did ICANN become aware of the incidents?

A2: As [previously reported](#), a user notified us on 27 February.

Q3: Did ICANN report the incidents to any government or law enforcement agency? If so, when and to whom?

A3: Not at this time. However, ICANN reserves all of its rights with respect to the portal issue. By reserving its rights, ICANN is leaving the door open to various actions that may be taken with respect to any unauthorized access.

Q4: Why did ICANN take so long to inform the affected Applicants and Registry Operators?

A4: ICANN used the time period between 30 April 2015 and 27 May 2015 to afford users whose login credentials were used to view data belonging to other portal users ample time to provide a fulsome account of their activities and to provide certifications. We also used this time to verify that access was authorized in certain instances.

Q5: ICANN correspondence to Applicants and Registry Operators was marked “CONFIDENTIAL”. Yet, in some cases, letters were sent to outdated contact person or entity. Why? What was ICANN’s intent?

A5: The letters were marked “confidential” as they were communications from ICANN to the primary contact for the applicant or registry operator. Primary contact information is maintained by the applicants and contracted parties. This is the information we used to identify the primary contact.

Q6: Would ICANN provide a detailed chronology (including (a),(b),(c), (d) above) for all major security incidents or technical glitches that have affected TAS, CZDS, RADAR and any other ICANN core systems and “lessons learned” from those incidents?

A6: Please refer to the following links for information on the chronology of recent events:

- TAS, April 2012:
 - <https://www.icann.org/news/announcement-2012-04-12-en>.
 - <http://newgtlds.icann.org/en/applicants/tas/interruption-fags>.

- CZDS, April 2014:
 - <https://www.icann.org/resources/pages/czds-2014-03-03-en> (See “CZDS News.”)
- RADAR, May 2014:
 - <https://www.icann.org/news/announcement-2-2014-05-28-en>.
- Spearphishing attack, November 2014:
 - <https://www.icann.org/news/announcement-2-2014-12-16-en>.

Read more information on current and planned IT activities at <https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>.

Product Testing and Launch and Management Oversight

Q7: What were the acceptance testing procedures for the two portals (the New gTLD Applicant and the GDD Portal customized from Salesforce software) before they were rolled out?

A7: *Applicant Portal:* This was developed by a third-party. At that time ICANN did not have a QA team, so all unit, functional and integration testing was conducted by the contractor. The users conducted functional user-acceptance tests in conjunction with the partner prior to rollout. ICANN IT was not directly involved in any development or testing; it supported data migration only. Data validity was confirmed by ICANN IT.

GDD Portal: This was developed by a third-party leveraging the existing framework from the Applicant Portal. At that stage, ICANN did have a QA team that was transitioning from the third-party to ICANN staff. Testing at that time was focused on functionality and data-integrity only. Full user-acceptance testing was performed by ICANN users prior to roll-out.

Q8: Who (ICANN staff/executive) signed off before they went live?

A8: ICANN staff, including members of the Global Domains Division executive team, approved the launch of the portals.

Q9: How does ICANN Management ensure proper oversight over its systems and data security obligations?

A9: ICANN has procedures in place and is accelerating its efforts to harden its systems. For more specific information, please refer to the blog published at <https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>.

Q10: For future IT related RFPs, would ICANN consider a public comment period or other mechanisms to give the community an opportunity to provide comment or input to ensure their design and functionality are cost-effective and meet the need of users.

A10: ICANN follows its published Procurement Guidelines, which are intended to ensure that products and services are purchased with the correct specifications, at the appropriate level of quality and for the appropriate value. For more information on the methodology and related information including Request for Proposals, please refer to ICANN’s procurement guidelines published at <https://www.icann.org/en/system/files/files/procurement-guidelines-21feb10-en.pdf>.

ICANN Investigation and Findings

Q11: How can ICANN be sure that other systems were unaffected, and that only specific data records were accessed? Are findings to date based upon audit logs or other WORM data recording mechanisms?

A11: The systems that house this application are isolated physically and logically from other systems. There is no shared network, data or authentication with any other system. For additional information, please refer to the 27 May 2015 announcement published at <https://www.icann.org/news/announcement-2015-05-27-en>.

Q12: Would ICANN provide a more detailed description of the methodology used by those who analyzed the data?

A12: At this point we are not providing this level of detail.

ICANN Enterprise Risk Management and Data/ Systems Security

Q13: When was the last enterprise risk audit carried out on ICANN' IT systems before the incident?

A13: An audit was conducted in June-July 2014 by a third-party. This resulted in a 16-project roadmap for FY15 and part of FY16. Our most recent annual audit was conducted by a third-party this in May-June 2015. For more information, please visit:

- RFP, 23 April 2014 "Information Security Assessment":
<https://www.icann.org/resources/pages/governance/rfps-en>.
- Blog post, 1 July 2015:
<https://www.icann.org/news/blog/ciio-perspectives-volume-3>.
- Blog post, 9 June 2015:
<https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>.

Q14: Did any audits prior or after the incident identify security vulnerability of these two portals? If so, what has been done to mitigate? When was the last enterprise risk audit carried out on ICANN' IT systems before the incident?

A14: As noted above, ICANN engaged a third-party to assess its systems in June-July 2014. We took the individual recommendations and sorted them in many ways. This resulted in a 16-project roadmap for FY15 and part of FY16. Our most recent audit by a third-party was conducted in May-June 2015.

On a concurrent but separate track, ICANN recently engaged the services of an expert-knowledge firm to review our Salesforce.com implementation. The review highlighted several areas where we could harden our platform. We have since released multiple software patches to address these issues. We expect to complete all work no later than the end of calendar year 2015. For more information, please visit:

- Blog post, 1 July 2015:
<https://www.icann.org/news/blog/ciio-perspectives-volume-3>.
- Blog post, 9 June 2015:
<https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>.

Q15: Was the decision to outsource IT services to one vendor (<https://www.icann.org/resources/board-material/resolutions-2015-04-26-en#2.h>) resulted from a recommendation by an enterprise risk audit?

A15: No. It was a business decision to reduce complexity and enhance management control. We consolidated services from eleven different vendors into a single vendor.

- “IT Services Outsourcing RFP” issued on 11 August 2014:
<https://www.icann.org/resources/pages/governance/rfps-en>.

Q16: What measures and processes have been put in place as safeguards against unauthorized access to or use of personal data or sensitive business information and to ensure coordination between internal staff/functions and outsourced IT service providers with clear roles and responsibilities? How will they be reviewed and updated to stay “ahead of the game”?

A16: ICANN sincerely regrets this incident. We continue to deploy security-based updates on a regular basis. Enhancing the security controls and privacy of the ICANN portals is part of a broader, multi-year effort to harden all of ICANN’s digital services. For additional information, read the blog post published at <https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>.

Q17: How does ICANN plan to continually monitor the integrity of its systems going forward?

A17: As indicated above, we continue to deploy security-based updates on a regular basis. Enhancing the security controls and privacy of the ICANN portals is part of a broader, multi-year effort to harden all of ICANN’s digital services. For additional information, read the blog post published at <https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>.

Q18: What remedies might be available to affected Applicants or Registry Operators?

A18: Our ultimate goal is to provide the ICANN community with flawless services. We have started work to achieve this goal by baselining everything we have – services, platforms, security, people, processes etc. ICANN is committed to improving our performance continually, and to reporting on our progress periodically. An example of this is the blog post published at <https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>.

NEW GTLD APPLICANT AND GDD PORTAL ISSUE QUESTIONS & ANSWERS ([Published 2 March 2015](#))

Q1: What is the nature of this issue?

A1: An issue was reported that could potentially affect users of the New gTLD Applicant and GDD (Global Domains Division) portals. Under certain circumstances, an authenticated portal user could potentially view data of, or related to, other users. Access to, and data in, these portals is limited to New gTLD Program applicants and New gTLD registry operators.

Q2: How was the issue addressed?

A2: The configuration was updated to address the reported issue.

Q3: Was any data exposed to an unauthorized party?

A3: There is currently no indication that this issue resulted in any actual exposure of data to an unauthorized party. We are continuing to investigate.

Q4: Did an unauthorized party access the portals?

A4: There is no indication, at this time, that anyone other than those authorized to access the portals did so.

Q5: What type of information is in these portals?

A5: These portals contain information from applicants to ICANN's New gTLD Program and New gTLD registry operators such as attachments to new gTLD applications or other forms submitted by applicants and/or registry operators.

Q6: What are the New gTLD Applicant and GDD portals?

A6: They make up a system that can be accessed only by New gTLD Program applicants and ICANN's New gTLD registry operators. It is not a system that is open and available to the general public. Authenticated applicants use the portals to carry out evaluation and contracting processes.

Q7. Why did you take the portals offline?

A7: An authorized user notified us about the issue on 27 February 2015. Upon notification, the team confirmed the reported issue and took the portals offline to address the issue.

Q8: What is the current status of the system?

A8: Access to the New gTLD Applicant and GDD portals was restored on 2 March 2015.

Q9: When will you give us additional information?

A9: We will provide updates as the investigation continues.

Q10: What if I have further questions?

A10: If you have further questions, please send an email to customerservice@icann.org. Updates will be published at <https://www.icann.org/news> and <http://newgtlds.icann.org/en/announcements-and-media/latest>.

R-17

RESPONDENT'S EXHIBIT

Announcement: New gTLD (generic Top Level Domain) Applicant and GDD Portals Update

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Português (<http://www.icann.org/news/announcement-2015-05-27-pt>)



The Internet Corporation for Assigned Names and Numbers (ICANN (Internet Corporation for Assigned Names and Numbers)) today provided an update on its investigation into a data exposure issue in the New gTLD (generic Top Level Domain) Applicant and GDD (Global Domains Division) portals, first reported on [1 March 2015 \(/news/announcement-2015-03-01-en\)](/news/announcement-2015-03-01-en).

In its 30 April [announcement \(/news/announcement-2015-04-30-en\)](/news/announcement-2015-04-30-en), ICANN (Internet Corporation for Assigned Names and Numbers) noted its intention to disclose to affected users the identity of any user(s) that viewed their information without authorization by 27 May 2015. This activity has been completed. Specifically, ICANN (Internet Corporation for Assigned Names and Numbers):

- Notified the users whose credentials were used to access information that did not appear to belong to them;
- Requested these users provide an explanation of their activity; and
- Requested these users certify that they will delete or destroy all information obtained and that they have not used and will not use the information or convey it to any third party.

In addition, ICANN (Internet Corporation for Assigned Names and Numbers) has provided the affected parties with the name(s) of the user(s) whose credentials were used to view their information without

their authorization or by individuals that were not officially designated by their organization to access certain data.

Investigation Results

Based on the information that ICANN (Internet Corporation for Assigned Names and Numbers) has collected to date our investigation leads us to believe that over 60 searches, resulting in the unauthorized access of more than 200 records, were conducted using a limited set of user credentials.

The remaining user credentials, representing the majority of users who viewed data, were either used to:

- Access information pertaining to another user through mere inadvertence and the users do not appear to have acted intentionally to obtain such information. These users have all confirmed that they either did not use or were not aware of having access to the information. Also, they have all confirmed that they will not use any such information for any purpose or convey it to any third party; or
- Access information of an organization with which they were affiliated. At the time of the access, they may not have been designated by that organization as an authorized user to access the information.

We will continue to provide information and respond to questions from affected parties as we continue our investigation.

Additional Information

The New gTLD (generic Top Level Domain) Applicant and GDD portals contain information from applicants to ICANN (Internet Corporation for Assigned Names and Numbers)'s New gTLD (generic Top Level Domain) Program and new gTLD (generic Top Level Domain) registry operators. No other systems were affected by this issue.

ICANN (Internet Corporation for Assigned Names and Numbers) sincerely regrets this incident. We continue to deploy security-based updates on a regular basis. Enhancing the security controls and privacy

of the ICANN (Internet Corporation for Assigned Names and Numbers) portals is part of a broader, multi-year effort to harden all of ICANN (Internet Corporation for Assigned Names and Numbers)'s digital services.

About ICANN (Internet Corporation for Assigned Names and Numbers)

ICANN (Internet Corporation for Assigned Names and Numbers)'s mission is to ensure a stable, secure and unified global Internet. To reach another person on the Internet you have to type an address into your computer - a name or a number. That address has to be unique so computers know where to find each other. ICANN (Internet Corporation for Assigned Names and Numbers) coordinates these unique identifiers across the world. Without that coordination we wouldn't have one global Internet. ICANN (Internet Corporation for Assigned Names and Numbers) was formed in 1998. It is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers. ICANN (Internet Corporation for Assigned Names and Numbers) doesn't control content on the Internet. It cannot stop spam and it doesn't deal with access to the Internet. But through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet. For more information please visit: [www.icann.org/\(\)](http://www.icann.org/).

More Announcements

[ICANN66 Fellowship Program Post-Meeting Report Now Available \(/news/announcement-2020-01-28-en\)](#)

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Launches Dr. Tarek Kamel Award and Opens Nomination for ICANN \(Internet Corporation for Assigned Names and Numbers\) Community Excellence Award \(/news/announcement-2-2020-01-27-en\)](#)

[Register Now to Participate in the 7th Middle East DNS \(Domain Name System\) Forum \(/news/announcement-2020-01-27-en\)](#)

[Second Security \(Security – Security, Stability and Resiliency \(SSR\)\), Stability \(Security, Stability and Resiliency\), and Resiliency \(Security Stability & Resiliency \(SSR\)\) \(SSR2\) Review Team Draft Report \(/news/announcement-2020-01-24-en\)](#)

R-18

RESPONDENT'S EXHIBIT

Response to Documentary Information Disclosure Policy Request

To: Flip Petillion

Date: 5 July 2015

Re: Request No. 20150605-1

Thank you for your request dated 5 June 2015 (the “Request”), which was submitted pursuant to the Internet Corporation for Assigned Names and Numbers’ (ICANN) Documentary Information Disclosure Policy (DIDP) on behalf of Travel Reservations SRL (formerly, Despegar Online SRL), Donuts, Inc. (and its subsidiary applicant Spring McCook, LLC), Minds + Machines Group Limited (formerly, Top Level Domain Holdings Limited) and Radix FZC (and its subsidiary applicant DotHotel Inc.). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of the following information regarding the data exposure issue in the New gTLD Applicant and GDD (Global Domains Division) portals first reported on 1 March 2015:

1. What was the precise nature of the security issue?
2. When did the security issue occur?
3. How could the security issue occur?
4. How could the security issue have been avoided?
5. How was the security issue discovered?
6. Who raised the security issue?
7. How did the security issue come to ICANN’s attention?
8. What actions did ICANN take after being informed of the security issue?
9. How does ICANN enforce the portal’s terms and conditions in case of obvious breach?
10. What are the concrete actions that ICANN took vis-à-vis D. Krischenowski?

You also requested a copy of the terms and conditions to which D. Krischenowski agreed and the correspondence with D. Krischenowski and his legal counsel.

Response

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. Simple requests for non-documentary information are not appropriate DIDP requests. Nevertheless, the majority of your questions (Items 1, 2, 3, 5, 6, 7, and 8) have been addressed by the public announcements and Q&A published on the New gTLD microsite and have been readdressed below. (See <http://newgtlds.icann.org/en/announcements-and-media/announcement-01mar15-en>, <http://newgtlds.icann.org/en/announcements-and-media/announcement-02mar15-en>, <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-02mar15-en>, <http://newgtlds.icann.org/en/announcements-and-media/announcement-30apr15-en>, and <http://newgtlds.icann.org/en/announcements-and-media/announcement-27may15-en>.)

On 27 February 2015, ICANN received notice of a potential security issue affecting the New gTLD Applicant and GDD (Global Domains Division) portals. Upon notification, ICANN confirmed the reported issue and immediately took the portals offline to address the issue. (See <https://www.icann.org/news/announcement-2015-03-01-en>.) Under certain circumstances, an authenticated portal user could potentially view data of, or related to, other users. Access to, and data in, these portals is limited to New gTLD Program applicants and New gTLD registry operators. These portals contain information from applicants to ICANN's New gTLD Program and new gTLD registry operators. No other systems were affected. The portals' configuration was updated to address the issue and the portals were restored on 2 March 2015. (See <https://www.icann.org/news/announcement-3-2015-03-02-en>.)

ICANN conducted an in depth forensic investigation into whether any data was exposed to an unauthorized user. Two consulting firms reviewed and analyzed all log data going back to the activation of the New gTLD Applicant portal on 17 April 2013 and the activation of the GDD portal on 17 March 2014. The results of the investigation indicate that the portal users were able to view data that was not their own. Based on the investigation to date, the unauthorized access resulted from advanced searches conducted using the login credentials of 17 users, which exposed 330 advanced search result records, pertaining to 96 applicants and 21 registry operators. These records may have included attachment(s). These advanced searches occurred during 36 user sessions out of a total of nearly 595,000 user sessions since April 2013. Based on the information that ICANN has collected to date, our investigation leads us to believe that over 60 searches, resulting in the unauthorized access of more than 200 records, were conducted using a limited set of user credentials. The remaining user credentials, representing the majority of users who viewed data, were either used to:

- Access information pertaining to another user through mere inadvertence and the users do not appear to have acted intentionally to obtain such information. These users have all confirmed that they either did not use or were not aware of having access to the information. Also, they have all confirmed that they will not use any such information for any purpose or convey it to any third party; or

- Access information of an organization with which they were affiliated. At the time of the access, they may not have been designated by that organization as an authorized user to access the information.

(See <https://www.icann.org/news/announcement-2015-05-27-en>.)

Following the conclusion of the first phase of its forensics investigation, ICANN contacted the users who appear to have viewed information that was not their own and required that they provide an explanation of their activity. ICANN also asked them to certify that they will delete or destroy all information obtained and to certify that they have not and will not use the data or convey it to any third party. (See <https://www.icann.org/news/announcement-2015-04-30-en>.) ICANN also informed the parties whose data was viewed and provided them with information regarding the date(s) and time(s) of access and what portion(s) of their data was seen. (See *id.*)

On 27 May 2015, ICANN additionally provided the affected parties with the name(s) of the user(s) whose credentials were used to view their information without their authorization or by individuals that were not officially designated by their organization to access certain data and any explanation(s) and/or certification(s) that the user(s) provided to ICANN regarding the unauthorized access. (See <https://www.icann.org/news/announcement-2015-05-27-en>.)

With respect to Items 4, 9 and 10, these questions seek information that are not only beyond the scope of DIDP requests as noted above, but are also subject to the following DIDP Defined Conditions of Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Confidential business information and/or internal policies and procedures.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

With respect to your requests for the terms and conditions to which D. Krischenowski agreed, all New gTLD Applicant portal users are subject to the TLD Application System Terms of Use, available at <http://newgtlds.icann.org/en/applicants/tas/terms>, and the TLD Terms and Conditions, available at <http://newgtlds.icann.org/en/applicants/agb/terms>. All GDD portal users are subject to the attached Authorized User Terms and Conditions that appear when the user logs in to the portal for the first time.

With respect to your request for correspondence with D. Krischenowski and his legal counsel, this request calls for documents that are subject to the following DIDP Defined Conditions of Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

About DIDP

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

ICANN GDD Portal

AUTHORIZED USER TERMS AND CONDITIONS

Portal Account

To access this portal and the services it provides (the “Portal”), a point of contact will be designated as the “Authorized User” and provided login credentials (user name and password). The Authorized User will be the individual previously designated by you as your point of contact, and ICANN will use that information to create the profile and login credentials for the Authorized User. Notwithstanding the foregoing, the entity for which the Authorized User represents is and remains responsible for all activity that takes place within the Portal. If at any time or for any reason it is desired or required to change the Authorized User, it is your responsibility to promptly notify ICANN of the change. You are responsible for keeping your account information and password confidential and are responsible for all activity that occurs under your Portal account. The Portal requires Authorized Users to sign in each time, and to acknowledge they accept these “Authorized User Terms and Conditions” (“Terms and Conditions”). On the first instance of access for any individual Authorized User (i.e., an individual under unique login credentials), the Authorized User will be required to read, acknowledge and expressly accept these Terms and Conditions. This information will be tracked. In the event the Terms and Conditions change, or in the event a new Authorized User accesses the Portal, acceptance of the Terms and Conditions will again be required. Failure to do so will prevent Authorized User access to the Portal.

Authorized User Provided Content

Authorized Users may post, upload and/or otherwise provide information, data or content (“User Content”) through the Portal. You are solely responsible for any User Content you provide and for any consequences thereof. You represent that you have the right to post any User Content which you post to the Portal, and that such User Content, or its use by us as contemplated, does not violate these terms and conditions, applicable law, or the intellectual property, publicity or privacy rights of others and is provided only with express written consent from any individual or entity of which the information relates. Except to the extent ICANN may review User Context for thoroughness and/or completeness, ICANN does not otherwise monitor, review, or edit User Content except to the extent expressly requested by you. ICANN reserves the right to remove or disable access to any User Content for any or no reason, including, but not limited to, User Content that, in ICANN’s sole discretion, violates these terms and conditions. ICANN may take these actions without prior notification to you. Removal or disabling of access to User Content shall be at our sole discretion, and we do not promise to remove or disable access to any specific User Content.

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I have read this Agreement and agree to the terms and conditions.

Cancel

R-19

RESPONDENT'S EXHIBIT



The Internet Corporation for Assigned Names and Numbers

Confidential

VIA E-MAIL (GPERRONE@DESPEGAR.COM)

23 February 2016

Guillermo Luis Perrone
General Counsel
Decolar.com, Inc.

Re: New gTLD Applicant Portal

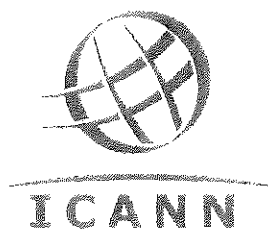
I am responding to your letter to me of 29 July 2015. As an initial matter, I apologize for the delayed response. As you know, ICANN responded to the 5 June 2015 Documentary Information Disclosure Policy Request submitted by Travel Reservations (formerly, Despegar Online SRL), Donuts, Inc., Famous Four Media Limited, Fegistry LLC, Minds+Machines Group Limited, and Fadix FZC (collectively the Requesters) which raised similar concerns that you raised in your 29 July 2015 letter; the Requesters did not seek reconsideration of that response. ICANN completed its investigation of the portal configuration issue on 19 November 2015, and is still considering the issues raised in your letter. In order for ICANN to do so, it would be helpful to have some further information from your client regarding the issues raised in your letter:

First, you state in your letter that Mr. Krischenowski has “readily apparent ties” to HOTEL Top-Level-Domain s.a.r.l. (“Hotel TLD”), a competing applicant for .HOTEL. This statement is significant to the ultimate question of how to proceed, yet Mr. Krischenowski is not one of the listed contacts in Hotel TLD’s application for .HOTEL (“Application”). You provide no evidence that Mr. Krischenowski is affiliated with Hotel TLD’s Application, other than noting that Mr. Krischenowski and the listed contacts in Hotel TLD’s Application collaborated together with respect to other new gTLD applications. It would be helpful if you could forward whatever evidence you have demonstrating the connection between Mr. Krischenowski and Hotel TLD.

Second, please forward any information demonstrating that your client has been competitively disadvantaged by the accessing of its confidential information. It does not appear that access to your client’s information could have had any effect on the Community Priority Evaluation (“CPE”) panel’s determination that Hotel TLD’s Application met the requirements for community priority. The CPE for Hotel TLD’s Application began on 19 February 2014 and was completed on 12 June 2014. ICANN’s

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Geneva Brussels - Silicon Valley - Washington

<http://icann.org>



investigation indicates that your client's application was accessed on 27 March 2014, after the CPE had already commenced. Hotel TLD did not submit a change request during CPE, nor did it submit any documentation that could have been considered by the CPE panel.

I thank you for your assistance and apologize again for our delayed response.

Regards,

A handwritten signature in cursive script, appearing to read "Akram Atallah".

Akram Atallah
President, Global Domains Division

R-20

RESPONDENT'S EXHIBIT

Flip Petillion
fpetillion@crowell.com
Personal Contact Information Redacted

8 March 2016

Members of the ICANN Board, and
Mr Akram Atallah,
President, Global Domains Division

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

UNITED STATES OF AMERICA

By e-mail

Dear Members of the ICANN Board of Directors and Mr. Atallah,

Re: .hotel data exposure issue

I am writing to you on behalf of Travel Reservations SRL ("TRS", formerly Despegar Online SRL), Famous Four Media Limited (and its subsidiary applicant dot Hotel Limited), Fegistry LLC, Minds+Machines Group Limited (formerly, Top Level Domain Holdings Limited), Donuts Inc. (and its subsidiary applicants Spring McCook, LLC and Little Birch, LLC), and Radix FZC (and its subsidiary applicant DotHotel Inc.).

My clients are all applicants for the .hotel and/or .eco gTLD and have expressed their concerns about the data exposure issue that occurred in the New gTLD Applicant and GDD portals. My clients expressed their concerns *inter alia* in a letter of 5 June 2015 and within the IRP proceedings in ICDR Case No. 01-15-002-8061 to which ICANN was a party. Unfortunately however, the Board has so far not addressed this issue.

In its Declaration of 11 February 2016, the IRP Panel denied my clients' requests. However, the IRP Panel considered that my clients had raised legitimate concerns that should be tackled by ICANN. With the present letter, I urge you to address my clients' concerns appropriately, with due respect for the Articles of Incorporation and Bylaws.

On 5 June 2015 my clients asked that there be full transparency and that ICANN adopt appropriate measures regarding the data exposure issue. On 11 February 2016 the IRP Panel ruled that “[t]he approach taken by the ICANN Board so far in relation to this issue does not, in the view of the Panel, comply with [Article III(1) of ICANN’s] Bylaw[s].”¹ According to the Panel, it was not clear if ICANN had properly investigated the allegation of association between HOTEL Top-Level-Domain s.a.r.l. (“HTLD”) and Mr. Dirk Krischenowski and, if it had, what conclusions ICANN had reached. The Panel added that ICANN is required to investigate the issue properly and to make public the fact of the investigation and the result thereof. The Panel added that appropriate action should have been taken by the date of the IRP Declaration, the failure of which could well amount to an inexcusable inaction by the Board.

At the hearing of 7 December 2015, counsel to ICANN, in the presence of senior ICANN staff and ICANN’s Deputy General Counsel, assured the panel that the issue was still under consideration by the ICANN Board.² However, although the Board was first contacted about this on 5 June 2015, there are no indications that the Board ever gave consideration to this matter, either before or after the 7 December hearing. My clients’ request was never put on the agenda of the Board, although there have been numerous Board meetings since.

In addition, it is apparent that ICANN has not investigated the issue properly. On 10 November 2015, ICANN asserted that there is no evidence to show that HTLD is closely linked with individuals who have misused, or who have permitted the misuse of, their user credentials.³ However, the affiliation between Mr. Dirk Krischenowski and HTLD is apparent from public information that is available on the ICANN website. As a matter of fact Mr. Dirk Krischenowski of HTLD represented HTLD in three string confusion objections against applications by Despegar Online SRL and Booking.com (Annexes 1 to 3). ICANN’s own evidence thus shows that Mr. Dirk Krischenowski is part of HTLD and that he has authority to represent HTLD. To paraphrase the IRP Panel⁴, ICANN’s argument – that the affiliation between Mr. Dirk Krischenowski and HTLD is unsupported – represents, at best, that ICANN’s investigations had not yet revealed this obvious link and, at worst, an attempt to mislead the IRP Panel about the Board’s intent to avoid dealing with what is clearly a serious and sensitive issue that relates to the integrity of the application process for the .hotel gTLD.

The integrity of the application process for the .hotel gTLD is at risk if ICANN allows HTLD’s application to proceed. Allowing HTLD’s application to proceed would go against everything that ICANN stands for. It would amount to an acquiescence in criminal acts that were committed with the obvious intent to obtain an unfair advantage over direct competitors. Such acquiescence would be contrary to ICANN’s obligations under its Articles of Incorporation and Bylaws, and to ICANN’s mandate to operate for the benefit of the Internet community as a whole by carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law, and through open and transparent processes that enable competition and open entry in Internet-related markets. When the background screening criteria for new gTLD applicants were introduced, ICANN affirmed the right to deny an otherwise qualified application, recognizing ICANN’s duty “to protect the public interest in the allocation of critical Internet resources”⁵. In this respect, ICANN made clear that “applications from any entity with or including any individual [who] has ever been convicted of any crime involving the use of computers [...] or

¹ ICDR Case No. 01-15-0002-8061, *Despegar Online SRL et al. v. ICANN*, Final Declaration, paras. 133-134.

² ICDR Case No. 01-15-0002-8061, *Despegar Online SRL et al. v. ICANN*, Final Declaration, para. 137.

³ ICDR Case No. 01-15-0002-8061, *Despegar Online SRL et al. v. ICANN*, ICANN’s Sur-Reply re .hotel of 10 November 2015, para. 25.

⁴ ICDR Case No. 01-15-0002-8061, *Despegar Online SRL et al. v. ICANN*, Final Declaration, para. 127.

⁵ gTLD Applicant Guidebook (v. 2012-06-04), Module 1-24.

the Internet to facilitate the commission of crimes” were going to be “automatically disqualified from the program”⁶.

In the case at hand, ICANN caught a representative of HTLD stealing trade secrets of competing applicants via the use of computers and the Internet. The situation is even more critical as the crime was committed with the obvious intent of obtaining sensitive business information concerning a competing applicant. It is clearly not in the public interest, and the public interest will not be adequately protected, if critical Internet resources are allocated to HTLD. Allocating the .hotel TLD to HTLD is not in accordance with any of the core values that should guide the decisions and actions of ICANN. It would go against ICANN's mandate to act in conformity with, *inter alia*, open and transparent processes that enable competition and open entry in Internet-related markets.

As a result, we see no other solution but for ICANN to cancel HTLD's application for .hotel, and to allow the other applications for .hotel to proceed.

*

In view of the above, I reiterate my clients' request that ICANN and its Board cancel the application of HTLD for .hotel at its meeting of 10 March 2016; failing this, I have instructions to bring this matter to the attention of an IRP panel.

This letter is not intended to be a complete statement of the elements of facts or law relevant to this matter and is sent without prejudice and reserving all rights.

Yours sincerely,



Flip Petillion

⁶ gTLD Applicant Guidebook (v. 2012-06-04), Module, 1-22.

Annexes:

Annex 1: SCO Expert Determination in ICDR Case No. 50-504-T-00237-13
(<https://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-3-1-1016-75482-en.pdf>)

Annex 2: SCO Expert Determination in ICDR Case No. 50-504-T-000211-13
(<https://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-3-1-1249-1940-en.pdf>)

Annex 3: SCO Expert Determination in ICDR Case No. 50-504-T-000212-13
(<https://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-3-1-1249-87712-en.pdf>)

R-21

RESPONDENT'S EXHIBIT

Flip Petillion
fpetillion@crowell.com
Personal Contact Information
Redacted

1 March 2016

Mr Akram Atallah,
President, Global Domains Division
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

UNITED STATES OF AMERICA

Cc: Members of the ICANN Board

By e-mail to Akram.Attalah@icann.org

Dear Mr. Atallah,

Re: Data exposure issue

I am writing to you on behalf of Travel Reservations SRL ("TRS", formerly Despegar Online SRL) in response to your letter of 23 February 2016 in which you request evidence that Mr. Dirk Krischenowski is affiliated with HOTEL Top-Level-Domain sàrl ("HTLD") and information demonstrating that TRS was disadvantaged by the accessing of its confidential information.

My client appreciates that you are now addressing the issue.

The answer to your first question, the evidence of affiliation between Mr. Dirk Krischenowski and HTLD, can be found in three string confusion objections initiated by HTLD against applications by Despegar Online SRL and Booking.com. In these cases, HTLD was represented by Mr. Dirk Krischenowski of HTLD (Annexes 1 to 3). The evidence shows that Mr. Dirk Krischenowski is part of HTLD and has authority to represent HTLD.

To answer your second question, TRS has been severely impacted by the unauthorized access of its confidential information, regardless of the CPE result. The unauthorized access of this information is a clear illegal appropriation of trade secrets. These trade secrets contain sensitive business information that is now held by HTLD. As you know, TRS applied for several hotel-related TLDs, including .hotel and .hoteles. HTLD is a competing applicant for .hotel. The fact that this competing applicant's representative repeatedly accessed confidential information on business plans, contingency planning, the estimated scale of the registry's technical operation, the technical infrastructure, etc. indicates that HTLD sought to obtain an unfair competitive advantage. If the .hotel TLD is delegated to HTLD, then TRS and HTLD would be competing in the same market of hotel-related TLDs. However, HTLD would have an unfair competitive

advantage because of its access to trade secrets it maliciously obtained. The damage resulting from such unfair competitive advantage can only be undone if HTLD is precluded from operating hotel-related TLDs.

*

I am confident that the above answers your questions and allows ICANN to take the only action that is appropriate given the circumstances, which is to cancel HTLD's application for .hotel.

Indeed, allowing for HTLD's application to proceed would go against everything that ICANN stands for. It would be the acquiescence in criminal acts that were committed with the obvious intent to obtain an unfair advantage over direct competitors. Such acquiescence would be contrary to ICANN's obligations under its Articles of Incorporation and Bylaws and to ICANN's mandate 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 through open and transparent processes that enable competition and open entry in Internet-related markets. When the background screening criteria for new gTLD applicants were introduced, ICANN affirmed the right to deny an otherwise qualified application, recognizing ICANN's duty "to protect the public interest in the allocation of critical Internet resources" (gTLD Applicant Guidebook (v. 2012-06-04), Module 1-24). In this respect, ICANN made clear that "applications from any entity with or including any individual [who] has ever been convicted of any crime involving the use of computers [...] or the Internet to facilitate the commission of crimes" were going to be "automatically disqualified from the program" (gTLD Applicant Guidebook (v. 2012-06-04), Module, 1-22).

In the case at hand, ICANN caught a representative of HTLD stealing trade secrets of competing applicants via the use of computers and the Internet. The situation is even more critical as the crime was committed with the obvious intent of obtaining sensitive business information of a competing applicant. It is clearly not in the public interest, and the public interest will not be protected, if critical Internet resources are allocated to HTLD. Allocating the .hotel TLD to HTLD is not in accord with any of the core values that should guide the decisions and actions of ICANN. It would go against ICANN's mandate to act in conformity with, inter alia, open and transparent processes that enable competition and open entry in Internet-related markets.

In this respect, I must admit that your letter has come somewhat as a surprise. There should be no need for applicants to remind ICANN about its core obligations.

My initial request – on behalf of several applicants concerned – for the ICANN Board to take appropriate action on HTLD's application dates back to 5 June 2015. TRS substantiated the request further on 29 July 2015. Now, seven months later, you write that you finally are considering the issue. I understand from your letter, and from the assurance that was given by counsel to ICANN at the hearing of 9 December 2015 in the IRP on the CPEs regarding .hotel and .eco, that ICANN has abandoned the position that the ICANN Board has no duty to act on the issue. At said hearing counsel to ICANN confirmed that the matter was under consideration by the Board. However, although you were contacted on 5 June 2015, there are no indications that the Board gave consideration to the matter, either before or after said hearing. Our request was never put on the agenda of the Board, although there have been numerous Board meetings since. The questions you now raise in your letter of 23 February 2016 further show that ICANN has done nothing to consider the issue.

As a matter of fact, your request for evidence that Mr. Dirk Krischenowski is affiliated with HTLD shows that ICANN has not done a proper investigation into the matter. Annexes 1 to 3, which show this affiliation, are part of ICANN's own file on HTLD. The fact that you ask TRS to provide ICANN with this information shows that ICANN has not done any investigation and that you are not in a position to publish any investigation results.

In addition, it is unclear how your request for information that TRS was disadvantaged by the fraudulent actions of Dirk Krischenowski has any bearing on the matter, and the reference you make to the CPE is somewhat disturbing. The fact that HTLD may not have used the sensitive and confidential business plans and information it had stolen with respect to the CPE is irrelevant. As explained above, the result of the CPE has no bearing on the fact that it is inappropriate to allocate a critical Internet resource to a party that has been cheating.

Moreover, the outcome of the CPE on HTLD's application has been severely criticized. In its IRP Declaration of 11 February 2016, the IRP Panel recognized that SRL's criticism on the inconsistent outcomes of the CPE had merit, and decided "*there needs to be a system in place that ensures that marks are allocated on a consistent and predictable basis by different individual evaluators.*" The CPE result on HTLD's application was inconsistent, and marks were allocated in an inconsistent and unpredictable fashion. Given the serious concerns expressed by the IRP Panel, the inconsistent and erroneous CPE result on HTLD's application should not be upheld. A recent intervention of the ICANN Board (Annex 4) shows that ICANN can take all steps necessary to address inconsistent and/or unreasonable results of a process that apparently was subject to due process. I fail to see why ICANN is not taking similar steps in a CPE that was void of due process and consistency.

In view of the above, I reiterate the request that ICANN and its Board cancel the application of HTLD for .hotel at its meeting of 10 March 2016, failure of which I have the instruction to bring this matter to the attention of an IRP panel, in which case this correspondence will be made public without further notice.

This letter is not intended to be a complete statement of the elements of facts or law relevant to this matter and is sent without prejudice and reserving all rights.

Yours sincerely,



Flip Petillion

R-22

RESPONDENT'S EXHIBIT

Approved Board Resolutions | Special Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

This page is available in:

English |

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17 Sep 2016

1. **Main Agenda:**

- a. **President and CEO Review of New gTLD (generic Top Level Domain) Community Priority Evaluation Report Procedures**

Rationale for Resolution 2016.09.17.01

1. Main Agenda:

- a. **President and CEO Review of New gTLD (generic Top Level Domain) Community Priority Evaluation Report Procedures**

Whereas, the Board has discussed various aspects of the Community Priority Evaluation (CPE) process, including some issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry LLC.

Whereas, the Board would like to have some additional information related to how ICANN (Internet Corporation for Assigned Names and Numbers) staff members interact with the CPE provider, and in particular with respect to the CPE provider's CPE reports.

Resolved (2016.09.17.01), the Board hereby directs the President and CEO, or his designee(s), to undertake an independent review of the process by which ICANN (Internet Corporation for Assigned Names and Numbers) staff interacted with the CPE provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider.

Rationale for Resolution 2016.09.17.01

Community Priority Evaluation (CPE) is a method to resolve string contention for New gTLD (generic Top Level Domain) applications. It occurs if a community application is both in contention and elects to pursue CPE. The evaluation is an independent analysis conducted by a panel from the Economist Intelligence Unit (EIU). As part of its process, the CPE provider reviews and scores a community applicant that has elected CPE against the following four criteria: Community Establishment; Nexus between Proposed String and Community; Registration Policies, and Community Endorsement. An application must score at least 14 points to prevail in a community priority evaluation.

At various points in the implementation of the New gTLD (generic Top Level Domain) Program, the Board (and the Board New gTLD (generic Top Level Domain) Program Committee) have discussed various aspects of CPE. Recently, the Board has discussed some issues with the CPE process, including certain issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry LLC. The Board is taking action at this time to direct the President and CEO, or his designee(s), to undertake a review of the process by

which ICANN (Internet Corporation for Assigned Names and Numbers) staff interacts with the CPE provider in issuing its CPE reports.

The review should include an overall evaluation of staff's interaction with the CPE provider, as well as any interaction staff may have with respect to the CPE provider preparing its CPE reports. The Board's action to initiate this review is intended to have a positive impact on the community as it will help to provide greater transparency into the CPE evaluation process. Additionally, by undertaking additional due diligence in the administration of the CPE process, the Board intends this review to help gather additional facts and information that may be helpful in addressing uncertainty about staff interaction with the CPE provider.

As part of its deliberations, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- New gTLD (generic Top Level Domain) Applicant Guidebook
(<https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>) [PDF, 5.9 MB]
- Final Community Priority Evaluation Guidelines
(<https://newgtlds.icann.org/en/applicants/cpe/guidelines-16aug13-en.pdf>) [PDF, 803 KB]
- Community Priority Evaluation (CPE) Panel Process Document
(<https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>) [PDF, 314 KB]
- Dot Registry v. ICANN (Internet Corporation for Assigned Names and Numbers) Independent Review Process Final Declaration (/resources/pages/dot-registry-v-icann-2014-09-25-en)

There may be some minor fiscal impact depending on the method of review that the President and CEO chooses to undertake, but none that would be outside of the current budget for administering the New gTLD (generic Top Level Domain) Program.

Initiating a review of the process by which ICANN (Internet Corporation for Assigned Names and Numbers) staff interacts with the CPE provider is not anticipated to have any impact on the security, stability or resiliency of the DNS (Domain Name System).

This is an Organizational Administrative Function that does not require public comment.

Published on 20 September 2016

R-23

RESPONDENT'S EXHIBIT

Minutes | Board Governance Committee (BGC) Meeting

18 Oct 2016

BGC Attendees: Rinalia Abdul Rahim, Cherine Chalaby, Chris Disspain (Chair), and Bruce Tonkin

BGC Member Apologies: Erika Mann, Mike Silber, and Suzanne Woolf

Other Board member Attendees: Steve Crocker, and Göran Marby

ICANN (Internet Corporation for Assigned Names and Numbers)

Executive and Staff Attendees: Akram Atallah (President, Global Domains Division), Michelle Bright (Board Operations Content Manager), John Jeffrey (General Counsel and Secretary), Melissa King (VP, Board Operations), Vinciane Koenigsfeld (Board Operations Content Manager), Wendy Profit (Board Operations Specialist), Amy Stathos (Deputy General Counsel), and Christine Willett (VP of gTLD (generic Top Level Domain) Operations)

The following is a summary of discussions, actions taken, and actions identified:

1. Consideration of Presentation Request Regarding Reconsideration Request 16-11 – At the BGC’s request, it was provided an overview of Reconsideration Request 16-11 (Request 16-11), which seeks reconsideration of Board Resolutions 2016.08.09.14 – 2016.08.0-9.15 (determining that cancellation of Hotel Top-Level Domain S.a.r.l’s (HTLD’s) application for .HOTEL was not warranted, and directing that HTLD’s application for .HOTEL move forward). Request 16-11 also raises issues relating to alleged discrepancies between the Dot Registry IRP Panel Declaration and the Despegar (.HOTEL) IRP Panel Declaration. The BGC discussed that the Requesters have asked for the opportunity to make a presentation to the BGC regarding the Board Resolutions at issue in Request

16-11. The BGC noted that previous presentations allowed related to the New gTLD (generic Top Level Domain) Program have been presented by applicants that have failed to prevail in Community Priority Evaluation (CPE) and focused on the CPE report at issue. The BGC also discussed setting parameters and expectations regarding such presentations, both for the presenters and the BGC. The BGC discussed the request and agreed to allow the Requesters to make a presentation to the BGC regarding Request 16-11. The BGC asked that the Requesters be notified that the BGC has accepted their presentation request and explain that the presentation should be limited to the claims set forth in Request 16-11 and the reconsideration criteria. The BGC also asked for an overview of Request 16-11 and BGC response options in advance of the presentation, so that the BGC is able to review the materials in advance and ask any necessary questions during the presentation.

▪ Actions:

- Notify the Requesters that the BGC has accepted their presentation request and explain that the presentation should be limited to the claims set forth in Request 16-11 and the reconsideration criteria.
- Provide the BGC with overview of Request 16-11 and BGC response options in advance of the presentation.

2. Next Steps Regarding Review of CPE Results (.GAY, Dot Registry Applications, Reconsideration Request Standard) – The BGC discussed potential next steps regarding review of certain CPE results. The BGC noted that several complainants have alleged that certain of the CPE criteria have been applied inconsistently or unfairly across the various CPE reports. In addition, from a transparency standpoint, certain complainants have requested production of the evidence that the CPE panels used to form their decisions and, in particular, the independent research that the panels conducted. In evaluating the pending Reconsideration Requests, the BGC discussed ensuring that the results of the CPEs currently under review are reported respecting the principle of transparency. The BGC decided to request from the CPE provider the materials and research relied upon by the CPE panels

in making their determinations with respect to certain pending CPE reports so that the BGC will be in a position to make determinations regarding certain recommendations or pending Reconsiderations Requests related to CPE (see <https://www.icann.org/resources/pages/accountability/reconsideration-en>.)

- Action:

- Request from the CPE provider the materials and research relied upon by the CPE panels in making their determinations with respect to the pending CPE reports.

3. Board Committee Activity Reports – The BGC discussed methods for handling the Board Committee Activity Reports that are submitted by the Board Committees twice per year. The BGC decided to recommend to the Board that the Board Committee Activity Reports be publicly posted.

- Action:

- Prepare Board paper recommending that the Board Committee Activity Reports be publicly posted.

4. Board Member Exit Questionnaire – The BGC discussed methods for handling the Board member exit questionnaires and ways in which to use the information provided to improve Board work and operations. The BGC decided that, along with the exit questionnaires, departing Board members would be informed that their responses will be summarized and anonymously submitted to the Board for consideration.

5. Committee Slating Update – The Chair provided an update on Committee slating and indicated that the questionnaires seeking input from Committee members regarding the current Committee Chairs are nearly complete. The information in the questionnaires will be summarized and sent to the BGC for consideration in recommending a slate of Committee leadership for Board approval. The BGC also discussed options for determining Chair recommendations for each of the Board Committees, and decided to seek input from the individual Committees regarding the Chair recommendations.

6. Any Other Business – The BGC discussed aspects of the Reconsideration process under the new Bylaws and whether a separate Board Committee should be established to consider Reconsideration Requests. The BGC decided to continue the discussion at a later meeting and asked that a report be prepared regarding the Reconsideration process under the new Bylaws.
- Action:
 - Prepare report regarding the Reconsideration process under the new Bylaws for BGC’s consideration

R-24

RESPONDENT'S EXHIBIT



The Internet Corporation for Assigned Names and Numbers

26 April 2017

Re: Update on the Review of the New gTLD Community Priority Evaluation Process

Dear All Concerned:

At various times in the implementation of the New gTLD Program, the ICANN Board has considered aspects of the Community Priority Evaluation (CPE) process. Recently, we discussed certain concerns that some applicants have raised with the CPE process, including issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry, LLC. The Board decided it would like to have some additional information related to how ICANN interacts with the CPE provider, and in particular with respect to the CPE provider's CPE reports. On 17 September 2016, we asked that the President and CEO, or his designee(s), undertake a review of the process by which ICANN has interacted with the CPE provider. ([Resolution 2016.09.17.01](#))

Further, during our 18 October 2016 meeting, the Board Governance Committee (BGC) discussed potential next steps regarding the review of pending Reconsideration Requests pursuant to which some applicants are seeking reconsideration of CPE results. Among other things, the BGC noted that certain complainants have requested access to the documents that the CPE panels used to form their decisions and, in particular, the independent research that the panels conducted. The BGC decided to request from the CPE provider the materials and research relied upon by the CPE panels in making determinations with respect to certain pending CPEs. This will help inform the BGC's determinations regarding certain recommendations or pending Reconsideration Requests related to CPE. This material is currently being collected as part of the President and CEO's review and will be forwarded to the BGC in due course.

The review is currently underway. We recognize that ensuring we fulfill all of our obligations means taking more time, but we believe that this is the right approach. The review will complete as soon as practicable and once it is done, the BGC, and Board where appropriate, will promptly consider the relevant pending Reconsideration Requests.

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<http://icann.org>



Meanwhile, the BGC's consideration of the following Reconsideration Requests is on hold: [14-30](#) (.LLC), [14-32](#) (.INC), [14-33](#) (.LLP), [16-3](#) (.GAY), [16-5](#) (.MUSIC), [16-8](#) (.CPA), [16-11](#) (.HOTEL), and [16-12](#) (.MERCK).

For more information about CPE criteria, please see ICANN's [Applicant Guidebook](#), which serves as basis for how all applications in the New gTLD Program have been evaluated. For more information regarding Reconsideration Requests, please see ICANN's [Bylaws](#).

Sincerely,

A handwritten signature in black ink, which appears to read 'Chris Disspain'. The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Chris Disspain
Chair, ICANN Board Governance Committee

R-25

RESPONDENT'S EXHIBIT

13 DECEMBER 2017

COMMUNICATIONS BETWEEN ICANN ORGANIZATION AND THE CPE PROVIDER

PREPARED FOR JONES DAY



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I. Introduction

On 17 September 2016, the Board of Directors of the Internet Corporation for Assigned Names and Numbers (ICANN organization) directed the President and CEO or his designees to undertake a review of the “process by which ICANN [organization] interacted with the [Community Priority Evaluation] CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider” as part of the New gTLD Program.¹ The Board’s action was part of the ongoing discussions regarding various aspects of the CPE process, including some issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry, LLC.²

On 18 October 2016, the Board Governance Committee (BGC) discussed potential next steps regarding the review of pending Reconsideration Requests relating to the CPE process.³ The BGC determined that, in addition to reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1), the review would also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (ii) a compilation of the reference material relied upon by the CPE Provider to the extent such reference material exists for the evaluations which are the subject of pending Reconsideration Requests (Scope 3).⁴ Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. FTI Consulting, Inc.’s (FTI) Global Risk and Investigations Practice and Technology Practice were retained by Jones Day on behalf of its client ICANN organization in order to conduct the CPE Process Review.

On 26 April 2017, Chris Disspain, the Chair of the BGC, provided additional information about the scope and status of the CPE Process Review.⁵ Among other things, he

¹ <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

² *Id.*

³ <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

⁴ *Id.*

⁵ <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

identified eight Reconsideration Requests that would be on hold until the CPE Process Review was completed.⁶ On 2 June 2017, ICANN organization issued a status update.⁷ ICANN organization informed the community that the CPE Process Review was being conducted on two parallel tracks by FTI. The first track focused on gathering information and materials from ICANN organization, including interviewing relevant ICANN organization personnel and document collection. This work was completed in early March 2017. The second track focused on gathering information and materials from the CPE Provider, including interviewing relevant personnel. This work was still ongoing at the time ICANN issued the 2 June 2017 status update.

On 1 September 2017, ICANN organization issued a second update, advising that the interview process of the CPE Provider's personnel that were involved in CPEs had been completed.⁸ The update further informed that FTI was working with the CPE Provider to obtain the CPE Provider's communications and working papers, including the reference material cited in the CPE reports prepared by the CPE Provider for the evaluations that are the subject of pending Reconsideration Requests. On 4 October 2017, FTI completed its investigative process relating to the second track.

This report addresses Scope 1 of the CPE Process Review and specifically details FTI's evaluation and findings regarding ICANN organization's interactions with the CPE Provider with respect to the CPE reports issued by the CPE Provider as part of the New gTLD Program.

⁶ See *id.* The eight Reconsideration Requests that the BGC placed on hold pending completion of the CPE Process Review are: 14-30 (.LLC) (withdrawn on 7 December 2017, see <https://www.icann.org/en/system/files/files/dotregistry-llc-withdrawal-redacted-07dec17-en.pdf>), 14-32 (.INC) (withdrawn on 11 December 2017, see <https://www.icann.org/en/system/files/files/reconsideration-14-32-dotregistry-request-redacted-11dec17-en.pdf>), 14-33 (.LLP), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCK).

⁷ <https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>.

⁸ <https://newgtlds.icann.org/en/applicants/cpe/process//newgtlds.icann.org/en/applicants/cpe/podcast-qa-1-review-update-01sep17-en.pdf>.

II. Executive Summary

FTI concludes that there is no evidence that ICANN organization had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process. This conclusion is based upon FTI's review of the written communications and documents described in Section III below and FTI's interviews with relevant personnel. While FTI understands that many communications between ICANN organization and the CPE Provider were verbal and not memorialized in writing, and thus FTI was not able to evaluate them, FTI observed nothing during its investigation and analysis that would indicate that any verbal communications amounted to undue influence or impropriety by ICANN organization.

III. Methodology

FTI followed the international investigative methodology, which is a methodology codified by the Association of Certified Fraud Examiners (ACFE), the largest and most prestigious anti-fraud organization globally and which grants certification to members who meet the ACFE's standards of professionalism.⁹ This methodology is used by both law enforcement and private investigative companies worldwide. This methodology begins with the formation of an investigative plan which identifies documentation, communications, individuals and entities that may be potentially relevant to the investigation. The next step involves the collection and review of all potentially relevant materials and documentation. Then, investigators interview individuals who, based upon the preceding review of relevant documents, may have potentially relevant information. Investigators then analyze all the information collected to arrive at their conclusions.

Here, FTI did the following:

- Reviewed publicly available documents pertaining to CPE, including:

⁹ www.acfe.com. FTI's investigative team, which includes published authors and frequent speakers on investigative best practices, holds this certification.

1. New gTLD Applicant Guidebook (the entire Applicant Guidebook with particular attention to Module 4.2): <https://newgtlds.icann.org/en/applicants/agb>;
2. CPE page: <https://newgtlds.icann.org/en/applicants/cpe>;
3. CPE Panel Process
Document: <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>;
4. CPE Guidelines
document: <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>;
5. Updated CPE FAQs: <https://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>;
6. Contract and SOW between ICANN organization and the CPE Provider, available at: <https://newgtlds.icann.org/en/applicants/cpe>;
7. CPE results and reports:
<https://newgtlds.icann.org/en/applicants/cpe#invitations>;
8. Preparing Evaluators for the New gTLD Application Process:
<https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>;
9. New gTLDs: Call for Applicant Evaluation Panel Expressions of Interest:
<https://www.icann.org/news/announcement-2009-02-25-en>;
10. Evaluation Panels: <https://newgtlds.icann.org/en/program-status/evaluation-panels>;
11. Evaluation Panels Selection Process:
<https://newgtlds.icann.org/en/about/evaluation-panels-selection-process>;
12. Application Comments:
<https://gtldcomment.icann.org/applicationcomment/viewcomments>;
13. External media: news articles on ICANN organization in general as well as the CPE process in particular;
14. BGC's comments on Recent Reconsideration Request:
<https://www.icann.org/news/blog/bgc-s-comments-on-recent-reconsideration-request>;
15. Relevant Reconsideration Requests:
<https://www.icann.org/resources/pages/accountability/reconsideration-en>;

16. CPE Archive Resources:
<https://newgtlds.icann.org/en/applicants/cpe#archive-resources>;
17. Relevant Independent Review Process Documents:
<https://www.icann.org/resources/pages/accountability/irp-en>;
18. New gTLD Program Implementation Review regarding CPE, section 4.1:
<https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf>;
19. Community Priority Evaluation Process Review Update:
<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>;
20. Community Priority Evaluation>Timeline:
<https://newgtlds.icann.org/en/applicants/cpe/timeline-10sep14-en.pdf>;
21. Community Priority Evaluation Teleconference – 10 September 2013, Additional Questions & Answers:
<https://newgtlds.icann.org/en/applicants/cpe/podcast-qa-10sep13-en.pdf>;
22. Community Priority Evaluation Process Review Update:
<https://newgtlds.icann.org/en/applicants/cpe/process//newgtlds.icann.org/en/applicants/cpe/podcast-qa-1-review-update-01sep17-en.pdf>;
23. Board Governance Committee:
<https://www.icann.org/resources/pages/governance-committee-2014-03-21-en>;
24. ICANN Bylaws:
<https://www.icann.org/resources/pages/governance/bylaws-en>;
25. Relevant Correspondence related to CPE:
<https://www.icann.org/resources/pages/correspondence>;
26. Board Resolution 2016.09.17.01 and Rationale for Resolution:
<https://www.icann.org/resources/board-material/resolutions-2016-09-17-en>;
27. Minutes of 17 September 2016 Board Meeting:
<https://www.icann.org/resources/board-material/minutes-2016-09-17-en>;
28. BGC Minutes of the 18 October 2016 Meeting:
<https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>;

29. Letter from Chris Disspain to All Concerned Parties, dated 17 April 2016: <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>; and
 30. New gTLD Program Implementation Review Report: <https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf>; and
 31. Case 15-00110, In a matter of an Own Motion Investigation by the ICANN Ombudsman: <https://omblog.icann.org/index.html%3Fm=201510.html>.
- Requested, received, and reviewed the following from ICANN organization:
 1. Internal emails among relevant ICANN organization personnel relating to the CPE process and evaluations (including email attachments); and
 2. External emails between relevant ICANN organization personnel and relevant CPE Provider personnel relating to the CPE process and evaluations (including email attachments).
 - Requested the following from the CPE Provider:
 1. Internal emails among relevant CPE Provider personnel, including evaluators, relating to the CPE process and evaluations (including email attachments);
 2. External emails between relevant CPE Provider personnel and relevant ICANN organization personnel related to the CPE process and evaluations (including email attachments); and
 3. The CPE Provider's internal documents pertaining to the CPE process and evaluations, including working papers, draft reports, notes, and spreadsheets.

FTI did not receive documents from the CPE Provider in response to Items 1 or 2. FTI did receive and reviewed documents from ICANN organization that were responsive to the materials FTI requested from the CPE Provider in Item 2 (i.e., emails between relevant CPE Provider personnel and relevant ICANN organization personnel related to the CPE process and evaluations (including email attachments)). FTI received and reviewed documentation produced by the CPE Provider in response to Item 3.

- Interviewed relevant ICANN organization personnel

- Interviewed relevant CPE Provider personnel
- Compared the information obtained from both ICANN organization and the CPE Provider.

IV. Background on CPE

CPE is a contention resolution mechanism available to applicants that self-designated their applications as community applications.¹⁰ CPE is defined in Module 4.2 of the Applicant Guidebook, and allows a community-based application to undergo an evaluation against the criteria as defined in section 4.2.3 of the Applicant Guidebook, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus prevail over other applications in the contention set.¹¹ CPE will occur only if a community-based applicant selects to undergo CPE for its relevant application and after all applications in the contention set have completed all previous stages of the new gTLD evaluation process. CPE is performed by an independent provider (CPE Provider).¹²

As noted, the standards governing CPE are set forth in Module 4.2 of the Applicant Guidebook.¹³ In addition, the CPE Provider published the CPE Panel Process Document, explaining that the CPE Provider was selected to implement the Applicant Guidebook's CPE provisions.¹⁴ The CPE Provider also published supplementary guidelines (CPE Guidelines) that provided more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored.¹⁵ The CPE Provider personnel interviewed by FTI stated that the CPE Guidelines were intended to increase transparency, fairness, and predictability around the assessment process.

¹⁰ See Applicant Guidebook, Module 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>). See also <https://newgtlds.icann.org/en/applicants/cpe>.

¹¹ See *id.* at Module 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>).

¹² *Id.*

¹³ <https://newgtlds.icann.org/en/applicants/agn>.

¹⁴ See CPE Panel Process Document (<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>).

¹⁵ See CPE Guidelines (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

Based upon the materials reviewed and interviews with ICANN organization and CPE Provider personnel, FTI learned that each evaluation began with a notice of commencement from ICANN organization to the CPE Provider via email. As part of the notice of commencement, ICANN organization identified the materials in scope, which included: application questions 1-30a, application comments, correspondence, objection outcomes, and outside research (as necessary). ICANN organization delivered to the CPE Provider the public comments available at the time of commencement of the CPE process. The CPE Provider was responsible for gathering the application materials, including letters of support and correspondence, from the public ICANN organization website.¹⁶

The CPE Provider personnel responsible for CPE consisted of a core team, a Project Director, a Project Coordinator, and independent evaluators. Before the CPE Provider commenced CPE, all evaluators, including members of the core team, confirmed that no conflicts of interest existed. In addition, all evaluators underwent regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which was followed by regular training sessions to ensure that all evaluators had the same understanding of the evaluation process and procedures.¹⁷

Two independent evaluators were assigned to each evaluation. The evaluators worked independently to assess and score the application in accordance with the Applicant Guidebook and CPE Guidelines. According to the CPE Provider interviewees, each evaluator separately presented his/her findings in a database and then discussed his/her findings with the Project Coordinator. Then, the Project Coordinator created a spreadsheet that included sections detailing the evaluators' conclusions on each criterion and sub-criterion. The core team then met to review and discuss the evaluators' work and scores. Following internal deliberations among the core team, the initial evaluation results were documented in the spreadsheet. The interviewees stated

¹⁶ See CPE Panel Process Document (<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>).

¹⁷ *Id.*

that, at times, the evaluators came to different conclusions on a particular score or issue. In these circumstances, the core team evaluated each evaluator's work and then referred to the Applicant Guidebook and CPE Guidelines in order to reach a conclusion as to scoring. Consistent with the CPE Panel Process Document, before the core team reached a conclusion, an evaluator may be asked to conduct additional research to answer questions that arose during the review.¹⁸ The core team would then deliberate and come up with a consensus as to scoring. FTI interviewed both ICANN organization and CPE Provider personnel about the CPE process and interviewees from both organizations stated that ICANN organization played no role in whether or not the CPE Provider conducted research or accessed reference material in any of the evaluations. That ICANN organization was not involved in the CPE Provider's research process was confirmed by FTI's review of relevant email communications (including attachments) provided by ICANN organization, inasmuch as FTI observed no instance where ICANN organization suggested that the CPE Provider undertake (or not undertake) research. Instead, research was conducted at the discretion of the CPE Provider.¹⁹

ICANN organization had no role in the evaluation process and no role in writing the initial draft CPE report. Once the CPE Provider completed an initial draft CPE report, the CPE Provider would send the draft report to ICANN organization. ICANN organization provided feedback to the CPE Provider in the form of comments exchanged via email or written on draft CPE reports as well as verbal comments during conference calls.

V. Analysis

FTI undertook its analysis after carefully studying the materials described above and evaluating the substance of the interviews conducted. The materials and interviews provided FTI with a solid understanding of CPE. The interviews in particular provided FTI with an understanding of the mechanics of the CPE process as well as the roles

¹⁸ CPE Panel Process Document (<http://newgtlds.icann.org/en/applicant/cpe/panel-process-07aug14-en.pdf>).

¹⁹ See Applicant Guidebook §4.2.3 at 4-9 ("The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.").

undertaken both separately and together by ICANN organization personnel and the CPE Provider during the process.

FTI proceeded with its investigation in four parts, which are separately detailed below: (i) analysis of email communications among relevant ICANN organization personnel and between relevant ICANN organization personnel and the CPE Provider (including email attachments); (ii) interviews of relevant ICANN organization personnel; (iii) interviews of relevant CPE Provider personnel; and (iv) analysis of draft CPE reports.

A. ICANN Organization’s Email Communications (Including Attachments) Did Not Show Any Undue Influence Or Impropriety By ICANN Organization.

In an effort to ensure the comprehensive collection of relevant materials, FTI provided ICANN organization with a list of search terms and requested that ICANN organization deliver to FTI all email (including attachments) from relevant ICANN organization personnel that “hit” on a search term. The search terms were designed to be over-inclusive, meaning that FTI anticipated that many of the documents that resulted from the search would not be pertinent to FTI’s investigation. In FTI’s experience, it is a best practice to begin with a broader collection and then refine the search for relevant materials as the investigation progresses. As a result, the search terms were quite broad and included the names of ICANN organization and CPE Provider personnel who were involved in the CPE process. The search terms also included other key words that are commonly used in the CPE process, as identified by a review of the Applicant Guidebook and other materials on the ICANN website. FTI’s Technology Practice worked with ICANN organization to ensure that the materials were collected in a forensically sound manner. In total, ICANN organization provided FTI with 100,701 emails, including attachments, in native format. The time period covered by the emails received dated from 2012 to March 2017.

An initial review of emails produced to FTI confirmed FTI’s expectation that the initial search terms were overbroad and returned a large number of emails that were not relevant to FTI’s investigation. As a result, FTI performed a targeted key word search to

identify emails pertinent to the CPE process and reduce the time and cost of examining irrelevant or repetitive documents. FTI developed and tested these additional terms using FTI Technology's Ringtail eDiscovery platform, which employs conceptual analysis, duplicate detection, and interactive visualizations to assist in improving search results by grouping documents with similar content and highlighting those that are more likely to be relevant.

Based on FTI's review of email communications provided by ICANN organization, FTI found no evidence that ICANN organization had any undue influence on the CPE reports or engaged in any impropriety in the CPE process. FTI found that the vast majority of the emails were administrative in nature and did not concern the substance or the content of the CPE results. Of the small number of emails that did discuss substance, none suggested that ICANN acted improperly in the process.

1. The Vast Majority of the Communications Were Administrative in Nature.

The email communications that FTI reviewed and which were provided by ICANN organization were largely administrative in nature, meaning that they concerned the scheduling of telephone calls, CPE Provider staffing, timelines for completion, invoicing, and other similar logistical issues. Although FTI was not able to review the CPE Provider's internal emails relating to this work, as indicated above, FTI did interview relevant CPE Provider personnel, and each confirmed that any internal email communications largely addressed administrative tasks.

2. The Email Communications that Addressed Substance did not Evidence any Undue Influence or Impropriety by ICANN Organization.

Of the email communications reviewed by FTI, only a small number discussed the substance of the CPE process and specific evaluations. These emails generally fell into three categories. First, ICANN organization's emails with the CPE Provider reflected questions or suggestions made to clarify certain language reflected in the CPE Provider's draft reports. In these communications, however, FTI observed no instances

where ICANN organization recommended, suggested, or otherwise interjected its own views on what specific conclusion should be reached. Instead, ICANN organization personnel asked the CPE Provider to clarify language contained in draft CPE reports in an effort to avoid misleading or ambiguous wording. In this regard, ICANN organization's correspondence to the CPE Provider largely comprised suggestions on a particular word to be used to capture a concept clearly. FTI observed no instances where ICANN dictated or sought to require the CPE Provider to use specific wording or make specific scoring decisions.

Second, ICANN organization posed questions to the CPE Provider that reflected ICANN organization's efforts to understand how the CPE Provider came to its conclusions on a specific evaluation. Based on a plain reading, ICANN organization's questions were clearly intended to ensure that the CPE Provider had engaged in a robust discussion on each CPE criterion in the CPE report.

The third category comprised emails from the CPE Provider inquiring as to the scope of Clarifying Questions and specifically whether a proposed Clarifying Question was permissible under applicable guidelines.²⁰

Across all three categories, FTI observed instances where the CPE Provider and ICANN organization engaged in a discussion about using the correct word to capture the CPE Provider's reasoning. ICANN organization also advised the CPE Provider that the CPE Provider's conclusions, as stated in draft reports, at times were not supported by sufficient reasoning, and suggested that additional explanation was needed. However, ICANN organization did not suggest that the CPE Provider make changes in final scoring or adjust the rationale set forth in the CPE report.

Throughout its review, FTI observed instances where ICANN organization and the CPE Provider agreed to discuss various issues telephonically. Emails would then follow

²⁰ The CPE Provider may, at its discretion, provide a clarifying question (CQ) to be issued via ICANN organization to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified. See CPE Panel Process Document (<https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>).

these telephone calls and note that the latest drafts reflected the telephone discussions that had occurred. FTI reviewed the drafts as noted in these communications and compared them with prior versions of the draft reports that were exchanged and confirmed that there was no evidence of undue influence or impropriety by ICANN organization, as described further below.

Ultimately, the vast majority of ICANN organization's emails were administrative in nature. FTI found no email communications that indicated that ICANN organization had any undue influence on the CPE Provider or engaged in any impropriety in the CPE Process.

B. Interviews With ICANN Organization Personnel Confirmed That There Was No Undue Influence Or Impropriety By ICANN Organization.

In March 2017, FTI met with several ICANN organization employees in order to learn more about their interactions with the CPE Provider. FTI interviewed the following individuals who interacted with the CPE Provider over time regarding CPE.

- Chris Bare
- Steve Chan
- Jared Erwin
- Cristina Flores
- Russell Weinstein
- Christine Willett

Each of the ICANN organization personnel that FTI interviewed confirmed that the interactions between ICANN organization and the CPE Provider took place via email (including attachments which were primarily comprised of draft reports with comments in red line form) and conference calls.

The interviewees explained that the initial draft reports received from the CPE Provider (particularly for the first four reports) were not particularly detailed, and, as a result,

ICANN organization asked the CPE Provider a lot of “why” questions to ensure that the CPE Provider’s rationale was sufficiently conveyed. The interviewees stated that they emphasized to the CPE Provider the importance of remaining transparent and accountable to the community in the CPE reports. Based on a plain reading of ICANN organization’s comments to draft CPE reports, none of ICANN organization’s comments were mandatory, meaning that ICANN organization never dictated that the CPE Provider take a specific approach. FTI observed no instances where ICANN organization endeavored to change the scoring or outcome of any CPE. This was confirmed by both ICANN organization personnel and CPE Provider personnel in FTI’s interviews. If changes were made in response to ICANN organization’s comments, they usually took the form of the CPE Provider providing additional information to explain its scoring decisions and conclusions.

The CPE reports became more detailed over time. The ICANN organization personnel who were interviewed noted that, over time, the majority of communications took place via weekly conference calls. Most of ICANN organization’s interaction with the CPE Provider consisted of asking for supporting citations to the CPE Provider’s research or that more precise wording be used. ICANN organization personnel noted that they observed robust debate among CPE Provider personnel concerning various criteria, but that the CPE Provider strictly evaluated the applications against the criteria outlined in the Applicant Guidebook and the CPE Guidelines. The interviewees confirmed that ICANN organization never questioned or sought to alter the CPE Provider’s conclusions.

C. Interviews With CPE Provider Personnel Confirmed That There Was No Undue Influence Or Impropriety By ICANN Organization.

FTI asked to interview relevant CPE Provider personnel involved in the CPE process. The CPE Provider stated that only two CPE Provider staff members remained. In June 2017, FTI interviewed the two remaining staff members, who were members of the core team for all CPEs that were conducted. During the interview, in addition to understanding the CPE process described above, see section IV above, FTI

endeavored to understand the interactions between the CPE Provider and ICANN organization.

The interviewees confirmed that ICANN organization was not involved in scoring the criteria or the drafting of the initial reports, but rather the CPE Provider independently scored each criterion. The interviewees stated that they were strict constructionists and used the Applicant Guidebook as their “bible”. Further, the CPE Provider stated that it relied first and foremost on material provided by the applicant. The CPE Provider informed FTI that it only accessed reference material when the evaluators or core team decided that research was needed to address questions that arose during the review.

The CPE Provider also stated that ICANN organization provided guidance as to whether or not a particular report sufficiently detailed the CPE Provider’s reasoning. The CPE Provider stated that it never changed the scoring or the results based on ICANN organization’s comments. The only action the CPE Provider took in response to ICANN organization’s comments was to revise the manner in which its analysis and conclusions were presented (generally in the form of changing a word or adding additional explanation). The CPE Provider stated that it also received guidance from ICANN organization with respect to whether a proposed Clarifying Question was permissible under applicable guidelines.

In short, the CPE Provider confirmed that ICANN organization did not impact the CPE Provider’s scoring decisions.

D. FTI’s Review Of Draft CPE Reports Confirmed That There Was No Undue Influence Or Impropriety By ICANN Organization.

FTI requested and received from the CPE Provider all draft CPE reports, including any drafts that reflected feedback from ICANN organization. ICANN organization provided feedback in redline form. Some draft reports had very few or no comments, while others had up to 20 comments. In some drafts, the comments were just numbered and not attributed to a particular person. As such, at times it was difficult to discern which

comments were made by ICANN organization versus the CPE Provider.²¹ Of the comments that FTI can affirmatively attribute to ICANN organization, all related to word choice, style and grammar, or requests to provide examples to further explain the CPE Provider's conclusions. This is consistent with the information provided by ICANN organization and the CPE Provider during their interviews and in the email communications provided by ICANN organization.

For example, FTI observed comments from ICANN organization personnel suggesting that the CPE Provider include more detailed explanation or explicitly cite resources for statements that did not appear to have sufficient factual or evidentiary support. In other instances, the draft reports reflected an exchange between ICANN organization and the CPE Provider in response to ICANN organization's questions regarding the meaning the CPE Provider intended to convey. It is clear from the exchanges that ICANN organization was not advocating for a particular score or conclusion, but rather commenting on the clarity of reasoning behind assigning one score or another.

In general, it was not uncommon for the CPE Provider to make revisions in response to ICANN organization's comments. As noted above, these revisions generally took the form of additional information to add further detail to the stated reasoning. However, none of these revisions affected the scoring or results. At other times, the CPE Provider did not make any revisions in response to ICANN organization's comments.

Overall, ICANN organization's comments generally were not substantive, but rather reflected ICANN organization's suggestion that a revision could make the CPE report clearer. Based on FTI's investigation, there is no evidence that ICANN organization ever suggested that the CPE Provider change its rationale, nor did ICANN organization dictate the scoring or CPE results.

²¹ Some comments to draft CPE reports followed verbal conversations between CPE Provider staff and ICANN organization; the CPE Provider stated that it did not possess notes documenting these conversations.

VI. Conclusion

Following a careful and comprehensive investigation, which included several interviews and an extensive review of available documentary materials, FTI found no evidence that ICANN organization attempted to influence the evaluation process, scoring or conclusions reached by the CPE Provider. As such, FTI concludes that there is no evidence that ICANN organization had any undue influence on the CPE Provider or engaged in any impropriety in the CPE process.

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RESPONDENT'S EXHIBIT

ICANN (Internet Corporation for Assigned Names and Numbers) Organization Publishes Reports on the Review of the Community Priority Evaluation Process

This page is available in:

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العربية (<http://www.icann.org/news/announcement-77-2017-12-19-ar>) |

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Português (<http://www.icann.org/news/announcement-68-2017-12-19-pt>)

pt)

[in](#) [f](#) [t](#) [e](#) [m](#) [+](#)

LOS ANGELES – 13 December 2017 – The Internet Corporation for Assigned Names and Numbers (ICANN (Internet Corporation for Assigned Names and Numbers)) today published three reports on the review of the Community Priority Evaluation (CPE) process (the CPE Process Review). The CPE Process Review was initiated at the request of the ICANN (Internet Corporation for Assigned Names and Numbers) Board as part of the Board's due diligence in the administration of the CPE process. The CPE Process Review was conducted by [FTI Consulting Inc.'s \(FTI\)](http://www.fticonsulting.com/) (<http://www.fticonsulting.com/>) Global Risk and Investigations Practice (GRIP) and Technology Practice, and consisted of three parts: (i) reviewing the process by which the ICANN (Internet Corporation for Assigned Names and Numbers) organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1); (ii) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (iii) a compilation of the reference material relied upon by the CPE Provider to the extent such reference material exists for the eight evaluations which are the subject of pending Reconsideration Requests that were

pending at the time that ICANN (Internet Corporation for Assigned Names and Numbers) initiated the CPE Process Review (Scope 3).

FTI concluded that "there is no evidence that the ICANN (Internet Corporation for Assigned Names and Numbers) organization had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process" (Scope 1) and that "the CPE Provider consistently applied the criteria set forth in the New gTLD (generic Top Level Domain) Applicant Guidebook [] and the CPE Guidelines throughout each CPE" (Scope 2). (See [Scope 1 report \(/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf\)](/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf) [PDF, 159 KB], Pg. 3; [Scope 2 report \(/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf\)](/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf) [PDF, 312 KB], Pg. 3.)

For Scope 3, FTI observed that two of the eight relevant CPE reports included a citation in the report for each reference to research. In the remaining six reports, FTI observed instances where the CPE Provider referenced research but did not include the corresponding citations in the reports. Except for one evaluation, FTI observed that the working papers underlying the reports contained material that corresponded with the research referenced in the CPE reports. In one instance, FTI did not find that the working papers underlying the relevant report contained citation that corresponded with the research referenced in the CPE report. However, based on FTI's observations, it is possible that the research being referenced was cited in the CPE Provider's working papers underlying the first evaluation of that application. (See [Scope 3 report \(/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf\)](/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf) [PDF, 309 KB], Pg. 4.) The findings will be considered by the Board Accountability Mechanisms Committee (BAMC) when the BAMC reviews the remaining pending Reconsideration Requests as part of the Reconsideration process.

"The Board appreciates the community's patience during this detailed investigation, which has provided greater transparency into the CPE evaluation process," said Cherine Chalaby, Chairman of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

"Further, this CPE Process Review and due diligence has provided additional facts and information that outline and document the ICANN (Internet Corporation for Assigned Names and Numbers) organization's interaction with the CPE Provider."

For more information about the CPE process and the CPE Process Review, please visit <https://newgtlds.icann.org/en/applicants/cpe> (<https://newgtlds.icann.org/en/applicants/cpe>).

More Announcements

[ICANN66 Fellowship Program Post-Meeting Report Now Available \(/news/announcement-2020-01-28-en\)](#)

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Launches Dr. Tarek Kamel Award and Opens Nomination for ICANN \(Internet Corporation for Assigned Names and Numbers\) Community Excellence Award \(/news/announcement-2-2020-01-27-en\)](#)

[Register Now to Participate in the 7th Middle East DNS \(Domain Name System\) Forum \(/news/announcement-2020-01-27-en\)](#)

[Second Security \(Security – Security, Stability and Resiliency \(SSR\)\), Stability \(Security, Stability and Resiliency\), and Resiliency \(Security Stability & Resiliency \(SSR\)\) \(SSR2\) Review Team Draft Report \(/news/announcement-2020-01-24-en\)](#)

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RESPONDENT'S EXHIBIT

Approved Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

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15 Mar 2018

1. **Consent Agenda:**

a. **Approval of Board Meeting Minutes**

b. **Outsource Service Provider Zensar Contract Approval**

Rationale for Resolutions 2018.03.15.02 - 2018.03.15.03

c. **New GNSO (Generic Names Supporting Organization) Voting Thresholds to address post-transition roles and responsibilities of the GNSO (Generic Names Supporting Organization) as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws**

Rationale for Resolution 2018.03.15.04

d. **Initiating the Second Review of the Country Code Names Supporting Organization (Supporting Organization) (ccNSO (Country Code Names Supporting Organization))**

Rationale for Resolutions 2018.03.15.05 - 2018.03.15.06

e. **Transfer of the .TD (Chad) top-level domain to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC)**

Rationale for Resolution 2018.03.15.07

- f. **Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 61 Meeting**
- g. **Thank you to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 61 Meeting**
- h. **Thank you to Interpreters, ICANN (Internet Corporation for Assigned Names and Numbers) org, Event and Hotel Teams of ICANN (Internet Corporation for Assigned Names and Numbers) 61 Meeting**

2. **Main Agenda:**

- a. **Next Steps in Community Priority Evaluation Process Review**
Rationale for Resolutions 2018.03.15.08 - 2018.03.15.11
- b. **Further Consideration of the Gulf Cooperation Council Independent Review Process Final Declarations**
Rationale for Resolutions 2018.03.15.12 - 2018.03.15.14
- c. **Consideration of the Asia Green IT System Independent Review Process Final Declaration**
Rationale for Resolutions 2018.03.15.15 - 2018.03.15.17
- d. **Appointment of the Independent Auditor for the Fiscal Year Ending 30 June 2018**
Rationale for Resolution 2018.03.15.18
- e. **AOB**

1. **Consent Agenda:**

- a. **Approval of Board Meeting Minutes**
Resolved (2018.03.15.01), the Board approves the minutes of the 4 February 2018 Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.
- b. **Outsource Service Provider Zensar Contract Approval**

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization's Engineering and Information Technology department has a need for continued third-party development, quality assurance and content management support.

Whereas, Zensar has provided good services in software engineering, quality assurance and content management over the last several years.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) org conducted a full request for proposal, the results of which led ICANN (Internet Corporation for Assigned Names and Numbers) org to determine that Zensar is still the preferred vendor.

Resolved (2018.03.15.02), the Board authorizes the President and CEO, or his designee(s), to enter into enter into, and make disbursement in furtherance of, a new Zensar contract for a term of 24 months with total cost not to exceed [REDACTED FOR NEGOTIATION PURPOSES]. These costs are based on the current Zensar RFP response and are under negotiation.

Resolved (2018.03.15.03), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, Section 3.5(b) and (d) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2018.03.15.02 - 2018.03.15.03

ICANN (Internet Corporation for Assigned Names and Numbers) org's Engineering & IT (E&IT) department has used Zensar to support development, quality assurance and content management needs since November 2014. This relationship has been beneficial to ICANN (Internet Corporation for Assigned Names and Numbers) org and, overall has been a success.

The current three-year contract expired in November 2017 and was extended through March 2018 to allow ICANN (Internet

Corporation for Assigned Names and Numbers) org to perform a full request for proposal (RFP).

Eleven vendors were included in the RFP of which six responded. Of these, two were cheaper and three more expensive than Zensar.

The RFP identified that Zensar rates are on par with others that may be interested in supporting this project.

The RFP team estimated that transition costs to move to another vendor would be at least 25% for a period of six months. More expensive vendors were therefore eliminated.

Zensar and the two less expensive applicants were asked to present their proposals and answer questions from the ICANN (Internet Corporation for Assigned Names and Numbers) org team. During the presentations, it was identified that both other applicants did not have sufficient existing resources to support this project for ICANN (Internet Corporation for Assigned Names and Numbers) org and would need to engage additional staff if they were awarded the contract. Staffing up would take time, causing delays. Quality of new staff would be an unknown.

While the RFP was in progress, ICANN (Internet Corporation for Assigned Names and Numbers) org undertook the FY19 budget process and identified the need for reduction in the services contemplated in the RFP to meet future targets. This resulted in a reduction of 2/3 (43 to 15 people) of the outsource contract. This reduction changes ICANN (Internet Corporation for Assigned Names and Numbers) org's needs and hence the services that would be provided by the outsource provider. While Zensar, being the incumbent would accept these reductions, the changes would require additional negotiation with the other RFP responders.

Zensar has three years of ICANN (Internet Corporation for Assigned Names and Numbers) knowledge. Retaining Zensar as the preferred provider ensures continuity in support.

Taking this step is in the fulfilment of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and in the public

interest to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) org is utilizing the right third party providers, and to ensure that it is maximizing available resources in a cost efficient and effective manner.

This action will have a fiscal impact on the organization, but that impact has already been anticipated and is covered in the FY18 and FY19 budget. This action will not impact the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

c. New GNSO (Generic Names Supporting Organization) Voting Thresholds to address post-transition roles and responsibilities of the GNSO (Generic Names Supporting Organization) as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws

Whereas, during its meeting on 30 January 2018, the Generic Names Supporting Organization (Supporting Organization) (GNSO (Generic Names Supporting Organization)) Council resolved

(<https://community.icann.org/display/gnsocouncilmeetings/Motions+30+January+2018> (<https://community.icann.org/display/gnsocouncilmeetings/Motions+30+January+2018>))

to recommend that the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors adopt proposed changes to section 11.3.i of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws to reflect new GNSO (Generic Names Supporting Organization) voting thresholds which are different from the current threshold of a simple majority vote of each House (see

<https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gnso-redline-19jun17-en.pdf> (</en/system/files/files/proposed-revisions-bylaws-article-11-gnso-redline-19jun17-en.pdf>) [PDF, 39 KB]).

Whereas, the addition of voting thresholds to section 11.3.i of the ICANN (Internet Corporation for Assigned Names and Numbers)

Bylaws as proposed by the GNSO (Generic Names Supporting Organization) would constitute a "Standard Bylaw Amendment" under Section 25.1 of the Bylaws (</resources/pages/governance/bylaws-en/#article25>).

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws requires that Standard Bylaw Amendments be published for public comment prior to the approval by the Board.

Whereas, after taking public comments into account, the Board will consider the proposed Bylaws changes for adoption.

Resolved (2018.03.15.04), the Board directs the President and CEO, or his designee(s), to post for public comment for a period of at least 40 days the Standard Bylaw Amendment reflecting proposed additions to section 11.3.i of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws to establish additional GNSO (Generic Names Supporting Organization) voting thresholds. The proposed new voting thresholds are different from the current threshold of a simple majority vote of each House to address all the new or additional rights and responsibilities in relation to participation of the GNSO (Generic Names Supporting Organization) as a Decisional Participant in the Empowered Community.

Rationale for Resolution 2018.03.15.04

The action being approved today is to direct the ICANN (Internet Corporation for Assigned Names and Numbers) President and CEO, or his designee, to initiate a public comment period on proposed changes to section 11.3.i of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws to reflect additional GNSO (Generic Names Supporting Organization) voting thresholds. The revised voting thresholds are different from the current threshold of a simple majority vote of each House, which is the default GNSO (Generic Names Supporting Organization) Council voting threshold. The revisions are made to address the new or additional rights and responsibilities in relation to participation of the GNSO (Generic Names Supporting Organization) as a Decisional Participant in the Empowered Community. The Board's action is a first step to consider the

unanimous approval by the GNSO (Generic Names Supporting Organization) Council of the proposed changes.

The Board's action to initiate a public comment period on this Standard Bylaw Amendment serves the public interest by helping to fulfill ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment to operate through open and transparent processes. In particular, posting Bylaws amendments for public comment is necessary to ensure full transparency and opportunity for the broader community to comment on these proposed changes prior to consideration or adoption by the ICANN (Internet Corporation for Assigned Names and Numbers) Board. If the Board approves this Standard Bylaw Amendment after public comment period, the Empowered Community will have an opportunity to consider rejecting the Amendment in accordance with the Bylaws. This action is also consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission as it in support of one of the policy development bodies that help ICANN (Internet Corporation for Assigned Names and Numbers) serve its mission.

There is no anticipated fiscal impact from this decision, which would initiate the opening of public comments, and no fiscal impact from the proposed changes to the Bylaws, if adopted. Approval of the resolution will not impact the security, stability and resiliency of the domain name.

The interim action of posting the proposed Bylaws amendments for public comment is an Organizational Administrative Action not requiring public comment.

d. **Initiating the Second Review of the Country Code Names Supporting Organization (Supporting Organization) (ccNSO (Country Code Names Supporting Organization))**

Whereas, Article 4, Section 4.4. of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws state that "[t]he Board "shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee

(Advisory Committee) (other than the Governmental Advisory Committee (Advisory Committee)), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review."

Whereas, as part of the first Country Code Names Supporting Organization (Supporting Organization) (ccNSO (Country Code Names Supporting Organization)) Review, the ccNSO (Country Code Names Supporting Organization) Review Working Group submitted its Final Report to the ICANN (Internet Corporation for Assigned Names and Numbers) Board on 4 March 2011, and per Resolution 2017.09.23.05, the Board resolved to defer the second ccNSO (Country Code Names Supporting Organization) Review until August 2018.

Resolved (2018.03.15.05), the Board hereby initiates the second ccNSO (Country Code Names Supporting Organization) Review and directs ICANN (Internet Corporation for Assigned Names and Numbers) organization to post a Request for Proposal to procure an independent examiner to begin the review as soon as practically feasible.

Resolved (2018.03.15.06), the Board encourages the ccNSO (Country Code Names Supporting Organization) to prepare for an independent examiner to begin work on the second ccNSO (Country Code Names Supporting Organization) Review in August 2018 by organizing a Review Working Party to serve as a liaison during the preparatory phase and throughout the review, and to conduct a self-assessment prior to August 2018.

Rationale for Resolutions 2018.03.15.05 - 2018.03.15.06

Why the Board is addressing the issue now?

This action is taken to provide a clear and consistent approach towards complying with ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws' mandate to conduct reviews. Moreover, the Board is addressing this issue because the Bylaws stipulate organizational reviews take place every five years. Following an initial deferral due to the IANA (Internet Assigned Numbers Authority) Stewardship Transition, the ICANN

(Internet Corporation for Assigned Names and Numbers) Board had deferred the Country Code Names Supporting Organization (Supporting Organization) (ccNSO (Country Code Names Supporting Organization)) Review in 2017 to commence in 2018. The Board is now initiating the second Review of the ccNSO (Country Code Names Supporting Organization) to prepare for an independent examiner to begin work in August 2018.

Which stakeholders or others were consulted?

No consultation took place as this action is in line with the guidelines and provisions contained in Article 4, Section 4.4 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, and Resolution 2017.09.23.05.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) org (strategic plan, operating plan, and budget); the community; and/or the public?

Timely conduct of organizational reviews is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s strategic and operating plans. The budget for the second ccNSO (Country Code Names Supporting Organization) Review has been approved as part of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual budget cycle and the funds allocated to the ccNSO (Country Code Names Supporting Organization) Review are managed by the ICANN (Internet Corporation for Assigned Names and Numbers) organization team responsible for these reviews. No additional budgetary requirements are foreseen at this time and separate consideration will be given to the budget impact of the implementation of recommendations that may result from the review.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

There are no security, stability or resiliency issues relating to the DNS (Domain Name System) as the result of this action.

This action is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and serves the public interest by supporting the effectiveness and ongoing improvement of ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability and governance structures.

This is an Organizational Administrative Function that does not require public comment.

e. **Transfer of the .TD (Chad) top-level domain to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC)**

Resolved (2018.03.15.07), as part of the exercise of its responsibilities under the IANA (Internet Assigned Numbers Authority) Naming Function Contract with ICANN (Internet Corporation for Assigned Names and Numbers), Public Technical Identifiers (PTI) has reviewed and evaluated the request to transfer the .TD country-code top-level domain (ccTLD (Country Code Top Level Domain)) to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC). The documentation demonstrates that the proper procedures were followed in evaluating the request.

Rationale for Resolution 2018.03.15.07

Why is the Board addressing this issue now?

In accordance with the IANA (Internet Assigned Numbers Authority) Naming Function Contract, PTI has evaluated a request for ccTLD (Country Code Top Level Domain) transfer and is presenting its report to the Board for review. This review by the Board is intended to ensure that the proper procedures were followed.

What is the proposal being considered?

The proposal is to approve a request to transfer the country-code top-level domain .TD and assign the role of manager to l'Agence de Développement des Technologies de l'Information et de la Communication (ADETIC).

Which stakeholders or others were consulted?

In the course of evaluating this transfer application, PTI consulted with the applicant and other significantly interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD (Country Code Top Level Domain), and their applicability to their local Internet community.

What concerns or issues were raised by the community?

PTI is not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

The Board reviewed the following evaluations:

- The domain is eligible for transfer, as the string under consideration represents Chad that is listed in the ISO (International Organization for Standardization) 3166-1 standard;
- The relevant government has been consulted and does not object;
- The incumbent manager consents to the transfer;
- The proposed manager and its contacts agree to their responsibilities for managing these domains;
- The proposal has demonstrated appropriate significantly interested parties' consultation and support;
- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domains are managed locally in the country, and are bound under local law;
- The proposed manager has confirmed they will manage the domains in a fair and equitable manner;
- The proposed manager has demonstrated appropriate operational and technical skills and plans to operate the

domains;

- The proposed technical configuration meets the technical conformance requirements;
- No specific risks or concerns relating to Internet stability have been identified; and
- ICANN (Internet Corporation for Assigned Names and Numbers) org has provided a recommendation that this request be implemented based on the factors considered.

These evaluations are responsive to the appropriate criteria and policy frameworks, such as "Domain Name (Domain Name) System Structure and Delegation" (RFC (Request for Comments) 1591) and "GAC (Governmental Advisory Committee) Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains".

As part of the process, Delegation and Transfer reports are posted at <http://www.iana.org/reports> (<http://www.iana.org/reports>).

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN (Internet Corporation for Assigned Names and Numbers)'s overall mission, the local communities to which ccTLDs are designated to serve, and responsive to obligations under the IANA (Internet Assigned Numbers Authority) Naming Function Contract.

Are there financial impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS (Domain Name System) root zone is part of the IANA (Internet Assigned Numbers Authority) functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN (Internet Corporation for Assigned Names and Numbers) to assess the financial impact of the internal operations of ccTLDs within a country.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

ICANN (Internet Corporation for Assigned Names and Numbers) does not believe this request poses any notable risks to security, stability or resiliency.

This is an Organizational Administrative Function not requiring public comment.

f. **Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 61 Meeting**

The Board wishes to extend its thanks to the Hon. Ricardo Roselló Nevaes, Governor of Puerto Rico; Oscar R. Moreno de Ayala, President of Puerto Rico Top Level Domain; Pablo Rodriguez, Vice President of Puerto Rico Top Level Domain; Carla Campos Vidal, Director of Puerto Rico Tourism Company; and the local host organizer, Puerto Rico Top Level Domain (.PR).

g. **Thank you to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 61 Meeting**

The Board wishes to thank the following sponsors: Verisign, Claro, Liberty, Canadian Internet Registration Authority (CIRA), Afiliac plc, Public Interest Registry and Uniregistry.

h. **Thank you to Interpreters, ICANN (Internet Corporation for Assigned Names and Numbers) org, Event and Hotel Teams of ICANN (Internet**

Corporation for Assigned Names and Numbers) 61 Meeting

The Board expresses its deepest appreciation to the scribes, interpreters, audiovisual team, technical teams, and the entire ICANN (Internet Corporation for Assigned Names and Numbers) org team for their efforts in facilitating the smooth operation of the meeting. The Board would also like to thank the management and staff of Puerto Rico Convention Center for providing a wonderful facility to hold this event. Special thanks are extended to Margaret Colon, Director of Sales & Marketing; Vivian E. Santana, Director of Events; Gianni Agostini Santiago, Senior Catering Sales Manager; Carlos Rosas, IT Manager; and Wilson Alers from Media Stage Inc.

2. Main Agenda:

a. Next Steps in Community Priority Evaluation Process Review

Whereas, the Board directed the President and CEO or his designees to undertake a review of the "process by which ICANN (Internet Corporation for Assigned Names and Numbers) [organization] interacted with the [Community Priority Evaluation (CPE)] Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider".

Whereas, the Board Governance Committee (BGC) determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report; and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (collectively, the CPE Process Review). (See <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en> (/resources/board-material/minutes-bgc-2016-10-18-en).)

Whereas, the BGC determined that the following pending Reconsideration Requests would be on hold until the CPE Process Review was completed: 14-30,¹ 14-32,² 14-33,³ 16-3, 16-5, 16-8, 16-11, and 16-12. (See

<https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>
(</en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>) [PDF, 405 KB].)

Whereas, the CPE Process Review was conducted by FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice and Technology Practice.

Whereas, on 13 December 2017 (</news/announcement-2017-12-13-en>), ICANN (Internet Corporation for Assigned Names and Numbers) organization published the three reports on the CPE Process Review (the CPE Process Review Reports).

Whereas, the Board Accountability Mechanisms Committee (BAMC) has considered the CPE Process Review Reports (the conclusions of which are set forth in the rationale below) and has provided recommendations to the Board of next steps in the CPE Process Review.

Whereas, the Board has considered the three CPE Process Review Reports and agrees with the BAMC's recommendations.

Resolved (2018.03.15.08), the Board acknowledges and accepts the findings set forth in the three CPE Process Review Reports.

Resolved (2018.03.15.09), the Board concludes that, as a result of the findings in the CPE Process Review Reports, no overhaul or change to the CPE process for this current round of the New gTLD (generic Top Level Domain) Program is necessary.

Resolved (2018.03.15.10), the Board declares that the CPE Process Review has been completed.

Resolved (2018.03.15.11), the Board directs the Board Accountability Mechanisms Committee to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review in accordance with the Transition Process of Reconsideration Responsibilities from the BGC to the BAMC (</en/system/files/files/reconsideration->

[responsibilities-transition-bgc-to-bamc-05jan18-en.pdf](#)) [PDF, 42 KB] document.

Rationale for Resolutions 2018.03.15.08 - 2018.03.15.11

CPE is a contention resolution mechanism available to applicants that self-designated their applications as community applications.⁴ CPE is defined in Module 4.2 of the Applicant Guidebook, and allows a community-based application to undergo an evaluation against the criteria as defined in section 4.2.3 of the Applicant Guidebook, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus prevail over other applications in the contention set.⁵ CPE will occur only if a community-based applicant selects to undergo CPE for its relevant application and after all applications in the contention set have completed all previous stages of the new gTLD (generic Top Level Domain) evaluation process. CPE is performed by an independent provider (CPE Provider).

The Board directed the President and CEO or his designees to undertake a review of the "process by which ICANN (Internet Corporation for Assigned Names and Numbers) [organization] interacted with the [Community Priority Evaluation] CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider" as part of the Board's oversight of the New gTLD (generic Top Level Domain) Program (Scope 1).⁶ The Board's action was part of the ongoing discussions regarding various aspects of the CPE process, including some issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry, LLC.

Thereafter, the Board Governance Committee (BGC) determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (Scope 3).⁷ Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review.

The BGC determined that the following pending Reconsideration Requests would be on hold until the CPE Process Review was completed: 14-30 (.LLC),⁸ 14-32 (.INC),⁹ 14-33¹⁰ (.LLP), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCK).

On 13 December 2017, ICANN (Internet Corporation for Assigned Names and Numbers) organization published three reports on the CPE Process Review.

For Scope 1, "FTI conclude[d] that there is no evidence that ICANN (Internet Corporation for Assigned Names and Numbers) organization had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process.... While FTI understands that many communications between ICANN (Internet Corporation for Assigned Names and Numbers) organization and the CPE Provider were verbal and not memorialized in writing, and thus FTI was not able to evaluate them, FTI observed nothing during its investigation and analysis that would indicate that any verbal communications amounted to undue influence or impropriety by ICANN (Internet Corporation for Assigned Names and Numbers) organization." (Scope 1 Report (/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf) [PDF, 160 KB], Pg. 4)

For Scope 2, "FTI found no evidence that the CPE Provider's evaluation process or reports deviated in any way from the applicable guidelines; nor did FTI observe any instances where the CPE Provider applied the CPE criteria in an inconsistent manner." (Scope 2 Report (/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf) [PDF, 313 KB], Pg. 3.)

For Scope 3, "[o]f the eight relevant CPE reports, FTI observed two reports (.CPA, .MERCK) where the CPE Provider included a citation in the report for each reference to research. For all eight evaluations (.LLC, .INC, .LLP, .GAY, .MUSIC, .CPA, .HOTEL, and .MERCK), FTI observed instances where the CPE Provider cited reference material in the CPE Provider's working papers that was not otherwise cited in the final CPE report. In addition, in six CPE

reports (.LLC, .INC, .LLP, .GAY, .MUSIC, and .HOTEL), FTI observed instances where the CPE Provider referenced research but did not include citations to such research in the reports. In each instance, FTI reviewed the working papers associated with the relevant evaluation to determine if the citation supporting referenced research was reflected in the working papers. For all but one report, FTI observed that the working papers did reflect the citation supporting referenced research not otherwise cited in the corresponding final CPE report. In one instance—the second .GAY final CPE report—FTI observed that while the final report referenced research, the citation to such research was not included in the final report or the working papers for the second .GAY evaluation. However, because the CPE Provider performed two evaluations for the .GAY application, FTI also reviewed the CPE Provider's working papers associated with the first .GAY evaluation to determine if the citation supporting research referenced in the second .GAY final CPE report was reflected in those materials. Based upon FTI's investigation, FTI finds that the citation supporting the research referenced in the second .GAY final CPE report may have been recorded in the CPE Provider's working papers associated with the first .GAY evaluation." ([Scope 3 Report \(/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf\)](/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf)) [PDF, 309 KB], Pg. 4.)

The Board notes that FTI's findings are based upon its review of the written communications and documents described in the three Reports. The Board Accountability Mechanisms Committee (BAMC) considered the CPE Process Review Reports as part of its oversight of accountability mechanisms and recommended that the Board take the foregoing actions related to the CPE Process Review. The Board agrees. In particular, the BAMC is ready to re-start its review of the remaining reconsideration requests that were put on hold. To ensure that the review of these pending Reconsideration Requests are conducted in an efficient manner and in accordance with the "[Transition Process of Reconsideration Responsibilities from the BGC to the BAMC \(/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf\)](/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf)" [PDF, 42 KB], the BAMC has developed a [Roadmap \(/en/system/files/files/roadmap-reconsideration-requests-cpe-15feb18-en.pdf\)](/en/system/files/files/roadmap-reconsideration-requests-cpe-15feb18-en.pdf) [PDF, 30 KB] for the review of the pending Reconsideration Requests.

The Board acknowledges receipt of the letters to the ICANN (Internet Corporation for Assigned Names and Numbers) Board from dotgay LLC on 15 January 2018 (</en/system/files/correspondence/ali-to-icann-board-15jan18-en.pdf>) [PDF, 238 KB] and 20 January 2018 (</en/system/files/correspondence/ali-to-icann-board-20jan18-en.pdf>) [PDF, 130 KB], and from DotMusic Limited on 16 January 2018 (</en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>) [PDF, 49 KB], regarding the CPE Process Review Reports. Both dotgay LLC and DotMusic Limited claim that the CPE Process Review lacked transparency or independence, and was not sufficiently thorough, and ask that the ICANN (Internet Corporation for Assigned Names and Numbers) Board take no action with respect to the conclusions reached by FTI, until the parties have had an opportunity to respond to the FTI Report and to be heard as it relates to their pending reconsideration requests. (See <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-15jan18-en.pdf> (</en/system/files/correspondence/ali-to-icann-board-15jan18-en.pdf>) [PDF, 238 KB]; <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-20jan18-en.pdf> (</en/system/files/correspondence/ali-to-icann-board-20jan18-en.pdf>) [PDF, 130 KB]; and <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf> (</en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>) [PDF, 49 KB].) The Board has considered the arguments raised in the letters. The Board notes that dotgay LLC and DotMusic Limited (among other requestors) each will have an opportunity to submit supplemental materials and make a presentation to the BAMC to address how the CPE Process Review is relevant to their pending Reconsideration Requests. Any specific claims they might have related to the FTI Reports with respect to their particular applications can be addressed then, and ultimately will be considered in connection with the determination on their own Reconsideration Requests.

The Board also acknowledges receipt of the letter to the ICANN (Internet Corporation for Assigned Names and Numbers) Board from dotgay LLC on 31 January 2018 (</en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf>) [PDF, 2.32 MB], which attached the Second Expert Opinion of Professor William N. Eskridge, Jr., addressing FTI's Scope 2 Report and Scope 3 Report on the CPE Process

Review.

(<https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf> (</en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf>) [PDF, 2.32 MB].) The Board has considered the arguments raised in the letter and accompanying Second Expert Opinion, and finds that they do not impact this Resolution, but instead will be addressed in connection with dotgay LLC's pending Reconsideration Request 16-3.

First, and as an initial matter, the Board does not accept dotgay LLC's assertion that "a strong case could be made that the purported investigation was undertaken with a pre-determined outcome in mind."

(<https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf> (</en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf>) [PDF, 2.32 MB], at Pg. 1.) Neither dotgay LLC nor Professor Eskridge offers any support for this baseless claim, and there is none.

(<https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf> (</en/system/files/correspondence/ali-to-icann-board-31jan18-en.pdf>) [PDF, 2.32 MB].) Second, dotgay LLC urges the Board to entirely "reject the findings made by FTI in the FTI Reports", but dotgay LLC has submitted no basis for this outcome. All dotgay LLC offers is Professor Eskridge's Second Expert Opinion, which, at its core, challenges the merits of the report issued by the CPE Provider in connection with dotgay LLC's community application for the .GAY gTLD (generic Top Level Domain). (See Response to dotgay LLC at <https://www.icann.org/en/system/files/correspondence/wallace-to-ali-05mar18-en.pdf> (</en/system/files/correspondence/wallace-to-ali-05mar18-en.pdf>) [PDF, 122 KB]; see also Response from dotgay LLC at <https://www.icann.org/en/system/files/correspondence/ali-to-wallace-07mar18-en.pdf> (</en/system/files/correspondence/ali-to-wallace-07mar18-en.pdf>) [PDF, 226 KB].) Dotgay LLC will have the opportunity to include such claims in that regard and if it does, the claims will be addressed in connection with their reconsideration request that is currently pending.

The Board also acknowledges the 1 February 2018 letter (</en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-01feb18-en.pdf>) [PDF, 537 KB] from

applicants Travel Reservations SRL, Minds + Machines Group Limited, Radix FXC, dot Hotel Inc. and Fegistry LLC (regarding "Consideration of Next Steps in the Community Priority Evaluation Process Review (Reconsideration Request 16-11).") These applicants that submitted Request 16-11 claim that the CPE Process Review lacked transparency or independence, and ask that the Board address the inconsistencies to "ensure a meaningful review of the CPE regarding .hotel."

(<https://www.icann.org/en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-01feb18-en.pdf> (</en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-01feb18-en.pdf>) [PDF, 537 KB].), Pg. 4.)

The Board understands the arguments raised in the letter, and again reiterates that the individual requestors with reconsideration requests that were placed on hold pending completion of the CPE Process Review will have the opportunity to submit additional information in support of those reconsideration requests, including the requestors that filed Reconsideration Request 16-11.

The Board acknowledges receipt of DotMusic Limited's submission to the ICANN (Internet Corporation for Assigned Names and Numbers) Board, on 2 February 2018 (</en/system/files/correspondence/roussos-to-marby-02feb18-en.pdf>) [PDF, 1.02 MB], regarding the CPE Process Review Reports. First, and as an initial matter, the Board does not accept DotMusic Limited's assertions that FTI's "objective was to exonerate ICANN (Internet Corporation for Assigned Names and Numbers) and the CPE panel", that "the intent of the investigation was to advocate in favor of ICANN (Internet Corporation for Assigned Names and Numbers) and [the CPE Provider]", and that "ICANN (Internet Corporation for Assigned Names and Numbers) carefully tailored the narrow scope of the investigation and cherry-picked documents and information to share with the FTI to protect itself."

(<https://www.icann.org/en/system/files/correspondence/roussos-to-marby-02feb18-en.pdf> (</en/system/files/correspondence/roussos-to-marby-02feb18-en.pdf>) [PDF, 1.02 MB], ¶ 109, Pg. 65, ¶ 69, Pg. 48, ¶ 74, Pg. 49, ¶ 76, Pg. 49.) DotMusic Limited offers no support for these baseless claims, and there is none. (See Response to DotMusic Limited,

<https://www.icann.org/en/system/files/correspondence/wallace-to-roussos-schaeffer-05mar18-en.pdf>
(</en/system/files/correspondence/wallace-to-roussos-schaeffer-05mar18-en.pdf>) [PDF, 126 KB]; see *a/so* Responses from DotMusic Limited,
<https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-jones-day-07mar18-en.pdf>
(</en/system/files/correspondence/ali-to-icann-board-jones-day-07mar18-en.pdf>) [PDF, 227 KB].) DotMusic Limited otherwise reiterates the claims made in its 16 January 2018
(</en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>) [PDF, 49 KB] letter to the ICANN (Internet Corporation for Assigned Names and Numbers) Board, namely that the CPE Process Review lacked transparency and was too narrow. DotMusic Limited asserts that it would be unreasonable for the ICANN (Internet Corporation for Assigned Names and Numbers) Board to accept the conclusions of the FTI Report and reject DotMusic's Reconsideration Request 16-5. The Board has considered the arguments raised in DotMusic Limited's submission, and finds that they do not impact this Resolution. As noted above, DotMusic Limited (among other Requestors) will have an opportunity to submit supplemental materials and make a presentation to the BAMC to address how the CPE Process Review is relevant to its pending Reconsideration Request 16-5, such that any claims DotMusic Limited might have related to the FTI Reports can be addressed then, and then ultimately will be considered in connection with the determination on Reconsideration Request 16-5.

The Board also acknowledges the 22 February 2018 letter
(</en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-22feb18-en.pdf>) [PDF, 516 KB] from applicants Travel Reservations SRL, Minds + Machines Group Limited, Radix FXC, dot Hotel Inc. and Fegistry LLC (regarding "Consideration of Next Steps in the Community Priority Evaluation Process Review (Reconsideration Request 16-11).") These applicants that submitted Request 16-11 reiterate their claim that the CPE Process Review lacked transparency, and further assert that ICANN (Internet Corporation for Assigned Names and Numbers) organization continues to be "non-transparent about the CPE deliberately" insofar as ICANN (Internet Corporation for Assigned Names and Numbers)

organization has not published a preliminary report of the BAMC's 2 February 2018 meeting, which these applicants claim is required pursuant to Article 3, Section 3.5(c) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws. (<https://www.icann.org/en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-22feb18-en.pdf> (</en/system/files/files/reconsideration-16-11-trs-et-al-petillion-to-icann-bamc-redacted-22feb18-en.pdf>) [PDF, 516 KB], Pg. 2.) First, the Board notes that Article 3, Section 3.5 relates to Minutes and Preliminary Reports of meetings of the Board, the Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations). (See Article 3, Section 3.5(a).) In this regard, the timing requirements relative to the publication of preliminary reports provided by Article 3, Section 3.5(c) of the Bylaws relates to the publication of "any actions taken by the Board" after the conclusion a Board meeting, not Board Committees meetings. In either case, the minutes of the BAMC's 2 February 2018 meeting have been published and reflect that the BAMC considered the recent letters to the ICANN (Internet Corporation for Assigned Names and Numbers) Board regarding the CPE Process Review. (See <https://www.icann.org/resources/board-material/minutes-bamc-2018-02-02-en> (</resources/board-material/minutes-bamc-2018-02-02-en>).) Second, the Board did timely publish, in accordance with Article 3, Section 3.5(c), a preliminary report regarding "Next Steps in Community Priority Evaluation Process Review – UPDATE ONLY", which reflected the Board's discussion of the CPE Process Review, including the fact that "the Board has received letters from a number of applicants ... [, that] the BAMC [has] taken the letters and reports into consideration as part of its recommendation to the Board, [and that] the proposed resolution has been continued to the Board's next meeting in Puerto Rico to allow the Board members additional time to consider the new documents." (Preliminary Report | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board, *available* at: <https://www.icann.org/resources/board-material/prelim-report-2018-02-04-en> (</resources/board-material/prelim-report-2018-02-04-en>)). Third, the Board understands the arguments raised in the letter, and again reiterates that the individual requestors with reconsideration requests that were placed on hold pending completion of the

CPE Process Review will have the opportunity to submit additional information in support of those reconsideration requests, including the requestors that filed Reconsideration Request 16-11.

The Board acknowledges receipt of a letter from the Head of Institutional Relations at the European Broadcasting Union (EBU) to dotgay LLC, with a copy to the ICANN (Internet Corporation for Assigned Names and Numbers) Board regarding its "disappointing experience with the Community Priority Evaluation (CPE) process."

<https://www.icann.org/en/system/files/correspondence/mazzone-to-baxter-06mar18-en.pdf>

[\(/en/system/files/correspondence/mazzone-to-baxter-06mar18-en.pdf\)](#) [PDF, 154 KB], Pg. 1.) The EBU raised very generalized concerns about the CPE process but did not provide any level of specificity about those concerns. Because the letter lacks specificity and does not detail the EBU's precise concerns, the Board regards the letter as support for the positions expressed by dotgay LLC and will be considered as part of the Board's evaluation of dotgay LLC's pending Reconsideration Request.

The Board also acknowledges receipt of letters from SERO and the National LGBT Chamber of Commerce on 18 February 2018 [\(/en/system/files/correspondence/strub-to-chalaby-18feb18-en.pdf\)](#) [PDF, 371 KB] and 1 March 2018 [\(/en/system/files/correspondence/lovitz-to-board-01mar18-en.pdf\)](#) [PDF, 1.16 MB], respectively, expressing support for dotgay LLC's community application. These letters will be considered as part of the Board's evaluation of dotgay LLC's pending Reconsideration Request.

Taking this action is in the public interest and consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments and Core Values as it will provide transparency and accountability regarding the CPE process and the CPE Process Review. This action also ensures that ICANN (Internet Corporation for Assigned Names and Numbers) operates in a manner consistent with the Bylaws by making decisions that apply documented policies consistently, neutrally, objectively, and fairly without singling out any particular party for discriminatory treatment.

This action 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. Further Consideration of the Gulf Cooperation Council Independent Review Process Final Declarations

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization received the Final Declaration in the Gulf Cooperation Council (GCC) v. ICANN (Internet Corporation for Assigned Names and Numbers) Independent Review Process (IRP) and the Final Declaration As To Costs (Costs Declaration) in the IRP.

Whereas, among other things, the IRP Panel declared that "the GCC is the prevailing Party," and ICANN (Internet Corporation for Assigned Names and Numbers) "shall reimburse the GCC the sum of \$107,924.16 upon demonstration by [the] GCC that these incurred costs have been paid." (Final Declaration at pg. 45; Costs Declaration at pg. 6, V.2.)

Whereas, the Panel recommended that the "Board take no further action on the '.persiangulf' gTLD (generic Top Level Domain) application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the '.persiangulf' gTLD (generic Top Level Domain)." (Final Declaration at pg. 44, X.2.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version of the Bylaws, the Board considered the Final Declaration and the Costs Declaration at its meeting on 16 March 2017, and determined that further consideration and analysis was needed.

Whereas, the Board Accountability Mechanisms Committee (BAMC) conducted the requested further consideration and analysis, and has recommended that: (i) the Board treat the

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RESPONDENT'S EXHIBIT

Approved Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

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27 Jan 2019

1. Consent Agenda:

- a. **Approval of Minutes**
- b. **Acceptance of GNSO2 Review Working Group's Implementation Final Report**
Rationale for Resolutions 2019.01.27.02 – 2019.01.27.03
- c. **Consideration of the At-Large Advisory Committee (Advisory Committee) Detailed Implementation Plan**
Rationale for Resolutions 2019.01.27.04 – 2019.01.27.07
- d. **FY20 IANA (Internet Assigned Numbers Authority) Operating Plan and Budget**
Rationale for Resolution 2019.01.27.08
- e. **October 2021 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting Venue Contracting**
Rationale for Resolutions 2019.01.27.09 – 2019.01.27.11
- f. **Contract Renewal and Disbursement for ERP Initiative (Oracle Cloud)**
Rationale for Resolutions 2019.01.27.12 – 2019.01.27.13
- g. **Reaffirming the Temporary Specification for gTLD (generic Top Level Domain) Registration Data**
Rationale for Resolutions 2019.01.27.14 – 2019.01.27.15

2. Main Agenda:

- a. **Delegation of the موريتانيا .country-code top-level domain representing Mauritania in Arabic Script to Université de Nouakchott Al Aasriya**
Rationale for Resolution 2019.01.27.16
- b. **Delegation of the .SS (South Sudan) country-code top-level domain to the National Communication Authority (NCA)**
Rationale for Resolution 2019.01.27.17
- c. **GAC (Governmental Advisory Committee) Advice: Barcelona Communiqué (October 2018)**
Rationale for Resolution 2019.01.27.18
- d. **Adoption of GNSO (Generic Names Supporting Organization) Consensus (Consensus) Policy relating to Certain Red Cross & Red Crescent Names at the**

Second Level of the Domain Name (Domain Name) System

Rationale for Resolutions 2019.01.27.19 – 2019.01.27.20

e. **Board Committee Membership and Leadership Changes**

Rationale for Resolutions 2019.01.27.21 – 2019.01.27.22

f. **Consideration of Reconsideration Request 16-11: Travel Reservations SRL, Famous Four Media Limited (and its subsidiary applicant dot Hotel Limited), Registry LLC, Minds + Machines Group Limited, Spring McCook, LLC, and Radix FZC (and its subsidiary applicant dot Hotel Inc.) (.HOTEL)**

Rationale for Resolution 2019.01.27.23

g. **Consideration of Reconsideration Request 18-9: DotKids Foundation (.KIDS)**

Rationale for Resolution 2019.01.27.24

h. **Consideration of Reconsideration Request 16-12: Merck KGaA (.MERCK)**

Rationale for Resolution 2019.01.27.25

i. **AOB**

1. Consent Agenda:

a. Approval of Minutes

Resolved (2019.01.27.01), the Board approves the minutes of the 25 October Regular and Organizational Meetings of the ICANN (Internet Corporation for Assigned Names and Numbers) Board and the 6 November Special Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

b. Acceptance of GNSO2 Review Working Group's Implementation Final Report

Whereas, as part of the second review of the Generic Names Supporting Organization (Supporting Organization) (GNSO (Generic Names Supporting Organization)), on 3 February 2017 the Board accepted the GNSO (Generic Names Supporting Organization) Review Implementation Plan and directed the GNSO (Generic Names Supporting Organization) Council to provide the Board with regular reporting on the implementation efforts.

Whereas, the GNSO (Generic Names Supporting Organization) Review Working Group, with GNSO (Generic Names Supporting Organization) Council approval and oversight, provided the Board via the Organizational Effectiveness Committee (OEC) with semi-annual updates on the progress of implementation efforts until such time that the implementation efforts concluded.

Whereas, the OEC monitored the progress of implementation efforts via the semi-annual implementation reports and recommends that the Board accept the Implementation Final Report of the second GNSO (Generic Names Supporting Organization) Review issued by the GNSO (Generic Names Supporting Organization) Review Working Group and approved by the GNSO (Generic Names Supporting

Organization) Council on 16 August 2018

(<https://community.icann.org/display/gnsocouncilmeetings/Motions+16+August+2018>).

Resolved (2019.01.27.02), the Board acknowledges the GNSO (Generic Names Supporting Organization) Review Working Group's hard work and thanks them for producing the report of implementation of recommendations to improve the GNSO (Generic Names Supporting Organization)'s effectiveness, transparency, and accountability, in line with the proposed timeline as set out in the adopted GNSO (Generic Names Supporting Organization) Review Implementation Plan.

Resolved (2019.01.27.03), the Board accepts the GNSO2 Review Implementation Final Report of the second GNSO (Generic Names Supporting Organization) Review issued by the GNSO (Generic Names Supporting Organization) Review Working Group, which marks the completion of this important review. The Board encourages the GNSO (Generic Names Supporting Organization) to continue monitoring the impact of the implementation of the recommendations from the second Review of the GNSO (Generic Names Supporting Organization) as part of its continuous improvement process.

Rationale for Resolutions 2019.01.27.02 – 2019.01.27.03

Why is the Board addressing the issue?

ICANN (Internet Corporation for Assigned Names and Numbers) organizes independent reviews of its supporting organizations and advisory committees as prescribed in Article 4 Section 4.4 (</resources/pages/governance/bylaws-en#IV-4>) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, to ensure ICANN (Internet Corporation for Assigned Names and Numbers)'s multistakeholder model remains transparent and accountable, and to improve its performance.

This action completes the second review of the GNSO (Generic Names Supporting Organization) and is based on the Implementation Final Report as adopted by the GNSO (Generic Names Supporting Organization) Council, the final report of the independent examiner, Westlake Governance, as well as the GNSO (Generic Names Supporting Organization) Review Working Group's (WG (Working Group)) assessment of the recommendations as adopted by the GNSO (Generic Names Supporting Organization) Council. Following the assessment of all pertinent documents and community feedback by the OEC, the Board is now in a position to consider and accept the Implementation Final Report.

The Board, with recommendation from the Organizational Effectiveness Committee of the Board (OEC), considered all relevant documents, including the final report, the GNSO (Generic Names Supporting Organization) Review Working Party Feasibility Assessment and Prioritization of Recommendations by Independent Examiner (https://gns0.icann.org/sites/default/files/filefield_49053/review-feasibility-prioritization-25feb16-en.pdf) ("Feasibility Assessment"), and accepted the final report issued by the independent examiner on 25 June 2016. The Board adopted the Feasibility Assessment, except recommendations 23 and 32. Additionally, the Board directed the GNSO (Generic Names Supporting Organization) Council to: draft an implementation plan for the adopted recommendations with a realistic timeline that took into account the continuously high community workload and consideration of the prioritization proposed by the WG (Working Group); publish the plan no later than six (6) months

after the Board's adoption of the Feasibility Assessment; ensure that the implementation plan includes definitions of desired outcomes and a way to measure current state as well as progress toward the desired outcome; and report back regularly to the Board on its implementation progress.

On 3 February 2017, the Board accepted the Implementation Plan provided by the WG (Working Group) and approved by the GNSO (Generic Names Supporting Organization) Council on 15 December 2016, and directed the WG (Working Group) to provide semi-annual updates to the OEC until such time that the implementation efforts have concluded.

What is the proposal being considered?

The proposal being considered is that the Board accepts the WG (Working Group)'s Implementation Final Report, adopted by the GNSO (Generic Names Supporting Organization) Council, and considered by the OEC.

Which stakeholders or others were consulted?

The Board, through the OEC, consulted with the GNSO (Generic Names Supporting Organization) Review Working Group, who was responsible for the implementation, and recommended good practices for conducting effective reviews on a timely basis and monitored the progress of the review as well as the progress of the implementation of review recommendations.

What concerns, or issues were raised by the community?

The implementation work conducted by the GNSO (Generic Names Supporting Organization) followed its standard practices to promote transparency and accountability. No concerns were voiced by the community.

What significant materials did the Board review?

The Board reviewed relevant Bylaws sections (</resources/pages/governance/bylaws-en/#article4>), Organizational Review Process documentation (</en/system/files/files/org-reviews-process-flowchart-31aug17-en.pdf>), GNSO (Generic Names Supporting Organization) Review Recommendations Implementation Plan (</en/system/files/correspondence/gnso-review-implementation-plan-to-icann-board-21nov16-en.pdf>), and the GNSO (Generic Names Supporting Organization) Review Working Group's Implementation Final Report (<https://gnso.icann.org/sites/default/files/file/field-file-attach/gnso2-review-implementation-30jul18-en.pdf>).

What factors did the Board find to be significant?

The Board found several factors to be significant, contributing to the effective completion of the implementation work:

- Convening a dedicated group that oversees the implementation of Board-accepted recommendations
- An implementation plan containing a realistic timeline for the implementation, definition of desired outcomes and a way to measure current state as well as

progress toward the desired outcome

- Timely and detailed reporting on the progress of implementation

Are there positive or negative community impacts?

This Board action is expected to have a positive impact on the community by acknowledging and highlighting an effective completion of implementation of GNSO (Generic Names Supporting Organization) Review Recommendations.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

This Board action is anticipated to have no fiscal impact as the implementation efforts have successfully concluded. The ramifications on the ICANN (Internet Corporation for Assigned Names and Numbers) organization, the community and the public are anticipated to be positive, as this Board action signifies an important milestone for organizational reviews and self-governance of ICANN (Internet Corporation for Assigned Names and Numbers).

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS (Domain Name System).

How is this action within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and what is the public interest served in this action?

The Board's action is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment pursuant to section 4.1 of the Bylaws to continue reviewing that entities within ICANN (Internet Corporation for Assigned Names and Numbers) have an ongoing purpose, and to improve the performance of its supporting organizations and advisory committees. This action will serve the public interest by fulfilling ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment to continuous review of its components to confirm that where people engage with the ICANN (Internet Corporation for Assigned Names and Numbers) community support the purposes and expectations of that engagement.

Is public comment required prior to Board action?

No public comment is required.

c. Consideration of the At-Large Advisory Committee (Advisory Committee) Detailed Implementation Plan

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws Article 4, Section 4.4 (/resources/pages/governance/bylaws-en#IV-4) calls on the ICANN (Internet Corporation for Assigned Names and Numbers) Board to "cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the

Governmental Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness."

Whereas, the independent examiner of the At-Large Review produced a [Final Report \(https://community.icann.org/display/ALRW/Final+Report%3A+Review+of+the+At-Large+Community\)](https://community.icann.org/display/ALRW/Final+Report%3A+Review+of+the+At-Large+Community) in February 2017. That report was received by the Board in June 2018, and at the same time the Board accepted the At-Large Review Recommendations Feasibility Assessment & Implementation Plan and the At-Large Review Implementation Overview Proposal as approved by the ALAC (At-Large Advisory Committee).

Whereas, in response to that June 2018 resolution, the At-Large Review Implementation Working Group was created. That Working Group developed and approved the [At-Large Review Implementation Plan \(https://docs.google.com/document/d/12fQ1jKp88g3sQHZv_SzIMGqEXssL8DtzTkr-Cv8LpTE/edit?pli=1\)](https://docs.google.com/document/d/12fQ1jKp88g3sQHZv_SzIMGqEXssL8DtzTkr-Cv8LpTE/edit?pli=1) (the "Implementation Plan") on 19 November 2018, which was endorsed by the ALAC (At-Large Advisory Committee) endorsement on 27 November 2018.

Resolved (2019.01.27.04), the Board acknowledges the At-Large Review Implementation Working Group's work and thanks the members of that Working Group for their efforts.

Resolved (2019.01.27.05), the Board accepts the At-Large Review Implementation Plan, including the phased approach contained within. The Board acknowledges that more details with regard to implementation details may be required for implementation of Priorities 2 and 3 activities.

Resolved (2019.01.27.06), the Board directs the At-Large Review Implementation Working Group to provide updates to the OEC every six months. Those bi-annual updates shall identify achievements as measured against the existing implementation plan, as well as details on future implementation plans. It is during these updates that the At-Large Review Implementation Working Group shall provide more details on implementation progress, and measurability. The OEC may request interim briefings if deemed necessary.

Resolved (2019.01.27.07), that any budgetary implications of the At-Large Review implementation shall be considered as part of the applicable annual budgeting processes.

Rationale for Resolutions 2019.01.27.04 – 2019.01.27.07

To ensure ICANN (Internet Corporation for Assigned Names and Numbers)'s multistakeholder model remains transparent and accountable, and to improve its performance, ICANN (Internet Corporation for Assigned Names and Numbers) organizes independent reviews of its supporting organizations and advisory committees as prescribed in [Article 4 Section 4.4 \(/resources/pages/governance/bylaws-en#IV-4\)](#) of the ICANN (Internet Corporation for

Assigned Names and Numbers) Bylaws. The second At-Large started in 2016 and the independent examiner presented its Final Report in May 2017.

The At-Large Review Implementation recommendations as noted in the At-Large Review Implementation Overview Proposal have the potential to advance ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability objectives and have been considered carefully by the Board's Organizational Effectiveness Committee as well as by the full Board.

The Board resolution will have a positive impact on ICANN (Internet Corporation for Assigned Names and Numbers) and especially the ALAC (At-Large Advisory Committee) and At-Large community as it reinforces ICANN (Internet Corporation for Assigned Names and Numbers)'s and the ALAC (At-Large Advisory Committee) and At-Large community's commitment to maintaining and improving its accountability, transparency and organizational effectiveness throughout the implementation process.

Due to the number of recommendations that need to be implemented, the Board supports the approach by priorities as laid out in the Implementation Plan (Exhibit A). This will allow the community time to refine details as the implementation process proceeds— especially during Priority 2 and 3 activities set out in that Implementation Plan.

Some recommendations – especially those foreseen to be implemented under Priority 2 and 3 activities – may benefit from additional details regarding their exact implementation. Due to the difficulty to predict these issues months in advance, the Board supports the idea that the At-Large Review Implementation Working Group provides updates bi-annually to the OEC. It is during these updates that the ALAC (At-Large Advisory Committee) can provide greater implementation details with regard to those recommendations that are going to be scheduled for the forthcoming six-month period following the respective OEC update. At that time, the ALAC (At-Large Advisory Committee) would be in a better position to flag any significant variations from the original implementation plan and timing. The At-Large Review Implementation Plan sets out the prioritization, expected resource allocation in terms of staff time, web and wiki resources, expected budgetary implications such as additional staff resources, and the steps to implementation. While the majority of implementation activities will use existing At-Large resources, any additional fiscal implications are noted below. The ALAC (At-Large Advisory Committee) will utilize the normal annual budgetary comment process to request the required resources. If such resources are not provided, the likely result would be a significant slow down in the speed of the Review Implementation.

Why is the Board addressing the issue?

This resolution moves the second review of the At-Large community into the implementation phase. Following the assessment of the Implementation Plan and the feedback from the Board's Organizational Effectiveness Committee, the Board is now in a position to consider the Plan and instruct the ALAC (At-Large Advisory Committee) to continue the implementation process as set out in the Plan. This step is an important part of the Organizational Review process of checks and balances, to ensure that the spirit of Board-approved recommendations will be addressed through the implementation plans, while being mindful of budgetary and timing constraints.

What is the proposal being considered?

The proposal the Board is considering is the Organizational Effectiveness Committee's recommendation of the adoption of the At-Large Review Implementation Plan, drafted and adopted by the At-Large Review Implementation Working Group, endorsed by the ALAC (At-Large Advisory Committee).

Which stakeholders or others were consulted?

Immediately after the Board passed the Resolution on the At-Large Review, the leadership of the At-Large Review Working Group provided updates on the Review and next steps on each of the five RALO monthly teleconferences. The creation of the At-Large Review Implementation Working Group involved careful consideration of members to ensure geographical balance and diversity within each RALO, including among the 232 At-Large Structures and over 100 individual members. During the development of the At-Large Review Implementation Plan, the At-Large Review Implementation WG (Working Group) members updated the ALAC (At-Large Advisory Committee) as well as each RALO on a regular basis with the progress that was being made. There were also several discussions on the At-Large Review Implementation during ICANN63 face-to-face sessions. At each step, feedback was discussed by the At-Large Review Implementation WG (Working Group) and incorporated into the final Plan.

What concerns, or issues were raised by the community?

During the development of the At-Large Review Implementation Plan, the At-Large community raised the concern over whether the third At-Large Summit (ATLAS III) would take place as tentatively scheduled during ICANN66 in Montreal in October 2019 and identified as a Priority 1 activity and requiring budgetary consideration in advance of the broader organizational budget cycle. In September 2018 the Board confirmed that the ICANN (Internet Corporation for Assigned Names and Numbers) organization still had authority to proceed with the planning and contracting.

What significant materials did the Board review?

The Board reviewed the At-Large Review Implementation Plan as adopted by the At-Large Review Implementation Working Group and endorsed by the ALAC (At-Large Advisory Committee).

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers), the Community, and/or the Public (strategic plan, operating plan, or budget)?

The work to improve the effectiveness of the At-Large organization – by implementing the issues resulting from the Review and the At-Large Review Implementation Overview Proposal, may require additional financial resources that are subject to ICANN (Internet Corporation for Assigned Names and Numbers)'s normal budgetary processes. This resolution does not authorize any specific funding for those implementation efforts. The Board understands that some of the Priority 1 work, such as skills development and communication efforts, will require FY20 Additional Budget Requests. The Board also understands that the ongoing and Priority 2 activities are estimated to require the addition of one Full Time Employee equivalent, and there are

other anticipated resource needs for items such as communications and data collection.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

This action is not expected to have a direct impact on the security, stability or resiliency of the DNS (Domain Name System). Still, once the improvements are implemented, future activities of the ALAC (At-Large Advisory Committee) and At-Large community, including advice or inputs into the policy development processes, will become more transparent and accountable, which in turn might indirectly contribute to the security, stability or resiliency of the DNS (Domain Name System).

Is public comment required prior to Board action?

The Draft Report of the independent examiner was posted for public comment. There is no public comment required prior to this Board action. The voice of the ALAC (At-Large Advisory Committee) has been reflected throughout the review process – via the At-Large Review Working Party that produced the ALAC (At-Large Advisory Committee) Implementation Overview Proposal; the At-Large Review Implementation Working Group that developed the implementation plan; and the ALAC (At-Large Advisory Committee) that endorsed the implementation plan.

How is this action within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and what is the public interest served in this action?

Given that At-Large represents the best interests of individual Internet end users within ICANN (Internet Corporation for Assigned Names and Numbers)'s multistakeholder governance approach, the approval of the At-Large Review Implementation Plan, which will lead to a strengthened At-Large community, will have a direct positive impact to ICANN (Internet Corporation for Assigned Names and Numbers)'s mission in its bottom-up policy development process. The public interest is also served through this action which furthers the continued development and support of a diverse and informed multistakeholder community.

d. FY20 IANA (Internet Assigned Numbers Authority) Operating Plan and Budget

Whereas, the draft FY20 IANA (Internet Assigned Numbers Authority) Operating Plan and Budget (OP&B) was posted for public comment in accordance with the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws on 28 September 2018.

Whereas, comments received through the public comment process were reviewed and responded to and provided to the BFC members for review and comment.

Whereas, all public comments have been taken into consideration, and where appropriate and feasible, have been incorporated into a final FY20 IANA (Internet Assigned Numbers Authority) OP&B.

Whereas, the Public Technical Identifier's Board adopted a Final FY20 PTI OP&B on 20 December 2018, which is a required input for the ICANN (Internet Corporation for Assigned Names and Numbers) Board's consideration of the broader IANA (Internet

Assigned Numbers Authority) OP&B. Per the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, once the IANA (Internet Assigned Numbers Authority) OP&B is adopted by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, it is then posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website and the Empowered Community has an opportunity to consider the IANA (Internet Assigned Numbers Authority) OP&B for rejection.

Whereas, the public comments received, as well as other solicited community feedback were taken into account to determine required revisions to the draft IANA (Internet Assigned Numbers Authority) FY20 Operating Plan and Budget.

Resolved (2019.01.27.08), the Board adopts the FY20 IANA (Internet Assigned Numbers Authority) Operating Plan and Budget, including the FY20 IANA (Internet Assigned Numbers Authority) Caretaker Budget.

Rationale for Resolution 2019.01.27.08

In accordance with Section 22.4 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the Board is to adopt an annual budget for the operation of the IANA (Internet Assigned Numbers Authority) functions and publish that budget on the ICANN (Internet Corporation for Assigned Names and Numbers) website. On 28 September 2018 drafts of the FY20 PTI O&B and the FY20 IANA (Internet Assigned Numbers Authority) OP&B were posted for public comment. The PTI Board approved the PTI Budget on 20 December 2018, and the PTI Budget was received as input into the FY20 IANA (Internet Assigned Numbers Authority) Budget.

The published draft FY20 PTI OP&B and the draft FY20 IANA (Internet Assigned Numbers Authority) OP&B were based on numerous discussions with members of ICANN (Internet Corporation for Assigned Names and Numbers) org and the ICANN (Internet Corporation for Assigned Names and Numbers) Community, including extensive consultations with ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and other stakeholder groups throughout the prior several months.

All comments received in all manners were considered in developing the FY20 IANA (Internet Assigned Numbers Authority) OP&B. Where feasible and appropriate these inputs have been incorporated into the final FY20 IANA (Internet Assigned Numbers Authority) OP&B proposed for adoption.

The FY20 IANA (Internet Assigned Numbers Authority) OP&B will have a positive impact on ICANN (Internet Corporation for Assigned Names and Numbers) in that it provides a proper framework by which the IANA (Internet Assigned Numbers Authority) services will be performed, which also provides the basis for the organization to be held accountable in a transparent manner.

This decision is in the public interest and within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, as it is fully consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s strategic and operational plans, and the results of which in fact allow ICANN (Internet Corporation for Assigned Names and Numbers) to satisfy its mission.

This decision will have a fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) and the Community as is intended. This should have a positive impact on the security, stability and resiliency of the domain name system (DNS (Domain Name System)) with respect to any funding that is dedicated to those aspects of the DNS (Domain Name System).

This is an Organizational Administrative Function that has already been subject to public comment as noted above. ICANN (Internet Corporation for Assigned Names and Numbers)'s Empowered Community now has an opportunity to consider if it will exercise its rejection power over this OB&P.

e. **October 2021 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting Venue Contracting**

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) intends to hold its last Public Meeting of 2021 in the North America region.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) organization has completed a thorough review of the available venues in the North America region and finds the one in Seattle, Washington to be the most suitable.

Resolved (2019.01.27.09), the Board authorizes the President and CEO, or his designee(s), to engage in and facilitate all necessary contracting and disbursements for the host venue for the October 2021 ICANN (Internet Corporation for Assigned Names and Numbers) Public Meeting in Seattle, Washington, in an amount not to exceed *[REDACTED-FOR NEGOTIATION PURPOSES]*.

Resolved (2019.01.27.10), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article III, section 5.2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws until the President and CEO determines that the confidential information may be released.

Resolved (2019.01.27.11), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2019.01.27.09 – 2019.01.27.11

As part of ICANN (Internet Corporation for Assigned Names and Numbers)'s Public Meeting strategy, ICANN (Internet Corporation for Assigned Names and Numbers) seeks to host a meeting in a different geographic region (as defined in the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws) three times a year. ICANN72 is scheduled for 23-28 October 2021. Following a search and evaluation of available venues, the organization identified Seattle, Washington as a suitable location for the ICANN (Internet Corporation for Assigned Names and Numbers) Public Meeting.

The organization performed a thorough analysis of the available locations and prepared a paper to identify those that met the Meeting Location Selection Criteria (see <http://meetings.icann.org/location-selection-criteria> (<http://meetings.icann.org/location-selection-criteria>)). Based on the proposals and analysis, ICANN (Internet Corporation for Assigned Names and Numbers) has

identified Seattle, Washington as the location for ICANN72. Selection of this North America location adheres to the geographic rotation guidelines established by the Meeting Strategy Working Group.

The Board reviewed the organization's briefing for hosting the meeting in Seattle, Washington and the determination that the proposal met the significant factors of the Meeting Location Selection Criteria, as well as the related costs for the facilities selected, for the October 2021 ICANN (Internet Corporation for Assigned Names and Numbers) Public Meeting. ICANN (Internet Corporation for Assigned Names and Numbers) conducts Public Meetings in support of its mission to ensure the stable and secure operation of the Internet's unique identifier systems, and acts in the public interest by providing free and open access to anyone wishing to participate, either in person or remotely, in open, transparent and bottom-up, multistakeholder policy development processes.

There will be a financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) in hosting the meeting and providing travel support as necessary, as well as on the community in incurring costs to travel to the meeting. But such impact would be faced regardless of the location and venue of the meeting. This action will have no impact on the security or the stability of the DNS (Domain Name System).

This is an Organizational Administrative function that does not require public comment.

f. Contract Renewal and Disbursement for ERP Initiative (Oracle Cloud)

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) has an established a need to renew contracts for ERP solution, Oracle Cloud.

Whereas, the Board Finance Committee has reviewed the financial implications of contract renewal with Oracle Cloud for ICANN (Internet Corporation for Assigned Names and Numbers)'s ERP solution and has considered alternatives.

Whereas, both the organization and the Board Finance Committee have recommended that the Board authorize the President and CEO, or his designee(s), to take all actions necessary to execute the contracts with Oracle Cloud for ICANN (Internet Corporation for Assigned Names and Numbers)'s ERP solution and make all necessary disbursements pursuant to those contracts.

Resolved (2019.01.27.12), the Board authorizes the President and CEO, or his designee(s), the take all necessary actions to renew the contracts with Oracle Cloud for ICANN (Internet Corporation for Assigned Names and Numbers)'s ERP solution and make all necessary disbursements pursuant to those contracts.

Resolved (2019.01.27.13), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2019.01.27.12 – 2019.01.27.13

ICANN (Internet Corporation for Assigned Names and Numbers) has successfully utilized Oracle Cloud ERP since implementation Go Live in December 2016. Over the past years, ICANN (Internet Corporation for Assigned Names and Numbers) organization has gradually increased the ERP systems and transactional processing knowledge and is in a position to make incremental efficiency improvements to maximize original investment. The Oracle Cloud ERP replaced a then aging Finance, Human Resources and Procurement legacy systems. This solution provided ICANN (Internet Corporation for Assigned Names and Numbers) org with an integrated ERP solution under a single system of record improving systems capacity, global reporting and analysis capability, leading to improved productivity and cross-functional efficiencies, and enhance internal controls.

Current Contract

ICANN (Internet Corporation for Assigned Names and Numbers)'s current contract with Oracle Cloud ERP was for a three-year period. This contract expired in December 2018. Oracle Cloud has provided ICANN (Internet Corporation for Assigned Names and Numbers) with a one-month contract extension. Annual cost is [REDACTED – FOR NEGOTIATION PURPOSES].

New Contract

After thorough analysis, negotiations, and an adjustment to the number of licenses with the supplier, the organization has two options available: (i) three-year contract at [REDACTED – FOR NEGOTIATION PURPOSES] annually with three-year total cost of [REDACTED – FOR NEGOTIATION PURPOSES], (ii) five-year contract at [REDACTED – FOR NEGOTIATION PURPOSES] annually with five-year total cost of [REDACTED – FOR NEGOTIATION PURPOSES].

After careful analysis of options submitted by the organization, the five-year contract option is considered a viable, cost-effective solution. This solution has lower total cost, lock-in pricing for protection against increases for five years, and flexibility for the organization to perform another overall ERP systems analysis in three years (2021-2022) to determine if the solution set is best for ICANN (Internet Corporation for Assigned Names and Numbers).

The Board reviewed the organization's and the Board Finance Committee's recommendations for contracting and disbursement authority for Oracle Cloud ERP contract renewal.

Taking this Board action fits squarely within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the public interest in that it ensures that payments of large amounts for one invoice to one entity are reviewed and evaluated by the Board if they exceed a certain amount of delegated authority through ICANN (Internet Corporation for Assigned Names and Numbers)'s Contracting and Disbursement Policy. This ensures that the Board is overseeing large disbursements and acting as proper stewards of the funding ICANN (Internet Corporation for Assigned Names and Numbers) receives from the public.

There will be a financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) to renew Oracle Cloud ERP contract. This impact is currently included in the FY20 Operating Plan and Budget that is pending Board approval. This action

will not have a direct impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

g. 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, on 6 November 2018, the Board reaffirmed the adoption of the Temporary Specification to be effective for an additional 90-day period beginning on 21 November 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 (2019.01.27.14), 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 19 February 2019.

Resolved (2019.01.27.14), the Board reaffirms the [Advisory Statement Concerning Adoption of the Temporary Specification for gTLD \(generic Top Level Domain\) Registration Data \(/en/system/files/files/advisory-statement-gtld-registration-data-specs-17may18-en.pdf\)](#), 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 2019.01.27.14 – 2019.01.27.15

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. On 6 November 2018, the Board again reaffirmed the adoption of the Temporary Specification to be effective for a subsequent 90-day period beginning on 21 November 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 \(/en/system/files/files/advisory-statement-gtld-registration-data-specs-17may18-en.pdf\)](#) 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 \(/news/blog/gnso-council-launches-edpd-on-the-temporary-specification-for-gtld-registration-data\)](/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. On 21 November 2018 the Working Group published for public comment the Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD (generic Top Level Domain) Registration Data (<https://gns0.icann.org/en/issues/epdp-gtld-registration-data-specs-initial-21nov18-en.pdf>). The Working Group defined a schedule to produce a final report in February 2019 and for the report to be provided to the Board for consideration prior to the expiration of the 1-year period provided for the Temporary Specification. 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/en/system/files/correspondence/chalaby-to-forrest-et-al-07aug18-en.pdf> (/en/system/files/correspondence/chalaby-to-forrest-et-al-07aug18-en.pdf)).

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_\(dataprotectionprivacy\)](https://www.icann.org/dataprotectionprivacy_(dataprotectionprivacy))).

2. Main Agenda:

a. Delegation of the موريتانيا. country-code top-level domain representing Mauritania in Arabic Script to Université de Nouakchott Al Aasriya

Resolved (2019.01.27.16), as part of the exercise of its responsibilities under the IANA (Internet Assigned Numbers Authority) Naming Function Contract with ICANN (Internet Corporation for Assigned Names and Numbers), PTI has reviewed and evaluated the request to delegate the موريتانيا. country-code top-level domain to Université de Nouakchott Al Aasriya. The documentation demonstrates that the proper procedures were followed in evaluating the request.

Rationale for Resolution 2019.01.27.16

Why the Board is addressing the issue now?

In accordance with the IANA (Internet Assigned Numbers Authority) Naming Function Contract, PTI has evaluated a request for ccTLD (Country Code Top Level Domain) delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that the proper procedures were followed.

What is the proposal being considered?

The proposal is to approve a request to create the موريتانيا. country-code top-level domain in Arabic script and assign the role of manager to Université de Nouakchott Al Aasriya.

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, PTI consulted with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD (Country Code Top Level Domain), and their applicability to their local Internet community.

What concerns or issues were raised by the community?

PTI is not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

[REDACTED-SENSITIVE DELEGATION INFORMATION]

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN (Internet Corporation for Assigned Names and Numbers)'s overall mission, the local communities to which country-code top-level domains are designated to serve, and responsive to obligations under the IANA (Internet Assigned Numbers Authority) Naming Function Contract.

Are there financial impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS (Domain Name System) root zone is part of the IANA (Internet Assigned Numbers Authority) functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN (Internet Corporation for Assigned Names and Numbers) to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

ICANN (Internet Corporation for Assigned Names and Numbers) does not believe this request poses any notable risks to security, stability or resiliency. This is an organizational administrative function not requiring public comment.

b. Delegation of the .SS (South Sudan) country-code top-level domain to the National Communication Authority (NCA)

Resolved (2019.01.27.17), as part of the exercise of its responsibilities under the IANA (Internet Assigned Numbers Authority) Naming Function Contract with ICANN (Internet Corporation for Assigned Names and Numbers), PTI has reviewed and evaluated the request to delegate the .SS (South Sudan) country-code top-level domain to National Communication Authority (NCA). The documentation demonstrates that the proper procedures were followed in evaluating the request.

*Rationale for Resolution 2019.01.27.17***Why the Board is addressing the issue now?**

In accordance with the IANA (Internet Assigned Numbers Authority) Naming Function Contract, PTI has evaluated a request for ccTLD (Country Code Top Level Domain) delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that the proper procedures were followed.

What is the proposal being considered?

The proposal is to approve a request to create the .SS country-code top-level domain and assign the role of manager to National Communication Authority (NCA).

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, PTI consulted with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD (Country Code Top Level Domain), and their applicability to their significantly interested parties.

What concerns or issues were raised by the community?

PTI is not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

[REDACTED-SENSITIVE DELEGATION INFORMATION]

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN (Internet Corporation for Assigned Names and Numbers)'s overall mission, the local communities to which country-code top-level domains are designated to serve, and responsive to obligations under the IANA (Internet Assigned Numbers Authority) Naming Function Contract.

Are there financial impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS (Domain Name System) root zone is part of the IANA (Internet Assigned Numbers Authority) functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN (Internet Corporation for Assigned Names and Numbers) to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

ICANN (Internet Corporation for Assigned Names and Numbers) does not believe this request poses any notable risks to security, stability or resiliency. This is an Organizational Administrative Function not requiring public comment.

c. GAC (Governmental Advisory Committee) Advice: Barcelona Communiqué (October 2018)

Whereas, the Governmental Advisory Committee (Advisory Committee) (GAC (Governmental Advisory Committee)) met during the ICANN63 meeting in Barcelona, Spain and issued advice to the ICANN (Internet Corporation for Assigned Names and Numbers) Board in a communiqué (/en/system/files/correspondence/gac-to-icann-25oct18-en.pdf) on 25 October 2018 ("Barcelona Communiqué").

Whereas, the Barcelona Communiqué was the subject of an exchange (/https://gac.icann.org/sessions/gac-and-icann-board-conference-call-regarding-icann62-communication) between the Board and the GAC (Governmental Advisory Committee) on 28 November 2018.

Whereas, in a 20 December 2018 letter (/en/system/files/correspondence/ismail-to-chalaby-botterman-20dec18-en.pdf), the GAC (Governmental Advisory Committee) provided additional clarification of language contained in the Barcelona Communiqué Annex titled Follow-up to Original Joint Statement by ALAC (At-Large Advisory Committee) and GAC (Governmental Advisory Committee) (Abu Dhabi, 2 November 2017).

Whereas, in a 21 December 2018 letter (/en/system/files/correspondence/drazek-et-al-to-icann-board-21dec18-en.pdf), the GNSO (Generic Names Supporting Organization) Council provided its feedback to the Board concerning advice in the Barcelona Communiqué relevant to generic top-level domains to inform the Board and the community of gTLD (generic Top Level Domain) policy activities that may relate to advice provided by the GAC (Governmental Advisory Committee).

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) organization published a memorandum (/en/system/files/files/implementation-memo-two-character-ascii-labels-22jan19-en.pdf) and historical briefing paper (/en/system/files/files/historical-overview-two-character-ascii-labels-22jan19-en.pdf) providing clarification regarding the development and evolution of ICANN (Internet Corporation for Assigned Names and Numbers) organization's procedure for the release of two-character labels at the second level and the standard framework of measures for avoiding confusion with corresponding country codes.

Whereas, the Board developed a scorecard to respond to the GAC (Governmental Advisory Committee)'s advice in the Barcelona Communiqué, taking into account the dialogue between the Board and the GAC (Governmental Advisory Committee), the clarification letter provided by the GAC (Governmental Advisory Committee) Chair, the information provided by the GNSO (Generic Names Supporting Organization) Council, and the memorandum and briefing paper released by the ICANN (Internet Corporation for Assigned Names and Numbers) org.

Whereas, the Board has considered the previously deferred GAC (Governmental Advisory Committee) advice (/en/system/files/files/resolutions-panamacity62-gac-advice-scorecard-16sep18-en.pdf) regarding two-character country codes at the second level from the Panama Communiqué, and has included a response in the current scorecard "GAC (Governmental Advisory Committee) Advice – Barcelona Communiqué: Actions and Updates (25 January 2019)".

Resolved (2019.01.27.18), the Board adopts the scorecard titled "[GAC \(Governmental Advisory Committee\) Advice – Barcelona Communiqué: Actions and Updates \(25 January 2019\)](#)" ([/en/system/files/files/resolutions-barcelona63-gac-advice-scorecard-27jan19-en.pdf](#)) in response to items of [GAC \(Governmental Advisory Committee\)](#) advice in the Barcelona Communiqué and the Panama Communiqué.

Rationale for Resolution 2019.01.27.18

Article 12, Section 12.2(a)(ix) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws permits the [GAC \(Governmental Advisory Committee\)](#) to "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." In its Barcelona Communiqué (25 October 2018), the [GAC \(Governmental Advisory Committee\)](#) issued advice to the Board on: two-character country codes at the second level and protection of names and acronyms of Intergovernmental Organizations (IGOs) in gTLDs. The [GAC \(Governmental Advisory Committee\)](#) also provided a follow-up to previous advice GDPR and WHOIS (WHOIS (pronounced "who is"; not an acronym)), the Dot Amazon applications, protection of the Red Cross and Red Crescent designations and identifiers, and a follow-up to the joint statement by ALAC (At-Large Advisory Committee) and [GAC \(Governmental Advisory Committee\)](#) (Abu Dhabi, 2 November 2017). The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the [GAC \(Governmental Advisory Committee\)](#)'s advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the [GAC \(Governmental Advisory Committee\)](#) advice, it must inform the [GAC \(Governmental Advisory Committee\)](#) and state the reasons why it decided not to follow the advice. Any [GAC \(Governmental Advisory Committee\)](#) advice approved by a full consensus of the [GAC \(Governmental Advisory Committee\)](#) (as defined in the Bylaws) may only be rejected by a vote of no less than 60% of the Board, and the [GAC \(Governmental Advisory Committee\)](#) and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The Board is taking action today on all items in the Barcelona Communiqué, including the items related to two-character country codes at the second level as well as protections of IGOs. The Board is also taking action on the items regarding two-character country codes at the second level from the Panama Communiqué, consideration of which had been previously deferred.

The Board will continue to defer consideration of five items from the San Juan Communiqué, including: four advice items related to GDPR and WHOIS (WHOIS (pronounced "who is"; not an acronym)) and one advice item related to IGO (Intergovernmental Organization) reserved acronyms, pending further discussion with the [GAC \(Governmental Advisory Committee\)](#). The Board will consider if further action is needed following these discussions.

The Board's actions are described in the [scorecard dated 25 January 2019](#) ([/en/system/files/files/resolutions-barcelona63-gac-advice-scorecard-27jan19-en.pdf](#)).

In adopting its response to the [GAC \(Governmental Advisory Committee\)](#) advice in the Barcelona Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- Panama Communiqué (28 June 2018):
<https://www.icann.org/en/system/files/correspondence/gac-to-icann-28jun18-en.pdf> ([/en/system/files/correspondence/gac-to-icann-28jun18-en.pdf](https://www.icann.org/en/system/files/correspondence/gac-to-icann-28jun18-en.pdf)) [PDF, 576 KB]
- Barcelona Communiqué (25 October 2018):
<https://www.icann.org/en/system/files/correspondence/gac-to-icann-25oct18-en.pdf> ([/en/system/files/correspondence/gac-to-icann-25oct18-en.pdf](https://www.icann.org/en/system/files/correspondence/gac-to-icann-25oct18-en.pdf))
- The GNSO (Generic Names Supporting Organization) Council's review of the advice in the Barcelona Communiqué as presented in the 21 December 2018 letter to the Board:
<https://www.icann.org/en/system/files/correspondence/drazek-et-al-to-icann-board-21dec18-en.pdf> ([/en/system/files/correspondence/drazek-et-al-to-icann-board-21dec18-en.pdf](https://www.icann.org/en/system/files/correspondence/drazek-et-al-to-icann-board-21dec18-en.pdf))
- The GAC (Governmental Advisory Committee)'s clarification of Barcelona Communiqué Attach Language – Follow-up to Original Joint Statement by ALAC (At-Large Advisory Committee) and GAC (Governmental Advisory Committee) (Abu Dhabi, 2 November 2017):
<https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-botterman-20dec18-en.pdf> ([/en/system/files/correspondence/ismail-to-chalaby-botterman-20dec18-en.pdf](https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-botterman-20dec18-en.pdf))
- The ICANN (Internet Corporation for Assigned Names and Numbers) Organization's memorandum providing clarification regarding the development and evolution of ICANN (Internet Corporation for Assigned Names and Numbers) organization's procedure for the release of two-character labels at the second level and the standard framework of measures for avoiding confusion with corresponding country codes:
<https://www.icann.org/en/system/files/files/implementation-memo-two-character-ascii-labels-22jan19-en.pdf> ([/en/system/files/files/implementation-memo-two-character-ascii-labels-22jan19-en.pdf](https://www.icann.org/en/system/files/files/implementation-memo-two-character-ascii-labels-22jan19-en.pdf))
- The ICANN (Internet Corporation for Assigned Names and Numbers) Organization's Historical Overview of Events Regarding Two-Character Labels at the Second Level in the New gTLD (generic Top Level Domain) Namespace:
<https://www.icann.org/en/system/files/files/historical-overview-two-character-ascii-labels-22jan19-en.pdf> ([/en/system/files/files/historical-overview-two-character-ascii-labels-22jan19-en.pdf](https://www.icann.org/en/system/files/files/historical-overview-two-character-ascii-labels-22jan19-en.pdf))

The adoption of the GAC (Governmental Advisory Committee) advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC (Governmental Advisory Committee) concerning gTLDs and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System). This is an Organizational Administrative function that does not require public comment.

d. Adoption of GNSO (Generic Names Supporting Organization) Consensus (Consensus) Policy relating to Certain Red Cross & Red Crescent Names at the Second Level of the Domain Name (Domain Name) System

Whereas, in March 2017 the Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)") and the Governmental Advisory Committee (Advisory Committee) ("GAC (Governmental Advisory Committee)") engaged in a good faith, facilitated dialogue in an attempt to resolve outstanding differences between the GNSO (Generic Names Supporting Organization)'s original Policy Development Process ("PDP (Policy Development Process)") consensus recommendations and the GAC (Governmental Advisory Committee)'s advice concerning certain Red Cross and Red Crescent names.

Whereas, in the course of that facilitated dialogue the GAC (Governmental Advisory Committee) and the GNSO (Generic Names Supporting Organization) noted certain specific matters, namely:

1. The public policy considerations associated with protecting identifiers associated with the international Red Cross movement ("Movement") in the domain name system;
2. The GAC (Governmental Advisory Committee)'s rationale for seeking permanent protection for the terms most closely associated with the Movement and its respective components is grounded in the protections of the designations "Red Cross", "Red Crescent", "Red Lion and Sun", and "Red Crystal" under international treaty law and under multiple national laws;
3. The list of names of the Red Cross and Red Crescent National Societies is a finite, limited list of specific names of the National Societies recognized within the Movement (http://www.ifrc.org/Docs/ExcelExport/NS_Directory.pdf (http://www.ifrc.org/Docs/ExcelExport/NS_Directory.pdf));
4. There are no other legitimate uses for these terms; and
5. The GAC (Governmental Advisory Committee) had provided clarification following the completion of the GNSO (Generic Names Supporting Organization) PDP (Policy Development Process), via its March 2014 Singapore Communiqué, on the finite scope of the specific list of Movement names for which permanent protections were being requested (<https://gacweb.icann.org/download/attachments/28278854/Final%20Communique%20%20Singapore%202014.pdf?version=1&modificationDate=1397225538000&api=v2> (<https://gacweb.icann.org/download/attachments/28278854/Final%20Communique%20%20Singapore%202014.pdf?version=1&modificationDate=1397225538000&api=v2>)).

Whereas, following the GAC (Governmental Advisory Committee)-GNSO (Generic Names Supporting Organization) discussion, the ICANN (Internet Corporation for Assigned Names and Numbers) Board had requested that the GNSO (Generic Names Supporting Organization) Council consider initiating the GNSO (Generic Names Supporting Organization)'s process for amending previous GNSO (Generic Names Supporting Organization) policy recommendations concerning the full names of the Red Cross National Societies and the International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, and a defined, limited set of variations of these names, in the six official languages of the United Nations (<https://www.icann.org/resources/board-material/resolutions-2017-03-16-en#2.e.i>) ([resources/board-material/resolutions-2017-03-16-en#2.e.i](https://www.icann.org/resources/board-material/resolutions-2017-03-16-en#2.e.i))).

Whereas, in May 2017 the GNSO (Generic Names Supporting Organization) Council resolved to reconvene the original PDP (Policy Development Process) Working Group to consider the Board's request

(<https://gnso.icann.org/en/council/resolutions#20170503-071>
(<https://gnso.icann.org/en/council/resolutions#20170503-071>)).

Whereas, in August 2018 the reconvened PDP (Policy Development Process) Working Group submitted six recommendations that received the Full Consensus (Consensus) of the Working Group to the GNSO (Generic Names Supporting Organization) Council (<https://gnso.icann.org/en/issues/igo-ingo/red-cross-protection-policy-amend-process-final-06aug18-en.pdf> (<https://gnso.icann.org/en/issues/igo-ingo/red-cross-protection-policy-amend-process-final-06aug18-en.pdf>)), including a defined, limited set of variations of the Red Cross and Red Crescent names to be reserved under the proposed Consensus (Consensus) Policy (<https://gnso.icann.org/en/issues/igo-ingo/red-cross-identifiers-proposed-reservation-06aug18-en.pdf> (<https://gnso.icann.org/en/issues/igo-ingo/red-cross-identifiers-proposed-reservation-06aug18-en.pdf>)).

Whereas, in September 2018 the GNSO (Generic Names Supporting Organization) Council voted unanimously to approve all the PDP (Policy Development Process) consensus recommendations

(<https://gnso.icann.org/en/council/resolutions#20180927-3>
(<https://gnso.icann.org/en/council/resolutions#20180927-3>)) and in October 2018 further approved the submission of a Recommendations Report to the ICANN (Internet Corporation for Assigned Names and Numbers) Board (<https://gnso.icann.org/en/council/resolutions#20181024-1>
(<https://gnso.icann.org/en/council/resolutions#20181024-1>)).

Whereas, as required by the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, a public comment period was opened in November 2018 to allow the public a reasonable opportunity to provide input on the proposed Consensus (Consensus) Policy prior to Board action as well as for the GAC (Governmental Advisory Committee) to provide timely advice on any public policy concerns.

Whereas, the Board has considered the GNSO (Generic Names Supporting Organization)'s recommendations and all other relevant materials relating to this matter.

Resolved (2019.01.27.19), the Board hereby adopts the final recommendations of the reconvened International Governmental Organizations (IGO (Intergovernmental Organization)) & International Non-Governmental Organizations (INGO) PDP (Policy Development Process) Working Group, as passed by a unanimous vote of the GNSO (Generic Names Supporting Organization) Council on 27 September 2018.

Resolved (2019.01.27.20), the Board directs the President and CEO, or his authorized designee, to develop and execute an implementation plan, including costs and timelines, for the adopted recommendations consistent with ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws Annex A and the Implementation Review Team Guidelines & Principles endorsed by the Board on 28 September 2015 (see <https://www.icann.org/resources/board-material/resolutions-2015-09-28-en-2.f>) ([/resources/board-material/resolutions-2015-09-28-en#2.f](https://www.icann.org/resources/board-material/resolutions-2015-09-28-en#2.f))), and to continue communication with the community on such work.

Rationale for Resolutions 2019.01.27.19 – 2019.01.27.20

Why is the Board addressing the issue?

The GNSO (Generic Names Supporting Organization) conducted a PDP (Policy Development Process), concluding in November 2013, that considered and developed certain policy recommendations for protecting certain identifiers associated with the Red Cross and Red Crescent movement. Those of the GNSO (Generic Names Supporting Organization)'s recommendations that were consistent with GAC (Governmental Advisory Committee) advice on the subject; namely, relating to the specific terms "Red Cross", "Red Crescent", "Red Crystal" and "Red Lion & Sun" were adopted by the Board in April 2014

(<http://www.icann.org/en/groups/board/documents/resolutions-30apr14-en.htm#2.a> ([/en/groups/board/documents/resolutions-30apr14-en.htm#2.a](http://www.icann.org/en/groups/board/documents/resolutions-30apr14-en.htm#2.a))). Following implementation work by ICANN (Internet Corporation for Assigned Names and Numbers) Organization and community volunteers, these four specific terms are now withheld from delegation at the top and second levels of the DNS (Domain Name System), in the six official languages of the United Nations, under a Consensus (Consensus) Policy that went into force in January 2018.

The Board did not approve the remaining GNSO (Generic Names Supporting Organization) policy recommendations from 2013 that concerned other Red Cross and Red Crescent identifiers, e.g. the full names of all the National Societies of the Red Cross movement and those of the International Red Cross and Red Crescent Movement, the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies. The Board did not approve these policy recommendations at that time to allow for further discussions between the Board, GNSO (Generic Names Supporting Organization), GAC (Governmental Advisory Committee) and community about the inconsistencies between the GNSO (Generic Names Supporting Organization) policy recommendations and the GAC (Governmental Advisory Committee)'s advice. Over the next several months, the Board facilitated dialogue among the groups about a possible path forward. Following the conclusion of a facilitated dialogue between the GAC (Governmental Advisory Committee) and the GNSO (Generic Names Supporting Organization) in March 2017, the GNSO (Generic Names Supporting Organization) Council reconvened the original PDP (Policy Development Process) Working Group to consider possible modifications of its previous recommendations concerning these specific identifiers.

In September 2018, the GNSO (Generic Names Supporting Organization) Council unanimously approved the modified policy recommendations presented in the final report of the PDP (Policy Development Process) Working Group. With the GNSO (Generic Names Supporting Organization) Council's unanimous approval of the modified policy recommendations, the Board is now taking action to adopt the revised consensus policy recommendations in accordance with the process documented under the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws.

What is the proposal being addressed?

The PDP (Policy Development Process) recommendations are that certain specific Red Cross and Red Crescent names as well as a list of agreed, permitted variants of those names be withheld from delegation at the second level of the DNS (Domain Name System), in all six official languages of the United Nations. The PDP (Policy Development Process) recommendations include a specific, documented process and

criteria for correcting errors found on the list of agreed names and variants, as well as for adding or removing entries from the list. The adopted policy will supplement the existing Consensus (Consensus) Policy on protection at the top and second levels of the terms "Red Cross", "Red Crescent", "Red Crystal" and "Red Lion & Sun" in all six official languages of the United Nations.

For clarity, the PDP (Policy Development Process) recommendations do not include proposals for protection of the specific acronyms associated with the international Red Cross movement, which remains an issue outstanding from the original 2013 GNSO (Generic Names Supporting Organization) PDP (Policy Development Process) that resulted in recommendations that are inconsistent with GAC (Governmental Advisory Committee) advice regarding these acronyms.

Which stakeholders or others were consulted?

The reconvened PDP (Policy Development Process) Working Group performed its work in accordance with the GNSO (Generic Names Supporting Organization)'s PDP (Policy Development Process) Manual and Working Group Guidelines, which include provisions pertaining to broad community representation. Members of the Working Group comprised representatives from various parts of the GNSO (Generic Names Supporting Organization) and ICANN (Internet Corporation for Assigned Names and Numbers) community, including representatives of the Red Cross. The Working Group's Initial Report was published for public comment in June 2018, following which the group considered all input received in developing its final recommendations, all of which received the Full Consensus (Consensus) of the Working Group. Prior to the GNSO (Generic Names Supporting Organization) Council's vote on the Final Report, the Working Group chair conducted a meeting with community members who had expressed some concerns about the proposed recommendations. The GNSO (Generic Names Supporting Organization) Council voted unanimously to approve all the recommendations in September 2018.

The policy recommendations as approved by the GNSO (Generic Names Supporting Organization) Council were published for public comment in November 2018 and the GAC (Governmental Advisory Committee) notified of the Council's action.

What concerns or issues were raised by the community?

Possible concerns about freedom of expression were raised concerning reservation of the Red Cross and Red names at the second level of the DNS (Domain Name System), as well as the Working Group's development of criteria and a process for adding new names and variants to the list instead of recommending a fixed list. The community also sought clarity about the mechanism for implementing the proposed policy (i.e. whether ICANN (Internet Corporation for Assigned Names and Numbers) Org's contracts with its contracted parties will need to be amended). The Board understands that the Working Group believes it addressed these concerns in developing its final Consensus (Consensus) Policy recommendations.

Other community comments supported the proposed policy, citing the public policy need to provide adequate protections for the Red Cross against abuse of its names and recognized variants, as well as the fact that the recommended protections are grounded in international humanitarian law and multiple national laws.

What significant materials did the Board review?

The Board reviewed the Working Group's Final Report and the recommended protected list of Red Cross names (<https://gnso.icann.org/sites/default/files/file/field-file-attach/red-cross-protection-policy-amend-process-final-06aug18-en.pdf> (<https://gnso.icann.org/sites/default/files/file/field-file-attach/red-cross-protection-policy-amend-process-final-06aug18-en.pdf>)) and <https://gnso.icann.org/sites/default/files/file/field-file-attach/red-cross-identifiers-proposed-reservation-06aug18-en.pdf> (<https://gnso.icann.org/sites/default/files/file/field-file-attach/red-cross-identifiers-proposed-reservation-06aug18-en.pdf>)), the GNSO (Generic Names Supporting Organization) Council's Recommendations Report (<https://gnso.icann.org/en/drafts/reconvened-red-cross-recommendations-14oct18-en.pdf> (<https://gnso.icann.org/en/drafts/reconvened-red-cross-recommendations-14oct18-en.pdf>)), a summary of the public comments received (<https://www.icann.org/en/system/files/files/report-comments-red-cross-names-consensus-policy-04jan19-en.pdf> ([/en/system/files/files/report-comments-red-cross-names-consensus-policy-04jan19-en.pdf](https://www.icann.org/en/system/files/files/report-comments-red-cross-names-consensus-policy-04jan19-en.pdf))) and the relevant GAC (Governmental Advisory Committee) advice on this subject (<https://gac.icann.org/> (<https://gac.icann.org/>)).

What factors did the Board find to be significant?

The recommendations were developed following the GNSO (Generic Names Supporting Organization) Policy Development Process as set out in Annex A of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws and have received the full consensus of the Working Group as well as the unanimous support of the GNSO (Generic Names Supporting Organization) Council. As stated in the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws ([Annex A, Sec. 9.a. \(/resources/pages/governance/bylaws-en/#annexA\)](#)), "Any PDP (Policy Development Process) Recommendations approved by a GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers)."

The Bylaws also allow for input from the GAC (Governmental Advisory Committee) in relation to public policy concerns that might be raised if a proposed policy is adopted by the Board. In this context, the GAC (Governmental Advisory Committee)'s October 2018 [Barcelona Communiqué \(https://gac.icann.org/contentMigrated/icann63-barcelona-communicue\)](#) expressed the hope that the Board will adopt the GNSO (Generic Names Supporting Organization)'s recommendations.

Are there positive or negative community impacts?

The Board's adoption of these recommendations will resolve the issue, outstanding since 2013, of inconsistencies between the GAC (Governmental Advisory Committee)'s advice and the GNSO (Generic Names Supporting Organization)'s previous policy on these specific Red Cross and Red Crescent names. This means that the interim protections previously put into place by the Board concerning these names will be replaced by the Consensus (Consensus) Policy when it goes into effect, leading to greater clarity as to the scope of protections for these names for ICANN

(Internet Corporation for Assigned Names and Numbers)'s Contracted Parties and the community at large.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

Aside from any financial or other resource costs that may arise during work on implementation of the adopted policy, no fiscal or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers), the community or the public are envisaged.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

There are no security, stability or resiliency issues relating to the DNS (Domain Name System) that can be directly attributable to the implementation of the PDP (Policy Development Process) recommendations.

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations) or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

This matter concerns the GNSO (Generic Names Supporting Organization)'s policy process, as defined and described by the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws and the GNSO (Generic Names Supporting Organization)'s operating procedures. All requirements for public comments as part of these processes have been met.

e. Board Committee Membership and Leadership Changes

Whereas, Chris Disspain is a member of the Board and the current Chair of the Board Accountability Mechanisms Committee (BAMC).

Whereas, León Sanchez is a current member of the Board and member of the BAMC.

Whereas, to facilitate the smooth transition of leadership of the BAMC, the Board Governance Committee (BGC) recommended that the Board immediately appoint León Sanchez as the Chair of the BAMC and retain Mr. Disspain as a member of the BAMC.

Whereas, Matthew Shears has expressed interest in becoming a member of the Organizational Effectiveness Committee (OEC) and the BGC recommended that the Board immediately appoint Mr. Shears as a member of the OEC.

Resolved (2019.01.27.21), the Board appoints León Sanchez as the Chair of the BAMC and retains Chris Disspain as a member of the BAMC, effectively immediately.

Resolved (2019.01.27.22), the Board appoints Matthew Shears as a member of the OEC, effective immediately.

Rationale for Resolutions 2019.01.27.21 – 2019.01.27.22

The Board is committed to facilitating a smooth transition in the leadership of its Board Committees as part of the Board's ongoing discussions regarding succession planning. To that end, the Board Accountability Mechanisms Committee (BAMC) has suggested that its current Chair, Chris Disspain, step down as Chair (but remain as a member) and that the Board appoint León Sanchez as Chair of the BAMC. As a member of the BAMC, Mr. Disspain will work with Mr. Sanchez during a transition period.

As the Board Governance Committee (BGC) is tasked with recommending committee assignments, the BGC has discussed the BAMC's proposal and has recommended that the Board appoint León Sanchez as the new BAMC Chair and retain Mr. Disspain as a member of the BAMC, effectively immediately. The Board agrees with the BGC's recommendation.

The Board is also committed to facilitating the composition of Board Committees in accordance with the [Board Committee and Leadership Selection Procedures \(/en/system/files/files/bgc-leadership-selection-procedures-02nov17-en.pdf\)](#). The BGC has considered the interest expressed by Matthew Shears in joining the Organizational Effectiveness Committee and has recommended that the Board approve this appointment. The Board agrees with the BGC's recommendation.

The action is in the public interest and in furtherance of [ICANN \(Internet Corporation for Assigned Names and Numbers\)'s mission](#) as it is important that Board Committees, in performing the duties as assigned by the Board in compliance with [ICANN \(Internet Corporation for Assigned Names and Numbers\)'s Bylaws](#) and the Committees' charters, have the appropriate succession plans in place to ensure leadership continuity within the Committees. Moreover, it is equally important that the composition of Board Committees is established pursuant to the [Board Committee and Leadership Selection Procedures \(/en/system/files/files/bgc-leadership-selection-procedures-02nov17-en.pdf\)](#). This action will have no financial impact on the organization 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.

f. **Consideration of Reconsideration Request 16-11: Travel Reservations SRL, Famous Four Media Limited (and its subsidiary applicant dot Hotel Limited), Fegistry LLC, Minds + Machines Group Limited, Spring McCook, LLC, and Radix FZC (and its subsidiary applicant dot Hotel Inc.) (.HOTEL)**

Whereas, Travel Reservations SRL, Fegistry LLC, Minds + Machines Group Limited, and Radix FZC (and its subsidiary applicant dotHotel Inc.) (collectively, the Requestors) submitted standard applications for .HOTEL, which was placed in a contention set with other .HOTEL applications. Another applicant, HOTEL Top-Level-Domain S.a.r.l. (HTLD), submitted a community-based application for .HOTEL.

Whereas, HTLD participated in Community Priority Evaluation (CPE) and prevailed.

Whereas, on 9 August 2016, the Board adopted Resolutions 2016.08.09.14 and 2016.08.09.15 (the 2016 Resolutions), which directed ICANN (Internet Corporation for Assigned Names and Numbers) organization to move forward with the processing of the prevailing community application for the .HOTEL gTLD (generic Top Level Domain) (HTLD's Application) submitted by HTLD.

Whereas, Requestors submitted Reconsideration Request 16-11 seeking reconsideration of the 2016 Resolutions.

Whereas, while Request 16-11 was pending, the Board directed ICANN (Internet Corporation for Assigned Names and Numbers) organization to undertake a review of the CPE process (the CPE Process Review). The Board Governance Committee (BGC) determined that the pending Reconsideration Requests relating to CPEs, including Request 16-11, would be placed on hold until the CPE Process Review was completed.¹

Whereas, on 13 December 2017, ICANN (Internet Corporation for Assigned Names and Numbers) org published three reports on the CPE Process Review (CPE Process Review Reports).

Whereas, on 15 March 2018, the Board passed the Resolutions 2018.03.15.08 through 2018.03.15.11 (/resources/board-material/resolutions-2018-03-15-en#2.a), which acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports, there would be no overhaul or change to the CPE process for this current round of the New gTLD (generic Top Level Domain) Program, and directed the Board Accountability Mechanism Committee (BAMC) to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review.

Whereas, in accordance with Resolutions 2018.03.15.08 through 2018.03.15.11 (/resources/board-material/resolutions-2018-03-15-en#2.a), the BAMC invited the Requestors to make a telephonic presentation to the BAMC in support of Request 16-11, which the Requestors did on 19 July 2018. The BAMC also invited the Requestors to submit additional written materials in response to the CPE Process Review Reports.

Whereas, the BAMC has carefully considered the merits of Request 16-11 and all relevant materials and has recommended that Request 16-11 be denied because the Board adopted the 2016 Resolutions based on accurate and complete information. The BAMC also recommended the Board deny Request 16-11 because there is no evidence supporting the Requestors' claim that the Board failed to consider the purported "unfair advantage" HTLD obtained as a result of the Portal Configuration, nor is there evidence that the Board discriminated against the Requestors.

Whereas, the Board has carefully considered the BAMC's Recommendation on Request 16-11 and all relevant materials related to Request 16-11, including the Requestors' rebuttal, and the Board agrees with the BAMC's Recommendation and concludes that the rebuttal provides no additional argument or evidence to support reconsideration.

Resolved (2019.01.27.23), the Board adopts the [BAMC Recommendation on Request 16-11 \(/en/system/files/files/reconsideration-16-11-trs-et-al-bamc-recommendation-request-16nov18-en.pdf\)](#).

Rationale for Resolution 2019.01.27.23

1. Brief Summary and Recommendation

The full factual background is set forth in the [BAMC Recommendation on Request 16-11 \(/en/system/files/files/reconsideration-18-10-acto-bamc-recommendation-21dec18-en.pdf\)](#) (BAMC Recommendation), which the Board has reviewed and considered, and which is incorporated here.

On 16 November 2018, the BAMC evaluated Request 16-11 and all relevant materials and recommended that the Board deny Request 16-11 because the Board adopted the 2016 Resolutions based on accurate and complete information. The BAMC also recommended the Board deny Request 16-11 because there is no evidence supporting the Requestors' claim that the Board failed to consider the purported "unfair advantage" HTLD obtained as a result of the Portal Configuration, nor is there evidence that the Board discriminated against the Requestors.

On 30 November 2018, the Requestor submitted a rebuttal to the BAMC's Recommendation (Rebuttal). The Board notes that the Rebuttal is not called for under the Bylaws applicable to Request 16-11, which are set forth in the 2016 Bylaws that were in effect Request 16-11 was filed.² Nonetheless, the Board has considered the arguments in the Requestors' rebuttal and finds that they do not support reconsideration for the reasons set forth below.

2. Issue

The issues are whether the Board's adoption of the 2016 Resolutions occurred: (i) without consideration of material information; or (ii) were taken as a result of its reliance on false or inaccurate material information.

These issues are considered under the relevant standards for reconsideration requests in effect at the time that Request 16-12 was submitted. These standards are discussed in detail in the [BAMC Recommendation \(/en/system/files/files/reconsideration-16-11-trs-et-al-bamc-recommendation-request-16nov18-en.pdf\)](#).

3. Analysis and Rationale

A. The Board Adopted The 2016 Resolutions After Considering All Material Information And Without Reliance On False Or Inaccurate Material Information.

The Requestors suggest that reconsideration of the 2016 Resolutions is warranted because [ICANN \(Internet Corporation for Assigned Names and Numbers\) org](#) failed to properly investigate the Portal Configuration and failed to address the alleged actions relating to the Portal Configuration. Specifically, the Requestors assert that [ICANN \(Internet Corporation for Assigned Names and Numbers\) org](#) did not verify the

affirmation by Dirk Kirschenowski, the individual whose credentials were used to access confidential information of other authorized users of the New gTLD (generic Top Level Domain) portal, that he did not and would not provide the information he accessed to HTLD or its personnel. The BAMC concluded, and the Board agrees, that this argument does not support reconsideration because Requestors did not identify any false or misleading information that the Board relied upon, or material information that the Board failed to consider relating to the Portal Configuration in adopting the 2016 Resolutions.

First, the BAMC determined, and the Board agrees, that ICANN (Internet Corporation for Assigned Names and Numbers) org undertook a careful and thorough analysis of the Portal Configuration and the issues raised by the Requestors regarding the Portal Configuration. The results of the investigation were shared with the ICANN (Internet Corporation for Assigned Names and Numbers) Board, and were carefully considered by the Board in its adoption of the 2016 Resolutions. The BAMC noted that, in its investigation, ICANN (Internet Corporation for Assigned Names and Numbers) org did not uncover any evidence that: (i) the information Mr. Krischenowski may have obtained as a result of the portal issue was used to support HTLD's Application; or (ii) any information obtained by Mr. Krischenowski enabled HTLD's Application to prevail in CPE. Moreover, ICANN (Internet Corporation for Assigned Names and Numbers)'s investigation revealed that at the time that Mr. Krischenowski accessed confidential information, he was not directly linked to HTLD's Application as an authorized contact or as a shareholder, officer, or director. Rather, Mr. Krischenowski was a 50% shareholder and managing director of HOTEL Top-Level-Domain GmbH, Berlin (GmbH Berlin), which was a minority (48.8%) shareholder of HTLD. Mr. Philipp Grabensee, the sole Managing Director of HTLD, informed ICANN (Internet Corporation for Assigned Names and Numbers) org that Mr. Krischenowski was "not an employee" of HTLD, but that Mr. Krischenowski acted as a consultant for HTLD's Application at the time it was submitted in 2012. Mr. Grabensee further verified that HTLD "only learned about [Mr. Krischenowski's access to the data] on 30 April 2015 in the context of ICANN (Internet Corporation for Assigned Names and Numbers)'s investigation." Mr. Grabensee stated that the business consultancy services between HTLD and Mr. Krischenowski were terminated as of 31 December 2015.³

Second, contrary to the Requestors' assertions, the BAMC determined that ICANN (Internet Corporation for Assigned Names and Numbers) org did verify the affirmation from Mr. Krischenowski that he and his associates did not and would not share the confidential information that they accessed as a result of the Portal Configuration with HTLD. ICANN (Internet Corporation for Assigned Names and Numbers) org also confirmed with HTLD that it did not receive any confidential information from Mr. Krischenowski or his associates obtained from the Portal Configuration. As discussed in the Rationale of the 2016 Resolutions, this information was considered by the Board in adopting the Resolutions.⁴ As the Board noted Rationale of the 2016 Resolutions, even if Mr. Krischenowski (or his associates) had obtained sensitive

business documents belonging to the Requestors, it would not have had any impact on the CPE process for HTLD's Application. The Requestors have not explained how confidential documents belonging to the other applicants for .HOTEL could impact the CPE criteria, which do not consider other entities' confidential information. While Mr. Krischenowski's access occurred prior to the issuance of the CPE Report in June 2014, HTLD did not seek to amend its application during CPE, nor did it submit any documentation that could have been considered by the CPE panel.⁵ There is no evidence that the CPE Panel had any interaction at all with Mr. Krischenowski during the CPE process, and therefore there is no reason to believe that the CPE Panel ever received the confidential information that Mr. Krischenowski obtained.⁶

For these reasons, which are discussed in further detail in the BAMC Recommendation and incorporated herein by reference, the BAMC determined, and the Board agrees, the Requestors did not identify any false or misleading information that the Board relied upon, or material information that the Board failed to consider relating to the Portal Configuration in adopting the 2016 Resolutions. The Board's decision to allow HTLD's Application to proceed was made following a comprehensive investigation, and was well reasoned and consistent with ICANN (Internet Corporation for Assigned Names and Numbers) org's Articles and Bylaws. In particular, in reaching its decision that HTLD's Application should not be excluded, the Board carefully considered the results of ICANN (Internet Corporation for Assigned Names and Numbers) org's forensic review and investigation of the Portal Configuration and the Requestors' claims relating the alleged impact of Portal Configuration on the CPE of HTLD's Application.

B. The Board Did Not Rely Upon False Or Misleading Information In Accepting The Despegar IRP Panel's Declaration.

Although Request 16-11 challenges the Board's conduct as it relates to the 2016 Resolutions, the Requestors also appear to challenge the Board's acceptance of the Despegar IRP Panel's Declaration. In particular, the Requestors assert that "the Despegar et al. IRP Panel relied on false and inaccurate material information," such that "[w]hen the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepted the Despegar et al. IRP Declaration, it relied on the same false and inaccurate material information."⁷

As an initial matter, the Board agrees with the BAMC's conclusion that the Requestors' claim is time-barred. The Board's resolution regarding the Despegar IRP Panel's Declaration was published on 10 March 2016.⁸ Request 16-11 was submitted on 25 August 2016, over five months after the Board's acceptance of the Despegar IRP Panel's Declaration, and well past the then 15-day time limit to seek reconsideration of a Board action.⁹

1. The Requestors' Claims Regarding the Dot Registry and Corn Lake IRP Panel Declarations Do Not Support their

Claims of Discrimination.

Even had the Requestors timely challenged the Board's resolution regarding the Despegar IRP Panel's Declaration, the Board agrees with the BAMC that the Requestors' claims do not support reconsideration. The Requestors cite to the IRP Panel Declaration issued in *Dot Registry, LLC v. ICANN (Internet Corporation for Assigned Names and Numbers)* (Dot Registry IRP Panel Declaration) to support their claim that the Despegar IRP Panel Declaration was based "upon the false premise that the [CPE Provider's] determinations are presumptively final and are made independently by the [CPE Provider], without ICANN (Internet Corporation for Assigned Names and Numbers)'s active involvement."¹⁰ In particular, the Requestors claim that the Dot Registry IRP Panel Declaration demonstrates that "ICANN (Internet Corporation for Assigned Names and Numbers) did have communications with the evaluators that identify the scoring of individual CPEs,"¹¹ such that the Despegar IRP Panel relied upon false information (namely ICANN (Internet Corporation for Assigned Names and Numbers) org's representation in its Response to the 2014 DIDP Request that ICANN (Internet Corporation for Assigned Names and Numbers) org does not engage in communications with individual evaluators who are involved in the scoring of CPEs, which was the subject of Request 14-39), when it found ICANN (Internet Corporation for Assigned Names and Numbers) org to be the prevailing party. As a result, the Requestors suggest that the ICANN (Internet Corporation for Assigned Names and Numbers) Board also relied upon false information when it accepted the Despegar IRP Panel Declaration. The Requestors also argue that they are "situated similarly" to the Dot Registry claimants, and therefore if the Board refuses to grant the Requestors relief when the Board granted the Dot Registry claimants relief, then the Board is discriminating against the Requestors in contradiction to ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles and Bylaws. The BAMC concluded, and the Board agrees, that the Dot Registry IRP Declaration and the Board's response to it, however, do not support the Requestors' request for reconsideration for the following reasons.

First, contrary to the Requestors' assertion, the Dot Registry IRP Panel did not find that ICANN (Internet Corporation for Assigned Names and Numbers) org engaged in communications with CPE evaluators who were involved in the scoring of CPEs. Second, the statements made by one IRP Panel cannot be summarily applied in the context of an entirely separate, unrelated, and different IRP. The Dot Registry IRP concerned .LLC, .INC, and .LLP while the Despegar IRP concerned .HOTEL. Different issues were considered in each IRP, based on different arguments presented by different parties concerning different applications and unrelated factual situations. As such, there is no

support for the Requestors' attempt to apply the findings of the Dot Registry IRP Declaration to the Despegar IRP.

Similarly, the BAMC concluded, and the Board agrees, that the Requestors' citation to the Board's acceptance of the final declaration in *Corn Lake, LLC v. ICANN (Internet Corporation for Assigned Names and Numbers)*, (Corn Lake IRP Declaration) and decision "to extend its final review procedure to include review of Corn Lake's charity expert determination"¹² does not support reconsideration. As was the case with the Dot Registry IRP, the circumstances in the Corn Lake IRP and the Board's subsequent decision concerning .CHARITY involved different facts and distinct considerations specific to the circumstances in Corn Lake's application. As such, the Board's action there does not amount to inconsistent or discriminatory treatment; it is instead an example of the way that the Board must "draw nuanced distinctions between different [gTLD (generic Top Level Domain)] applications,"¹³ and is consistent with *ICANN (Internet Corporation for Assigned Names and Numbers)*'s Articles and Bylaws.

2. The CPE Process Review Confirms that *ICANN (Internet Corporation for Assigned Names and Numbers) Org* did not have any Undue Influence on the CPE Provider with respect to the CPEs Conducted.

The BAMC concluded, and the Board agrees, that the Requestors' suggestion that *ICANN (Internet Corporation for Assigned Names and Numbers) org* exerted undue influence over the CPE Provider's execution of CPE does not warrant reconsideration.¹⁴ Indeed, as the BAMC correctly pointed out, this argument has already been addressed by the Board in the 2018 Resolutions.¹⁵

In short, the CPE Process Review's Scope 1 Report confirms that "there is no evidence that *ICANN (Internet Corporation for Assigned Names and Numbers) org* had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process," including with respect to HTLD's Application.¹⁶ The Requestors believe that the Scope 1 Report demonstrates that "the CPE Provider was not independent from *ICANN (Internet Corporation for Assigned Names and Numbers)*. Any influence by *ICANN (Internet Corporation for Assigned Names and Numbers)* in the CPE was contrary to the policy, and therefore undue."¹⁷ The Requestors do not identify what "policy" they are referring to, but regardless, their disagreement with the conclusions of the Scope 1 Report do not support reconsideration. This is because the Requestors do not dispute that, when *ICANN (Internet Corporation for Assigned Names and Numbers) org* provided input to the CPE Provider, that input did *not* involve challenging the CPE Provider's conclusions, but

rather was to ensure that the CPE Reports were clear and "that the *CPE Provider's* conclusions"—not ICANN (Internet Corporation for Assigned Names and Numbers) org's conclusions—were "supported by sufficient reasoning."¹⁸ The Requestors also cite "phone calls between ICANN (Internet Corporation for Assigned Names and Numbers) and the CPE Provider to discuss 'various issues,'" claiming that those calls "demonstrate that the CPE Provider was not free from external influence from ICANN (Internet Corporation for Assigned Names and Numbers)" org and was therefore not independent.¹⁹ Neither of these facts demonstrates that the CPE Provider was "not independent" or that ICANN (Internet Corporation for Assigned Names and Numbers) org exerted undue influence over the CPE Provider. These types of communications instead demonstrate that ICANN (Internet Corporation for Assigned Names and Numbers) org protected the CPE Provider's independence by focusing on ensuring that the CPE Provider's conclusions were clear and well-supported, rather than directing the CPE Provider to reach a particular conclusion. This argument therefore does not support reconsideration. Accordingly, the BAMC concluded, and the Board agrees, that because the Scope 1 Report demonstrates that ICANN (Internet Corporation for Assigned Names and Numbers) org did not exert undue influence on the CPE Provider and CPE process, it disproves the Requestors' claim that "the *Despegar et al.* IRP Panel was given incomplete and misleading information" which is based solely on the premise of ICANN (Internet Corporation for Assigned Names and Numbers) org's undue influence in the CPE process.²⁰

3. The Requestors Have Not Demonstrated that ICANN (Internet Corporation for Assigned Names and Numbers) Org was Obligated to Produce Communications Between ICANN (Internet Corporation for Assigned Names and Numbers) Org and the CPE Panel.

The Board agrees with the BAMC's conclusion that reconsideration is not warranted because, as the Requestors claim, the *Despegar* IRP Panel did not order ICANN (Internet Corporation for Assigned Names and Numbers) org to produce documents between ICANN (Internet Corporation for Assigned Names and Numbers) org and the CPE Provider. The BAMC noted that that ICANN (Internet Corporation for Assigned Names and Numbers) org was not ordered by the IRP Panel to produce any documents in the *Despegar* IRP, let alone documents that would reflect communications between ICANN (Internet Corporation for Assigned Names and Numbers) org and the CPE panel. And no policy or procedure required ICANN (Internet Corporation for Assigned Names and Numbers) org to voluntarily produce documents during the *Despegar* IRP or thereafter.²¹ In contrast, during the Dot Registry IRP, the Dot Registry IRP Panel ordered ICANN (Internet Corporation for Assigned Names and Numbers) org to produce all documents reflecting "

[c]onsideration by ICANN (Internet Corporation for Assigned Names and Numbers) of the work performed by the [CPE Provider] in connection with Dot Registry's application" and "[a]cts done and decisions taken by ICANN (Internet Corporation for Assigned Names and Numbers) with respect to the work performed by the [CPE Provider] in connection with Dot Registry's applications."²² ICANN (Internet Corporation for Assigned Names and Numbers) org's communications with the CPE panels for .INC, .LLC, and .LLP fell within the scope of such requests, and thus were produced. Ultimately, ICANN (Internet Corporation for Assigned Names and Numbers) org acted in accordance with applicable policies and procedures, including ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, in both instances.²³

4. **The Requestors Have Not Demonstrated that a New CPE of HTLD's Application is Appropriate.**

Without identifying particular CPE criteria, the Requestors ask the Board to "ensure meaningful review of the CPE regarding .hotel, ensuring consistency of approach with its handling of the *Dot Registry* [IRP Panel Declaration]."²⁴ The BAMC determined, and the Board agrees, that to the extent the Requestors are asserting that the outcome of the CPE analysis of HTLD's Application is inconsistent with other CPE applications, this argument was addressed in Scope 2 of the CPE Process Review. There, "FTI found no evidence that the CPE Provider's evaluation process or reports deviated in any way from the applicable guidelines; nor did FTI observe any instances where the CPE Provider applied the CPE criteria in an inconsistent manner."²⁵ Additionally, for the reasons discussed in above and in detail in the BAMC Recommendation, the Board finds that neither the .HOTEL CPE nor the 2016 Resolutions evidence inconsistent or discriminatory treatment toward the Requestors. For these reasons, this argument does not support reconsideration.

C. **The 2018 Resolutions Are Consistent With ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and Established ICANN (Internet Corporation for Assigned Names and Numbers) Policy(ies).**

The Requestors' criticisms of the 2018 Resolutions focus on the transparency, methodology, and scope of the CPE Process Review. None support reconsideration. The BAMC found, and the Board agrees, that the BAMC and the Board addressed the Requestors' concerns regarding the 2018 Resolutions in its Recommendation on Request 18-6,²⁶ which the Board adopted on 18 July 2018.²⁷ The rationales set forth by the BAMC, and the Board in its determination of Request 18-6, are incorporated herein by reference.

D. The Rebuttal Does Not Raise Arguments or Facts That Support Reconsideration.

As an initial matter, Request 16-11 was submitted pursuant to the 11 February 2016 Bylaws, see Discussion *supra*, which do not call for a rebuttal to the BAMC's recommendation.²⁸ Nonetheless, the Board has considered the Requestors' Rebuttal and finds that the Requestors have not provided any additional arguments or facts supporting reconsideration.

1. The 11 February 2016 Bylaws Govern Request 16-11.

The Requestors assert that the Board should consider Request 16-11 under the standards for reconsideration set forth in ICANN (Internet Corporation for Assigned Names and Numbers) org's 18 June 2018 Bylaws, i.e., the version of the Bylaws in effect at the time of the BAMC's recommendation, rather than the 11 February 2016 version which was in effect when Request 16-11 was submitted on 25 August 2016. However, the 18 June 2018 Bylaws did not exist when the Requestors submitted Request 16-11, and the Board did not provide for retroactive treatment when it approved the 18 June 2018 version of the Bylaws; accordingly, the 18 June 2018 Bylaws have no retroactive effect. Indeed, the Reconsideration Request form that the Requestors submitted references the standard for reconsideration under the 11 February 2016 Bylaws, instructing requestors that, for challenges to Board action, "[t]here has to be identification of material information that was in existence [at] the time of the decision and that was not considered by the Board in order to state a reconsideration request." (See Request 16-11, § 8, at Pg. 7.) Therefore, the BAMC correctly considered Request 16-11 under the 11 February 2016 Bylaws, which were in effect when the Requestors submitted Request 16-11.

2. The Requestors' Challenges to the Bylaws are Untimely.

The Requestors assert that "the formal requirements of Article 4(2)(q) [of the 18 June 2018 Bylaws] and the circumstances of this case create an unjustified imbalance that prevents Requestors from participating in the reconsideration proceedings in a meaningful way" because the BAMC issued a 33-page recommendation "almost four months" after the Requestors' telephonic presentation concerning Request 16-11, when (under the current Bylaws) rebuttals must be filed within 15 days after the BAMC publishes its recommendations and may not exceed 10 pages. (Rebuttal, at Pg. 1.) As noted above, the operative version of the Bylaws do not provide the Requestors with a right to submit a rebuttal, so reconsideration is not warranted on account of the Requestors' apparent disagreement with the deadlines governing rebuttals under the current (inapplicable) version of the Bylaws.²⁹ Moreover, the Requestors *have* meaningfully participated in the reconsideration process: the

Requestors made a presentation at a telephonic hearing concerning Request 16-11 (Rebuttal, at Pg. 1); and, as noted in the BAMC's Recommendation, the Requestors submitted—and the BAMC considered—seven letters in support of Request 16-11.³⁰ The Requestors have now also submitted a rebuttal in support of Request 16-11, which the Board has considered. Accordingly, the Requestors have not shown that they have been prevented from "meaningful" participation in the reconsideration request process.

3. The Board Considered Ms. Ohlmer's Actions When it Adopted the 2016 Resolutions.

The Requestors assert that the "Board ignored the role of [Katrin] Ohlmer" (Rebuttal, at Pg. 3) in the Portal Configuration issue. The Requestors claim that Ms. Ohlmer was CEO of HTLD when she accessed the confidential information of other applicants, and that she had been CEO from the time HTLD submitted HTLD's Application until 23 March 2016. (Request 16-11, § 8, at Pg. 19; see also Rebuttal, at Pg. 3.) The Requestors claim that, because of her role at HTLD, information Ms. Ohlmer accessed "was automatically provided to HTLD." (Rebuttal, at Pg. 4.) The Requestors also assert that "HTLD acknowledged that [Ms. Ohlmer] was (i) principally responsible for representing HTLD, (ii) highly involved in the process of organizing and garnering support for [HTLD's Application], and (iii) responsible for the day-to-day business operations of HTLD."³¹

The Board finds that this argument does not support reconsideration as the Board did consider Ms. Ohlmer's affiliation with HTLD when it adopted the 2016 Resolutions. Indeed, the Rationale for Resolutions 2016.08.09.14 – 2016.08.09.15 notes that: (1) Ms. Ohlmer was an associate of Mr. Krischenowski; (2) Ms. Ohlmer's wholly-owned company acquired the shares that Mr. Krischenowski's wholly-owned company had held in GmbH Berlin (itself a 48.8% minority shareholder of HTLD); and (3) Ms. Ohlmer (like Mr. Krischenowski) "certified to ICANN (Internet Corporation for Assigned Names and Numbers) [org] that [she] would delete or destroy all information obtained, and affirmed that [she] had not used and would not use the information obtained, or convey it to any third party."³² As the BAMC noted in its Recommendation, Mr. Grabensee affirmed that GmbH Berlin would transfer its ownership interest in HTLD to another company, Afiliac plc. Once this transfer occurred, Ms. Ohlmer's company would not have held an ownership interest in HTLD.³³

4. The Requestors' Arguments Concerning HTLD's and Mr. Krischenowski's Assurances and HTLD's Relationship with Mr. Krischenowski Do Not Support Reconsideration.

The Board finds that the Requestors' arguments that the Board should not have accepted the statements from Messrs. Grabensee or Krischenowski that HTLD did not receive the confidential information from the Portal Configuration does not warrant reconsideration because the Requestors have not provided any arguments or facts that have not already been addressed by the BAMC in its Recommendation.

Similarly, the Board concludes that the Requestors' arguments that the Board failed to consider timing of HTLD's separation from Mr. Krischenowski in adopting the 2016 Resolutions does not warrant reconsideration. Contrary to the Requestors' argument, it is clear that the Board considered the timing of HTLD's separation from Mr. Krischenowski when it adopted the Resolutions. In the Rationale for the 2016 Resolutions, the Board referenced the same timing in the Rationale for the Resolutions, noting that "the business consultancy services between HTLD and Mr. Krischenowski were terminated as of 31 December 2015" and "Mr. Krischenowski stepped down as a managing director of GmbH Berlin effective 18 March 2016."³⁴ The Requestors disagree with the Board's conclusion that the timing did not support cancelling HTLD's Application, but this disagreement, without more, is not grounds for reconsideration.

5. The Requestors Do Not Challenge the Application of Specific CPE Criteria to HTLD's Application

The Requestors claim that the BAMC incorrectly concluded that the Requestors "do not challenge the application of the CPE criteria to HTLD's application or a particular finding by the CPE Provider on any of the CPE criteria." (Rebuttal, at Pg. 9, citing Recommendation, at Pg. 1). However, neither Request 16-11 nor the Rebuttal identifies any of the CPE criteria nor discusses the application of specific CPE criteria to HTLD's Application. (See Request 16-11; Rebuttal.) The Requestors simply reiterate their arguments that the CPE Provider applied (unspecified) CPE criteria "inconsistent[ly] and erroneous[ly]," and that the BAMC should not have considered the CPE Process Review Reports when it made its Recommendation. (Rebuttal, at Pgs. 9-10.) The BAMC addressed these arguments in its Recommendation, and the Board adopts the BAMC's reasoning as if fully set forth herein.

For these reasons, the Board concludes that reconsideration is not warranted.

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.

g. Consideration of Reconsideration Request 18-9: DotKids Foundation (.KIDS)

Whereas, in [Resolution 2010.03.12.47 \(/resources/board-material/resolutions-2010-03-12-en#20\)](#), as part of the New gTLD (generic Top Level Domain) Program, the ICANN (Internet Corporation for Assigned Names and Numbers) Board "request[ed] stakeholders to work through their [Supporting Organizations (Supporting Organizations)] SOs and [Advisory Committees (Advisory Committees)] ACs, and form a Working Group to develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs."

Whereas, in response to [Resolution 2010.03.12.47 \(/resources/board-material/resolutions-2010-03-12-en#20\)](#), the Joint SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) New gTLD (generic Top Level Domain) Applicant Support Working Group (JAS WG (Working Group)) was formed.

Whereas, on 13 September 2011, the JAS WG (Working Group) issued its Final Report, setting forth various recommendations regarding financial and non-financial support to be offered to "Support-Approved Candidates" in conjunction with the New gTLD (generic Top Level Domain) Program.

Whereas, in [Resolution 2011.10.28.21 \(/resources/board-material/resolutions-2011-10-28-en#2\)](#), the Board committed to taking the JAS Final Report seriously, and convened a working group of Board members "to oversee the scoping and implementation of recommendations out of [the JAS Final] Report, as feasible."

Whereas, in [Resolutions 2011.12.08.01 – 2011.12.08.03 \(/resources/board-material/resolutions-2011-12-08-en#1.1\)](#), the Board approved the implementation plan of the JAS Final Report developed by the Board working group, directed ICANN (Internet Corporation for Assigned Names and Numbers) organization to finalize the implementation plan in accordance with the proposed criteria and process for the launch of the Applicant Support Program (ASP) in January 2012, and approved a fee reduction to US\$47,000 Applicant Support candidates that qualify for the established criteria.

Whereas, the Requestor DotKids Foundation submitted a community-based application for .KIDS, which was placed in a contention set with one other .KIDS application and an application for .KID.

R-29

RESPONDENT'S EXHIBIT

Approved Board Resolutions | Special Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

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18 Jul 2018

1. **Consent Agenda:**

a. **Approval of Minutes**

b. **Revisions to the Code of Conduct, the Board Governance Guidelines, and the Conflicts of Interest Policy.**

Rationale for Resolution 2018.07.18.02

2. **Main Agenda:**

a. **Initiating Next Steps on the Uniform Board Member Integrity Screening Process**

Rationale for Resolution 2018.07.18.03

b. **Consideration of Reconsideration Request 18-1: DotMusic Limited**

Rationale for Resolution 2018.07.18.04

c. **Consideration of Reconsideration Request 18-2: dotgay LLC**

Rationale for Resolution 2018.07.18.05

- d. **Consideration of Reconsideration Request 18-3:
Astutium Ltd**
Rationale for Resolution 2018.07.18.06
 - e. **Consideration of Reconsideration Request 18-4: dotgay.
LLC**
Rationale for Resolution 2018.07.18.07
 - f. **Consideration of Reconsideration Request 18-5:
DotMusic Limited**
Rationale for Resolution 2018.07.18.08
 - g. **Consideration of Reconsideration Request 18-6: Travel
Reservations SRL, Minds + Machines Group Limited,
Radix FZC, dot Hotel Inc., Fegistry LLC**
Rationale for Resolution 2018.07.18.09
 - h. **AOB**
3. **Executive Session - Confidential:**
- a. **President and CEO FY18 SR2 At-Risk Compensation
and Goals for FY19**
*Rationale for Resolutions 2018.07.18.10 –
2018.07.18.11*
 - b. **President and CEO Executive Services Agreement –
One Year Extension**
*Rationale for Resolutions 2018.07.18.12 –
2018.07.18.13*
 - c. **Officer Compensation**
*Rationale for Resolutions 2018.07.18.14 –
2018.07.18.15*
 - d. **Ombudsman FY18 At-Risk Compensation**
Rationale for Resolution 2018.07.18.16
 - e. **Extension of Ombudsman Contract**
*Rationale for Resolutions 2018.07.18.17 –
2018.07.18.19*

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.

g. Consideration of Reconsideration Request 18-6: Travel Reservations SRL, Minds + Machines Group Limited, Radix FZC, dot Hotel Inc., Fegistry LLC

Whereas, Travel Reservations SRL, Minds + Machines Group Limited, Radix FZC (and its subsidiary applicant dotHotel Inc.), and Fegistry LLC (collectively the Requestors) submitted standard applications for the .HOTEL generic top-level domain (gTLD (generic Top Level Domain)), which was placed in a contention set with other .HOTEL applications. One of the other application for the .HOTEL gTLD (generic Top Level Domain), was a community application filed by HOTEL Top-Level-Domain S.a.r.l. (HTLD).

Whereas, HTLD participated in Community Priority Evaluation (CPE) and prevailed.

Whereas, the Requestors have challenged the CPE Provider's determination that the HTLD Application satisfied the requirements for community priority, and the Board's decision not to cancel the HTLD Application, via numerous DIDP Requests, Reconsideration Requests, and Independent Review Process. All of those challenges have been resolved, with the exception of Reconsideration Request 16-11 (Request 16-11), which is pending.

Whereas, while Request 16-11 was pending, the Board directed ICANN (Internet Corporation for Assigned Names and Numbers) organization to undertake a review of the CPE process (the CPE Process Review). The Board Governance Committee (BGC) determined that the pending Reconsideration Requests regarding the CPE process, including Request 16-11, would be placed on hold until the CPE Process Review was completed.²¹³

Whereas, on 13 December 2017, ICANN (Internet Corporation for Assigned Names and Numbers) org published three reports on the CPE Process Review (CPE Process Review Reports).

Whereas, on 15 March 2018, the Board passed the Resolutions 2018.03.15.08 through 2018.03.15.11 (/resources/board-material/resolutions-2018-03-15-en#2.a), in which the Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports, there would be no overhaul or change to the CPE process for this current round of the New gTLD (generic Top Level Domain) Program, and directed the Board Accountability Mechanism Committee (BAMC) to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review.

Whereas, on 14 April 2018, the Requestors submitted Reconsideration Request 18-6 (Request 18-6), claiming that the Board's adoption of the CPE Process Review Reports in Resolutions 2018.03.15.08 through 2018.03.15.11 are contrary to ICANN (Internet Corporation for Assigned Names and Numbers) org's commitments to transparency and to applying documented policies in a consistent, neutral, objective, and fair manner.

Whereas, the BAMC previously determined that Request 18-6 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 18-6 and all relevant materials and recommended that Request 18-6 be denied because the Board considered all material information when it adopted Resolutions 2018.03.15.08 through 2018.03.15.11, which is consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values, and established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies).

Whereas, the Board has carefully considered the BAMC's Recommendation on Request 18-6 and all relevant materials related to Request 18-6, including the Requestor's rebuttal, and the Board agrees with the BAMC's Recommendation and concludes that the rebuttal provides no additional argument or evidence to support reconsideration.

Resolved (2018.07.18.09), the Board adopts the BAMC Recommendation on Request 18-6

[\(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf).

Rationale for Resolution 2018.07.18.09

1. Brief Summary and Recommendation

The full factual background is set forth in the [BAMC Recommendation on Request 18-6](#) (</en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf>) (BAMC Recommendation), which the Board has reviewed and considered, and which is incorporated here.

On 14 June 2018, the BAMC evaluated Request 18-6 and all relevant materials and recommended that the Board deny Request 18-6 because the Board considered all material information when it adopted the Resolutions, which is consistent with [ICANN \(Internet Corporation for Assigned Names and Numbers\)'s Mission, Commitments, Core Values, and established ICANN \(Internet Corporation for Assigned Names and Numbers\) policy\(ies\)](#). Specifically, as noted in Resolutions 2018.03.15.08 through 2018.03.15.11 (the Resolutions), the Board considered the CPE Process Review Reports.²¹⁴ The CPE Process Review Reports identify the materials considered by FTI.²¹⁵ Additionally, as noted in the Rationale of the Resolutions, the Board acknowledged receipt of, and took into consideration, the correspondence received after the publication of the CPE Process Review Reports in adopting the Resolutions. (See [BAMC Recommendation](#) (</en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf>)).

On 29 June 2018, the Requestor submitted a rebuttal to the BAMC's Recommendation (Rebuttal), pursuant to Article 4, Section 4.2(q) of [ICANN \(Internet](#)

Corporation for Assigned Names and Numbers)'s Bylaws. (See [Rebuttal \(/en/system/files/files/reconsideration-18-6-trs-et-al-requestors-rebuttal-bamc-recommendation-29jun18-en.pdf\)](#).) The Requestor claims that "the BAMC's Recommendation is based on both factual errors and on a misrepresentation of Requestors' position and of the applicable rules."²¹⁶

The Board has carefully considered the [BAMC's Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#) and all relevant materials related to Request 18-6, including the Requestor's rebuttal, and the Board agrees with the [BAMC's Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#) and concludes that the Rebuttal provides no additional argument or evidence to support reconsideration.

2. Issue

The issue is whether the Board's adoption of the Resolutions contradicted ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and/or established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies). These issues are considered under the relevant standards for reconsideration requests, which are set forth in the [BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#).

The Board notes that it agrees with the BAMC's decision to not consider Request 16-11 in conjunction with Request 18-6 (as requested by the Requestors) because the Requests were filed under

different Bylaws with different standards for Reconsideration and involve different subject matters.

3. Analysis and Rationale

A. **The Resolutions Are Consistent With ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and Established ICANN (Internet Corporation for Assigned Names and Numbers) Policy(ies).**

The Requestor's claims focus on the transparency, methodology, and scope of the CPE Process Review. The BAMC noted, and the Board agrees, the Requestor provides no evidence demonstrating how the Resolutions violate ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment to fairness, or that the Board's action is inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s commitments to transparency, multistakeholder policy development, promoting well-informed decisions based on expert advice, applying documented policies consistently, neutrally, objectively, and fairly without discrimination, and operating with efficiency and excellence. Rather, it appears that the Requestor simply does not agree with findings of the CPE Process Review Reports and the Board's acceptance of those findings. As demonstrated below and in further detail in the [BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#)

which is incorporated herein, these are not sufficient bases for reconsideration.

1. The CPE Process Review Satisfied Applicable Transparency Obligations.

The Requestors argue that the CPE Process Review—and therefore the Resolutions—are contrary to ICANN (Internet Corporation for Assigned Names and Numbers)'s commitments to transparency and to applying documented policies in a consistent, neutral, objective, and fair manner.²¹⁷ Specifically, the Requestors believe that the CPE Process Review lacked transparency concerning: (1) "the selection process for the CPE process reviewer ([FTI]), and the names and curricula vitae of the FTI individuals involved in the review"; (2) the "instructions FTI received from ICANN (Internet Corporation for Assigned Names and Numbers) [organization]"; (3) the "criteria and standards that FTI used to perform the CPE process review"; (4) the "documents or the recordings of the interviews on which [FTI's] findings are based"; and (5) the "questions that were asked during [FTI's] interviews."²¹⁸

With respect to the first three claims, ICANN (Internet Corporation for Assigned Names and Numbers) org provided details concerning the selection process for the CPE process reviewer almost one year ago, in

furtherance of its effort to operate to the maximum extent feasible in an open and transparent manner.²¹⁹ In the same document, ICANN (Internet Corporation for Assigned Names and Numbers) org provided information concerning the scope of FTI's investigation.²²⁰ Similarly, the CPE Process Review Reports themselves provide extensive detail concerning FTI's "criteria and standards" for conducting the CPE Process Review.²²¹ Accordingly, the BAMC concluded, and the Board agrees, that none of these arguments support reconsideration. (BAMC Recommendation (/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf), Pg. 13.)

Concerning FTI's documents, recordings, and interview questions, as noted in the CPE Process Review Reports, many of the materials that FTI reviewed are publicly available documents, and are equally available to the Requestors.²²² Additionally, FTI requested, received, and reviewed (1) emails from ICANN (Internet Corporation for Assigned Names and Numbers) org (internal to ICANN (Internet Corporation for Assigned Names and Numbers) personnel as well external emails exchanged with the CPE Provider) and (2) the CPE Provider's working papers, including draft reports, notes, and spreadsheets.²²³ While the Requestors

did not file a request for documentary information pursuant to the Documentary Information Disclosure Policy (DIDP), these materials are the subject of two DIDP Requests, which were submitted by parties in January 2018. ICANN (Internet Corporation for Assigned Names and Numbers) organization considered the request and concluded that ICANN (Internet Corporation for Assigned Names and Numbers) organization explained that those documents would not be made publicly available because they were subject to certain Nondisclosure Conditions.²²⁴ These same Nondisclosure Conditions apply to the Requestors' claim. Moreover, the reasoning set forth in the BAMC's Recommendations on Reconsideration Requests 18-1 and 18-2, denying reconsideration on those DIDP Responses are applicable here and are therefore incorporated herein by reference.²²⁵ The Requestors here provide no evidence that ICANN (Internet Corporation for Assigned Names and Numbers) org's decision not to disclose these materials contravened any applicable policies, or ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, or Core Values. Accordingly, the BAMC determined, and the Board agrees, this argument does not support reconsideration. (BAMC Recommendation ([12](/en/system/files/files/reconsideration-</p></div><div data-bbox=)

18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf), Pgs. 13-15.)

2. **The Requestors' Challenges to FTI's Methodology Do Not Warrant Reconsideration.**

The Requestors assert that the Board should not have acknowledged or accepted the CPE Process Review Reports because FTI's methodology was flawed.²²⁶ Specifically, the Requestors complain that FTI: (1) did not explain why the CPE Provider refused to produce email correspondence; and (2) did not try to contact former employees of the CPE Provider.²²⁷

As discussed in the detail in the BAMC Recommendation (/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf), FTI, not the Board or ICANN (Internet Corporation for Assigned Names and Numbers) org, defined the methodology for the CPE Process Review Reports.²²⁸ The Board selected FTI because it has "the requisite skills and expertise to undertake" the CPE Process Review, and relied on FTI to develop an appropriate methodology.²²⁹ The Requestors have not identified a policy or procedure (because there is none) requiring the Board or ICANN (Internet Corporation for Assigned Names and Numbers) org to develop a particular

methodology for the CPE Process Review.

With respect to the Requestor's first concern, the BAMC concluded, and the Board agrees, that the claim does not support reconsideration. The CPE Provider *did* produce to FTI, and FTI *did* review, the CPE Provider's working papers, draft reports, notes, and spreadsheets for all CPE Reports.²³⁰ FTI also received and reviewed emails (and attachments) produced by ICANN (Internet Corporation for Assigned Names and Numbers) organization between relevant CPE Provider personnel and relevant ICANN (Internet Corporation for Assigned Names and Numbers) organization personnel related to the CPE process and evaluations.²³¹ The Requestors are correct that FTI requested additional materials from the CPE Provider such as the internal correspondence between the CPE Provider's personnel and evaluators, but the CPE Provider refused to produce certain categories of documents, claiming that pursuant to its contract with ICANN (Internet Corporation for Assigned Names and Numbers) org, it was only required to produce CPE working papers, and internal and external emails were not "working papers."²³² The BAMC determined, and the Board agrees, no policy or procedure exists that would require ICANN (Internet Corporation for Assigned Names and Numbers)

organization to reject the CPE Process Review Reports because the CPE Provider did not produce internal emails. This argument does not support reconsideration. ([BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#), Pgs. 15-16.)

The BAMC concluded, and the Board agrees, that the Requestors' concern that FTI interviewed the "only two remaining [CPE Provider] personnel" does not warrant reconsideration. Other team members were no longer employed by the CPE Provider when FTI conducted its investigation, and were therefore not available for FTI to interview. ²³³ Neither FTI nor the Board were required to search out every former CPE Provider employee who had any role in any CPE evaluation, particularly when FTI already had access to two individuals who were core members of every CPE evaluation team and the working papers of the CPE reports that the entire core team worked on. The Requestor has not identified a policy or procedure requiring FTI to do more (including to explain why it did not seek out former employees) because none exists. Reconsideration is not warranted on this ground. ([BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#), Pg. 16.)

The Requestors also claim that FTI's methodology was flawed because FTI did not identify that the CPE Provider determined that the HTLD Application "provided for an appeal system," when in fact the application "d[id] not provide for an appeal system" as required under Criterion 3, Registration Policies.²³⁴ The Requestors claim that "[t]he Despegar et al. IRP Panel considered [this] inconsistenc[y] to have merit," and the "existence of said inconsistencies has never been contested."²³⁵ As discussed in detail in the BAMC Recommendation and incorporated herein by reference, this assertion is an overstatement of the Despegar IRP Panel's findings. (</en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf>), Pgs. 16-17.) The Despegar IRP Panel stated that: (1) ICANN (Internet Corporation for Assigned Names and Numbers) org had confirmed that the CPE Provider did not have a "process for comparing the outcome of one CPE evaluation with another in order to ensure consistency," nor did ICANN (Internet Corporation for Assigned Names and Numbers) org have a process for doing so; and that (2) "[m]uch was made in this IRP of the inconsistencies, or at least apparent inconsistencies, between the outcomes of different CPE evaluations, . . . some of which, **on the basis solely of the arguments provided by [the Requestors]**, have

some merit."²³⁶ The Despegar IRP Panel did not make a determination concerning these arguments, nor was it asked to. Accordingly, the IRP Panel's side note concerning the Requestors' allegations of inconsistencies does not support reconsideration.

3. The Requestors' Challenge to the Scope of the CPE Process Review Does Not Warrant Reconsideration.

The BAMC determined, and the Board agrees, that the Requestors' complaints about the scope of FTI's investigation do not support reconsideration.²³⁷ The Requestors believe that FTI "sum[med] up" but did not "analyse" "the different reasons that the CPE Provider provided to demonstrate adherence to the community priority criteria," that it did not analyze "the inconsistencies invoked by applicants in [reconsideration requests], IRPs or other processes," and that FTI "did not examine the gTLD (generic Top Level Domain) applications underlying the CPE [evaluations]."²³⁸ Essentially, the Requestors wanted FTI to substantively re-evaluate the CPE applications, which was beyond the scope of the CPE Process Review. The requestor's substantive disagreement with FTI's methodology is not a basis for reconsideration. ([BAMC Recommendation \(/en/system/files/files/reconsideration-](#)

18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf), Pgs. 17-18.)

4. The Resolutions Are Consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values, and Established Policy(ies).

The BAMC concluded, and the Board agrees, that there is no merit to the Requestors' assertions that the Resolutions are contrary to ICANN (Internet Corporation for Assigned Names and Numbers)'s commitments to transparency and to applying documented policies in a consistent, neutral, objective, and fair manner,²³⁹ and they will prevent Requestors from obtaining "a meaningful review of their complaints regarding HTLD's application for .hotel, the CPE process and the CPE Review Process."²⁴⁰ In the Resolutions, the Board directed the BAMC to consider the CPE Reports along with all of the materials submitted in support of the relevant reconsideration requests.²⁴¹ The BAMC will consider the CPE Process Review Reports in the course of its evaluation of Request 16-11 (just as the BAMC will consider all of the materials submitted by the Requestors in connection with Request 16-11), but this does not mean that the BAMC will find the CPE Process Review Reports to be determinative to its Recommendation on Request 16-11. (BAMC Recommendation

(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf), Pg. 18.)

The BAMC notes that it provided the Requestors an opportunity to make a telephone presentation concerning the effect of the CPE Process Review on Request 16-11, which the Requestors accepted. The BAMC will carefully review and consider all of the materials that the Requestors submitted in support of Request 16-11, as well as the CPE Process Review Reports as one of many reference points in its consideration of Request 16-11. Accordingly, reconsideration is not warranted.

With respect to the Requestors' due process claims, as discussed in the BAMC Recommendation and incorporated herein by reference, while ICANN (Internet Corporation for Assigned Names and Numbers) org is committed to conform with *relevant* principles of international law and conventions, any commitment to provide due process is voluntary and not coextensive with government actors' obligations. Constitutional protections do not apply with respect to a corporate accountability mechanism. California non-profit public benefit corporations, such as ICANN (Internet Corporation for Assigned Names and Numbers) organization, are expressly authorized to establish internal accountability mechanisms and to

define the scope and form of those mechanisms.²⁴² ICANN (Internet Corporation for Assigned Names and Numbers) organization was not required to establish any internal corporate accountability mechanism, but instead did so voluntarily. Accordingly, the Requestor does not have the "right" to due process or other "constitutional" rights with respect to ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms. ([BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#), Pgs. 19-20).

Even if ICANN (Internet Corporation for Assigned Names and Numbers) organization *did* have due process obligations, and even though the "rights" the Requestors invoke do not apply to corporate accountability mechanisms, the Requestors have not explained how the alleged misapplication of ICANN (Internet Corporation for Assigned Names and Numbers) org's policies resulted in a denial of due process. ICANN (Internet Corporation for Assigned Names and Numbers) org *did* take due process into account when it designed the accountability mechanisms, including the Reconsideration Request process that the Requestors exercised by submitting Request 16-11 and the IRP Process that the Requestors exercised in the Despegar IRP. ICANN (Internet

Corporation for Assigned Names and Numbers) org's accountability mechanisms—that is, Reconsideration Requests and the Independent Review Process—consider the CPE Provider's compliance with the Guidebook and with ICANN (Internet Corporation for Assigned Names and Numbers) organization's Articles of Incorporation and Bylaws. They consider whether the CPE Provider complied with its processes, which requires the adjudicator (the BAMC, Board, or an Independent Panel) to consider the outcome in addition to the process. Accordingly, the accountability mechanisms, including this reconsideration request, provide affected parties like the Requestor with avenues for redress of purported wrongs, and substantively review the decisions of third-party service providers, including the CPE Provider. This is not grounds for reconsideration. (*See id.*)

B. The Rebuttal Does Not Raise Arguments or Facts That Support Reconsideration.

The Board has carefully considered the Requestors' Rebuttal and finds that the Requestors have not provided any additional arguments or facts supporting reconsideration. The Rebuttal claims that "the BAMC's Recommendation is based on both factual errors and on a misrepresentation of Requestors' position and of the applicable rules." ([Rebuttal](#) [./en/system/files/files/reconsideration-18-6-trs-](#)

et-al-requestors-rebuttal-bamc-recommendation-29jun18-en.pdf), Pg. 1)

First, the Requestors assert that the ICANN (Internet Corporation for Assigned Names and Numbers) Board did not consider the claims raised in the Requestors' 16 January 2018 and 22 February 2018 correspondence when the Board adopted the 2018 Resolutions. This claim is factually incorrect and does not support reconsideration. The Requestors' 16 January 2018 letter did not identify any specific challenges to the CPE Process Review Reports, but instead only made passing references to the Requestors' broad "concerns" about transparency, the methodology employed by FTI, due process, and alleged disparate treatment and inconsistencies.²⁴³ These "concerns" were then detailed in the Requestors' 1 February 2018 letter, which the Board acknowledged and considered in the 2018 Resolutions.²⁴⁴ Further, contrary to the Requestors' claim, the Board *did* acknowledge and consider the Requestors' 22 February 2018 letter.²⁴⁵

Second, the Requestors assert that ICANN (Internet Corporation for Assigned Names and Numbers) org has "largely ignored" many of the Requestors' challenges to the CPE Provider's determination that the HTLD Application satisfied the requirements for community priority, and the Board's decision not to cancel the HTLD Application.²⁴⁶ This claim is unsupported and does not warrant reconsideration because, as the BAMC explained (see BAMC Recommendation (/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf)),

Pgs. 4, 14-15), and the Board agrees, ICANN (Internet Corporation for Assigned Names and Numbers) org responded to Requestors' DIDP Requests,²⁴⁷ Reconsideration Requests, and the Despegar IRP in accordance with established policies and procedures. With respect to Reconsideration Request 16-11, ICANN (Internet Corporation for Assigned Names and Numbers) org has not "ignored" it, as the Requestors claim. Rather, it remains pending and will be considered on the merits as soon as practicable following the completion of the Requestors' oral presentation to the Board. Regarding the Requestors' claim that ICANN (Internet Corporation for Assigned Names and Numbers) org has not provided details concerning the selection process for FTI, the Board finds that this argument has been sufficiently addressed by the BAMC. (See [BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#), Pgs. 13-14.) The Requestors have not set forth any new evidence in the Rebuttal supporting reconsideration.

Third, the Requestors repeat their argument that Board's adoption of the 2018 Resolutions will prevent Requestors from obtaining a "meaningful review of their complaints made in the framework of [Request] 16-11."²⁴⁸ The Board finds that this argument has been sufficiently addressed by the BAMC. (See [BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#), Pgs. 18-19.) The Requestors have not set

forth any new evidence in the Rebuttal supporting reconsideration.

Fourth, with respect to the Requestors' due process claim, the Requestors now assert that "the fact that the BAMC refuses to hear [Requests] 16-11 and 18-6 together limits Requestors' due process rights even further."²⁴⁹ The Requestors state that they "cannot accept the BAMC's reasoning that both [Requests] cannot be handled together because [Request] 16-11 was filed under different (previous) Bylaws," and summarily conclude that this will result in Request 16-11 being determined under "less robust accountability standards" than Request 18-6.²⁵⁰ However, the Requestors do not provide any basis for this assertion, because there is none. As the BAMC explained, "the Requests were filed under different Bylaws with different standards for Reconsideration and involve different subject matters." ([BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#), Pg. 11.) Accordingly, reconsideration is not warranted.

Finally, the Requestors again disagree with the scope of the CPE Process Review and the methodology employed by FTI. The Board finds that these arguments have been sufficiently addressed by the BAMC. (See [BAMC Recommendation \(/en/system/files/files/reconsideration-18-6-trs-et-al-bamc-recommendation-14jun18-en.pdf\)](#), Pgs. 15-20.) The Requestors have not set forth any new evidence in the Rebuttal supporting 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.

h. AOB

No Resolutions taken.

3. Executive Session - Confidential:

a. President and CEO FY18 SR2 At-Risk Compensation and Goals for FY19

Whereas, each Board member has confirmed that he/she does not have a conflict of interest with respect to establishing the amount of payment for the President and CEO's FY18 SR2 at-risk compensation payment.

R-30

RESPONDENT'S EXHIBIT

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Independent Review Process Panel

In the Matter of an Independent Review Process

Between:

Booking.com B.V.

Applicant

-and-

ICDR Case No: 50-20-1400-0247

**Internet Corporation for Assigned Names
and Numbers (ICANN)**

Respondent

FINAL DECLARATION

The Panel:

Hon. A. Howard Matz

David H. Bernstein, Esq.

Stephen L. Drymer (Chair)

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DECLARATION

WE, THE UNDERSIGNED PANELISTS, members of the Independent Review Process Panel (“**IRP Panel**” or “**Panel**”), having been designated in accordance with ICANN Bylaws dated 11 April 2013, hereby issue the following Final Declaration (“**Declaration**”):¹

I. INTRODUCTION

1. This Declaration is issued in the context of an Independent Review Process (“**IRP**”) as provided for in Article IV, Section 3 of the Bylaws of the Internet Corporation for Assigned Names and Numbers (“**ICANN**”; “**ICANN Bylaws**” or “**Bylaws**”). In accordance with those Bylaws, the conduct of this IRP is governed by the International Arbitration Rules of the International Centre for Dispute Resolution as amended and in effect June 1, 2009 (“**ICDR**”; “**ICDR Rules**”) as supplemented by the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (“**Supplementary Procedures**”).
2. The subject matter of the dispute here concerns alleged conduct by the ICANN Board in relation to one particular facet of the process by which new generic top-level domains (“**gTLDs**”, also known as gTLD “**strings**”) are applied for, reviewed and delegated into the Internet’s domain name system (“**DNS**”) root zone.
3. As explained in this Declaration, the Applicant, Booking.com, alleges that, in establishing and overseeing the process by which so-called *string similarity reviews* are conducted, and in refusing to reconsider and overturn a decision to place Booking.com’s applied-for gTLD string .hotels in a so-called *string contention set*, the Board acted in a manner inconsistent with applicable policies, procedures and rules as set out in ICANN’s Articles of Incorporation, Bylaws and gTLD Applicant Guidebook (“**Guidebook**”).
4. Reading between the lines of the parties’ submissions, the Panel senses that both sides would welcome the opportunity to contribute to an exchange that might result in enabling disputants in future cases to avoid having to resort to an IRP to resolve issues such as have arisen here. Certainly the Panel considers that the present matter would ideally have been resolved amicably by the parties. This is particularly true given that the matter here concerns two of ICANN’s guiding principles – transparency and fairness – as applied to one of ICANN’s most essential activities – the delegation of new gTLDs² – in circumstances in which various members of the Internet community, including certain members of the ICANN Board’s New gTLD Program Committee, have expressed their own concerns regarding the string similarity review process. That being the case, though, the Panel does not shy away from the duty imposed by the Bylaws to address the questions before it and to render the

¹ As requested by the ICDR, the Declaration was provided to the ICDR in draft form on 26 January 2015 for non-substantive comments on the text (if any). It was returned to the Panel on 2 March 2015.

² As stated in the very first sentence of the Guidebook: “New gTLDs have been in the forefront of ICANN’s agenda since its creation.”

present Declaration, in accordance with, and within the constraints of the Bylaws, the ICDR Rules and the Supplementary Procedures.

II. THE PARTIES

A. The Applicant: Booking.com

5. The Applicant, Booking.com, is a limited liability company established under the law of the Netherlands. Booking.com describes itself as “the number one online hotel reservation service in the world, offering over 435,605 hotels and accommodations.”³ Booking.com’s primary focus is on the U.S. and other English-language markets.
6. Booking.com is represented in this IRP by Mr. Flip Petillion and Mr. Jan Janssen of the law firm *Crowell & Moring* in Brussels, Belgium.

B. The Respondent: ICANN

7. The Respondent, ICANN, is a California not-for-profit public benefit corporation, formed in 1998. As set forth in Article I, Section 1 of its Bylaws, ICANN’s mission is “to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems.” ICANN describes itself as “a complex organization that facilitates input from a wide variety of Internet stakeholders. ICANN has a Board of Directors and staff members from around the globe, as well as an Ombudsman. ICANN, however, is much more than just the corporation—it is a community of participants.”⁴
8. ICANN is represented in this IRP by Mr. Jeffrey A. LeVee, Esq. and Ms. Kate Wallace, Esq. of the law firm *Jones Day* in Los Angeles, California, USA.

III. FACTUAL AND PROCEDURAL BACKGROUND – IN BRIEF

9. We recount here certain uncontested elements of the factual and procedural background to the present IRP. Other facts are addressed in subsequent parts of the Declaration, where the parties’ respective claims and the Panel’s analysis are discussed.

A. ICANN’s Adoption of the New gTLD Program and the Applicant Guidebook

10. Even before the introduction of ICANN’s New gTLD Program (“**Program**”), in 2011, ICANN had, over time, gradually expanded the DNS from the original six gTLDs (.com; .edu; .gov; .mil; .net; .org) to 22 gTLDs and over 250 two-letter country-code TLDs.⁵ Indeed, as noted above, the introduction of new gTLDs has been “in the forefront of ICANN’s agenda” for as long as ICANN has existed.

³ Request, ¶ 10.

⁴ Response, ¶ 11-12.

⁵ Request, ¶ 12; see also Guidebook, *Preamble*.

11. The Program has its origins in what the Guidebook refers to as “carefully deliberated policy development work” by the ICANN community.⁶
12. In 2005, ICANN’s Generic Names Supporting Organization (“GNSO”), one of the groups that coordinates global Internet policy at ICANN, commenced a policy development process to consider the introduction of new gTLDs.⁷ As noted in the Guidebook:

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.
13. In October 2007, the GNSO formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations.
14. In June 2008, the ICANN Board decided to adopt the policies recommended by the GNSO.⁸ As explained in the Guidebook, ICANN’s work next focused on implementation of these recommendations, which it saw as “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.”⁹
15. This process concluded with the decision by the ICANN Board in June 2011 to implement the New gTLD Program and its foundational instrument, the Guidebook.¹⁰
16. As described by ICANN in these proceedings, the Program “constitutes by far ICANN’s most ambitious expansion of the Internet’s naming system. The Program’s goals include

⁶ Guidebook, *Preamble*

⁷ Request, ¶ 13, Reference Material 7, “Public Comment Forum for Terms of Reference for New gTLDs (6 December 2005), <http://www.icann.org/en/news/announcements/announcement-06dec05-en.htm#TOR>; Reference Material 8, “GNSO Issues Report, Introduction of New Top-Level Domains (5 December 2005) at pp. 3-4. See also Guidebook, *Preamble*. Booking.com refers to the GNSO as “ICANN’s main policy-making body for generic top-level domains”. Article X of ICANN’s Articles of Incorporation provides: “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 1); the GNSO shall consist of “a number of Constituencies” and “four Stakeholder Groups” (Section 2).

⁸ Guidebook, *Preamble*. A review of this policy process can be found at <http://qns0.icann.org/issues/new-gtlds> (last accessed on January 15, 2015).

⁹ Guidebook, *Preamble*: “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.”

¹⁰ RM 10 (ICANN resolution). The Guidebook (in its 30 May 2011 version) is one of seven “elements” of the Program implemented in 2011. The other elements were: a draft communications plan; “operational readiness activities”; a program to ensure support for applicants from developing countries; “a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the [Program]”; budgeted expenditures; and a timetable.

enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs ...”¹¹

17. The Guidebook is “continuously iterated and revised”, and “provides details to gTLD applicants and forms the basis for ICANN’s evaluation of new gTLD applications.”¹² As noted by Booking.com, the Guidebook “is the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs.”¹³

B. Booking.com’s Application for .hotels, and the Outcome

18. In accordance with the process set out in the Guidebook, Booking.com filed an application (Application ID 1-1016-75482) for the gTLD string .hotels.
19. At the same time, Despegar Online SRL (“Despegar”), a corporation established under the law of Uruguay, applied (Application ID 1-1249-87712) for the string .hoteis.
20. “Hoteis” is the Portuguese word for “hotels”.
21. According to Booking.com, Despegar is “a competitor of Booking.com”.¹⁴ Booking.com claims that it intends “to operate .hotels as a secure Internet environment providing hotel reservation services for consumers, hotels, and other stakeholders,”¹⁵ while Despegar similarly intends .hoteis to be dedicated primarily to “individuals that are interested in, and businesses that offer, hotel- and travel-related content.”¹⁶ That being said, a key difference between the two applications, as Booking.com acknowledges, is that Booking.com intends to focus the services it will offer under its proposed gTLD “on the U.S. (with its strongly Anglo-Saxon traditions) and other English-language markets,”¹⁷ whereas Despegar intends to target “Portuguese-speaking” markets.”¹⁸
22. As part of the Initial Evaluation to which all applied-for gTLDs were subject, .hotels and .hoteis were each required to undergo so-called *string review* in accordance with the Guidebook, the first component of which is a process known as *string similarity review*. As provided by the Guidebook, the string similarity review was conducted by an independent

¹¹ Response, ¶ 14.

¹² Response, ¶ 14. The resolution (RM 10) adopting the Guidebook explicitly “authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes.”

¹³ Request, ¶ 13. See also Guidebook, Module 1-2: “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.”

¹⁴ Request, ¶ 17.

¹⁵ Request, ¶ 5.

¹⁶ Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

¹⁷ Request, ¶ 16.

¹⁸ Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

String Similarity Panel (“SSP”) selected and engaged by ICANN for this purpose. (Extracts of the relevant provisions of the Guidebook can be found below, at Part IV of this Declaration.) ICANN engaged InterConnect Communications Ltd. (“ICC”), a company registered under the law of England and Wales, specializing in communications sector strategy, policy and associated regulatory frameworks,¹⁹ in cooperation with University College London, to act as the SSP.

23. On 26 February 2013 ICANN published the results of all of the string similarity reviews for all of the applications for new gTLDs submitted as part of the Program. The announcement revealed, among other things, that two “non-exact match” contention sets had been created: .hotels & .hoteis; and .unicorn & .unicom.²⁰ Booking.com’s applied for string .hotels (as well as the .hoteis, .uncorn and .unicom strings) had thus failed the string similarity review.
24. The results of the string similarity review were notified to Booking.com by ICANN that same day. In its letter of 26 February 2013 ICANN wrote:

After careful consideration and extensive review performed against the criteria in Section 2.2.1.1 of the Applicant Guidebook, the String Similarity Panel has found that the applied-for string (.hotels) is visually similar to another applied-for string (.hoteis), creating a probability of user confusion.

*Due to this finding, the ... two strings have been placed in a contention set.*²¹

25. The impact of being put into a contention set is that the proposed strings in the set will not be delegated in the root zone unless and until the applicants reach agreement on which single string should proceed (with the other proposed string therefore rejected), or until after an auction is conducted, with the highest bidder being given the right to proceed to the next step in the review process.

C. DIDP Request and Request for Reconsideration

26. On 28 March 2013 Booking.com submitted a request for information under ICANN’s Documentary Information Disclosure Policy (“**DIDP Request**”) asking for “all documents directly and indirectly relating to (1) the standard used to determine whether gTLD strings are confusingly similar, and (2) the specific determination that .hotels and .hoteis are confusingly similar.”²²
27. On the same date, Booking.com also filed a formal Request for Reconsideration (“**Request for Reconsideration**”). The “specific action(s)” that Booking.com asked to be reconsidered were: the decision to place .hotels and .hoteis in a contention set; and the decision not to

¹⁹ See <http://www.icc-uk.com/>

²⁰ Request, Annex 3. ICANN published document dated 26 February 2013. As its name suggests, a “non-exact match” connotes a determination that two different (non-identical) strings are visually similar within the meaning of the Guidebook. Another 752 applied-for gTLDs were put into 230 identical contention sets.

²¹ Request, Annex 3, ICANN letter dated 26 February 2013.

²² Request, ¶ 30 and Annex 3.

provide a “detailed analysis or a reasoned basis” for the decision to place .hotels in contention.²³

28. ICANN responded to the DIDP Request on 27 April 2013. Although ICANN provided certain information regarding the review process, in its response to the DIDP Request, ICANN also noted:

*The SSP is responsible for the development of its own process documentation and methodology for performing the string similarity review, and is also responsible for the maintenance of its own work papers. Many of the items that are sought from ICANN within the [DIDP] Request are therefore not in existence within ICANN and cannot be provided in response to the DIDP Request. ICANN will, however, shortly be posting the SSP’s String Similarity Process and Workflow on the New gTLD microsite ...*²⁴

29. By letter dated 9 May 2013 Booking.com replied to ICANN, writing that “ICANN’s response fails to provide any additional information or address any of Booking.com’s concerns as conveyed in its DIDP Request or Request for Reconsideration.”²⁵ On 14 May 2013, ICANN answered that it “intends to post the string similarity process documentation on or before ... 17 May 2013.”²⁶ ICANN further informed Booking.com that “ICANN will afford you 30 days from the posting of the process document for the submission of a revised Request for Reconsideration.”²⁷
30. On 7 June 2013, ICANN published the “String Similarity New gTLD Evaluation Panel [i.e., the SSP] – Process Description” (“**SSP Process Description**”).²⁸
31. On 26 June 2013 Booking.com wrote to ICANN regarding both its DIDP Request and its 28 March 2013 Request for Reconsideration. In its letter, Booking.com noted among other things that “the generalized information ICANN thus far has provided does not explain a rationale for or analysis for the decision to put .hotels and .hoteis in a contention set and therefore does not allow Booking.com to appropriately amend its Request for Reconsideration.” The letter concluded by stating: “Considering ICANN’s obligations of transparency and accountability, there cannot be any ‘compelling reason for confidentiality’.

²³ Request, Annex 12, §3. The Request for Reconsideration (which appears to be in the form of a template) expressly states at §2 that it is a “Request for Reconsideration of ... Staff [vs. Board] action/inaction.” The cover letter attaching the Request states that, “[d]espite the fact that the origin of the decisions is unclear, this Reconsideration Request is being submitted as a reconsideration of a ‘Staff action’. In the event that the decisions referenced above are determined to be a ‘Board action’, this request may be amended.” As explained below, the Request for Reconsideration was amended on 7 July 2013. That amendment did not alter the stated nature of the request in §2 or the description of the specific actions that Booking.com sought to have reconsidered (§3). Unless otherwise indicated, all further references in this Declaration to the Request for Reconsideration are understood to be the *amended* Request for Reconsideration.

²⁴ Request, Annex 5.

²⁵ Request, Annex 6.

²⁶ Request, Annex 7.

²⁷ Request, Annex 7.

²⁸ Request, Annex 8.

And ... there are numerous compelling reasons for publication of [the information requested by Booking.com].”²⁹

32. ICANN responded on 25 July 2013, explaining among other things that “the evaluation of the .hotels string by the SSP panel was performed according to the [SSP Process Description] ...” and “[t]he SSP’s work was subjected to quality review, as has been publicly discussed.”³⁰ Approximately six months later, on 9 January 2014, ICANN posted a letter dated 18 December 2013 addressed to ICANN by the SSP Manager at ICC (Mr. Mark McFadden) providing a further “summary of the process, quality control mechanisms and some considerations surrounding the non-exact contention sets for the string similarity evaluation ...” (“**SSP Manager’s Letter**”).³¹ According to that Letter:

When ALL of the following features of a pairwise comparison [of non-exact match strings] are evident the evaluators found the string pair to be confusingly similar:

- *Strings of similar visual length on the page;*
- *Strings within +/- 1 character of each other;*
- *Strings where the majority of characters are the same and in the same position in each string; and*
- *The two strings possess letter combinations that visually appear similar to other letters in the same position in each string*

o For example m~m & l~i

33. Meanwhile, on 7 July 2013 Booking.com had submitted its amended Request for Reconsideration. In its letter attaching the amended Request for Reconsideration, Booking.com stated: “Booking.com reserves the right to further amend its Request for Reconsideration upon receipt of the information it previously requested and urges ICANN to publish the requested information as specified in our letter of 26 June 2013.”³²
34. By virtue of Article IV, Section 3 of the Bylaws, ICANN’s Board Governance Committee (“**BGC**”) is charged with evaluating and making recommendation to the Board with respect to requests for reconsideration. The Board’s New gTLD Program Committee (“**NGPC**”) receives and acts on such recommendations on behalf of the ICANN Board. In accordance with this procedure, Booking.com’s Request for Reconsideration was evaluated by the BGC. In a detailed analysis dated 1 August 2013, the BGC “conclude[d] that Booking.com has not

²⁹ Request, Annex 9.

³⁰ Request, Annex 10.

³¹ Request, Annex 11.

³² Request, Annex 13.

stated proper grounds for reconsideration and we therefor recommend that Booking.com's request be denied" ("**BGC Recommendation**").³³

35. At a telephone meeting held on 10 September 2013 the NGPC, "bestowed with the powers of the Board", considered, discussed and accepted the BGC Recommendation. Booking.com's Request for Reconsideration was denied.³⁴

D. The Cooperative Engagement Process

36. Booking.com thereafter filed a request for a Cooperative Engagement Process ("**CEP**") on 25 September 2013, with a view to attempting to reach an amicable resolution of its dispute with ICANN. In its CEP request, Booking.com wrote:

*Booking.com is of the opinion that Resolution 2013.09.10.NG02 [the Board resolution denying its Request for Reconsideration] violates various provisions of ICANN's Bylaws and Articles of Incorporation. In particular Booking.com considers that ICANN's adoption of [the Resolution] is in violation of Articles I, II(3), II and IV of the ICANN Bylaws as well as Article 4 of ICANN's Articles of Incorporation. In addition, Booking.com considers that ICANN has acted in violation of Articles 3, 5, 7 and 9 of ICANN's Affirmation of Commitment ...*³⁵

37. The CEP ultimately did not result in a resolution, and Booking.com duly commenced the present IRP.
38. One further point should be made, here, prior to describing the commencement and conduct of the present IRP proceedings: The determination by the SSP that .hotels and .hoteis are so visually similar as to give rise to the probability of user confusion, and the resulting placement of those applied-for strings into a contention set, does *not* mean that Booking.com's application for .hotels has been denied or that .hotels will not proceed to delegation to the root zone. Rather, as noted above and explained in the extracts from the Guidebook reproduced below, the Guidebook establishes a process for resolving such contention, under which the applicants for the contending strings in the set – here, Booking.com and Despegar – may resolve the contention by negotiation, failing which the matter will proceed to auction. Ultimately, no matter the outcome of these IRP proceedings, Booking.com may yet be successful and .hotels may yet be delegated into the Internet root zone. However, the fact that .hotels has been put into a contention set does raise the risk that .hotels may never be delegated into the root zone, or that it may be more costly for Booking.com to obtain approval of its proposed string. It also has caused a significant delay in the potential delegation of the string into the root zone (which could prove to be detrimental to the ultimate success of Booking.com's proposed string if other applicants

³³ Request, Annex 14, BGC Recommendation dated 1 August 2013, p.9. See also Request, Annex 15, NGPC Resolution dated 10 September 2013. As noted in footnote 1 to the BGC Recommendation, the Recommendation was ultimately finalized and submitted for posting on 21 August 2013.

³⁴ Request, Annex 15, NGPC Resolution dated 10 September 2013.

³⁵ Request, Annex 17.

whose strings were not put into a contention set are able to establish themselves as pioneer providers of hotel- and travel-related services under a different new gTLD).

E. The IRP Proceedings

39. On 19 March 2014, Booking.com submitted a Notice of Independent Review, dated 18 March 2014, as well as a Request for Independent Review Process (“**Request**”) accompanied by numerous supporting documents and reference materials.
40. In accordance with Article IV, Section 3(9) of the ICANN Bylaws, Booking.com requested that a three-member IRP panel be constituted to consider and determine the Request. As the omnibus standing panel referred to in Article IV, Section 3(6) of the ICANN Bylaws had yet to be established, Booking.com further proposed, in accordance with Article 6 of the ICDR Rules, that each party appoint one panelist, with the third (the Chair of the panel) to be appointed by the two party-appointed panelists.
41. On 25 April 2014, ICANN submitted a Response to ICANN’s Request with supporting documents (“**Response**”).
42. The parties having thereafter agreed on the number of panelists and the method of their appointment, David H. Bernstein, Esq. was duly appointed as panelist by Booking.com on 1 May 2014, and the Hon. A Howard Matz was duly appointed as panelist by ICANN on 30 May 2014.
43. On 17 July 2014, the ICDR notified the parties that Mr. Stephen L. Drymer had been duly nominated by the two party-appointed panelists as Chair of the Panel. Mr. Drymer’s appointment became effective and the Panel was duly constituted as of 1 August 2014.
44. On 21 August 2014, further to consultations among the panelists and between the Panel and the parties, the Panel convened a preparatory conference with the parties (by telephone) for the purpose of discussing organizational matters, including a timetable for any further written statements or oral argument. Both parties requested the opportunity to make supplemental submissions and to present oral argument.
45. On 22 August 2014 the Panel issued Procedural Order No. 1 in which, among other things, it established a Procedural Timetable for the IRP. As specifically requested by the parties, the Procedural Order and Timetable provided for the submission of additional written statements by the parties as well as for a brief oral hearing to take place by telephone, all on dates proposed by and agreed between the parties.³⁶
46. In accordance with the Procedural Timetable, on 6 October 2014 Booking.com submitted its Reply to ICANN’s Response, accompanied by additional documents (“**Reply**”).

³⁶ Paragraph 6 of Procedural Order No. 1 provided that, in its forthcoming Reply to ICANN’s Response, “Booking.com shall only address two issues raised in Respondent’s Response: (1) the nature and scope of the IRP requested; (2) the nature of the relief sought by Claimant.” Paragraph 7 of Procedural Order No. 1 provided that “Respondent’s Sur-Reply ... shall address only the issues raised in the Reply.”

47. In accordance with the Procedural Timetable, ICANN submitted a Sur-Reply on 20 November 2014 (“**Sur-Reply**”).

F. The Hearing

48. As provided by Procedural Order No. 1 and the Procedural Timetable, a hearing was held (by telephone) on 10 December 2011, commencing at 9:00 PST/18:00 CET.
49. In the light of the significance of the issues raised by the parties, and given the many questions prompted by those issues and by the parties’ extensive written submissions and supporting materials, the Panel indicated that it would allow the hearing to continue beyond the approximately one hour originally envisaged. The hearing ultimately lasted two and one-half hours. Counsel for each party made extensive oral submissions, including rebuttal and sur-rebuttal submissions, and responded to the panelists’ questions.
50. Prior to the close of the hearing each party declared that it had no objection concerning the conduct of the proceedings, that it had no further oral submissions that it wished to make, and that it considered that it had had a full opportunity to present its case and to be heard.
51. As agreed and ordered prior to the close of the hearing, the parties were provided the opportunity to file limited additional materials post-hearing, in relation to a certain question asked of them by the Panel. This was done, and, on 13 December 2014, the proceedings were declared closed.

IV. ICANN ARTICLES, BYLAWS AND POLICIES – KEY ELEMENTS

52. We set out here the key elements of ICANN’s Articles of Association, Bylaws and policies on which the parties rely in their submissions and to which the Panel will refer later in this Declaration.

A. Articles of Association

4. The Corporation shall 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. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.

[Underlining added]

B. Bylaws

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.

[..]

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 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.

[...]

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.*

[...]

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 [ICANN]?*

[...]

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.

[...]

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. [...]

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. [...]

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.

[...]

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.

[Underlining added]

53. Lest there be any misunderstanding as regards the proper subject matter of IRP proceedings or the role of the Panel, we note that, as was clearly established during the hearing, it is common ground between the parties that the term "action" (or "actions") as used in Article IV, Section 3 of the Bylaws is to be understood as action(s) or inaction(s) by the ICANN Board. The Panel observes that this understanding comports not only with the provisions of Article

IV, Section 2 of the Bylaws concerning “Reconsideration”, which expressly refer to “actions or inactions of the ICANN Board”, but with the clear intent of Section 3 itself, which stipulates at sub-section 11 that “[t]he IRP Panel shall have the authority to: ... (c) declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws.”

C. The gTLD Applicant Guidebook

54. As noted above and as understood by all, the Guidebook is (to borrow Booking.com’s phrase) “the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs.”³⁷
55. The Guidebook is divided into “Modules”, each of which contains various sections and sub-sections. The three Modules of primary relevance here are Modules 1, 2 and 4. Module 1, titled “Introduction to the gTLD Application Process,” provides an “overview of the process for applying for a new generic top-level domains.”³⁸ Module 2, titled “Evaluation Procedures,” describes the “evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation.”³⁹ Module 4, titled “String Contention Procedures,” concerns “situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.”

(i) *Initial Evaluation*

56. As explained in Module 1, “[i]mmediately following the close of the application submission period, ICANN will begin checking all applications for completeness.”⁴⁰ Initial Evaluation begins “immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation.”⁴¹
57. Initial Evaluation is comprised of two main elements or types of review: *string review*, which concerns the applied-for gTLD string; and *applicant review*, which concerns the entity applying for the gTLD and its proposed registry services. It is the first of these – string review, including more specifically the component known as *string similarity review* – that is particularly relevant.

(ii) *String Review, including String Similarity Review*

58. String review is itself comprised of several components, each of which constitutes a separate assessment or review of the applied-for gTLD string, conducted by a separate reviewing body or panel. As explained in Module 2:

The following assessments are performed in the Initial Evaluation:

³⁷ Request, ¶ 13.

³⁸ Module 1-2. Each Module of the Guidebook is paginated separately. “Module 1-2” refers to Guidebook Module 1, page 2.

³⁹ Module 2-2.

⁴⁰ Guidebook, §1.1.2.2: “Administrative Completeness Check”, Module 1-5.

⁴¹ Guidebook, §1.1.2.5: “Initial Evaluation”, Module 1-8 (underlining added).

- *String Reviews*
 - *String similarity*
 - *Reserved names*
 - *DNS stability*
 - *Geographic names*

[...]

*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.*⁴²

59. As indicated, all complete applications are subject to Initial Evaluation, which means that all applied-for gTLD strings are subject to string review. String review is further described in Module 2 as follows:

[String 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.*⁴³

60. The various assessments or reviews (i.e., string similarity, reserved names, DNS stability, etc.) that comprise string review are elaborated at Section 2.2.1 of Module 2. As mentioned, the most relevant of these reviews for our purposes is *string similarity review*, which is described in detail at Section 2.2.1.1. Because of the central importance of the string similarity review process in the context of the present dispute, this section of the Guidebook is reproduced here at some length:

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.

⁴² Module 2-2. The same is true of applicant review, which is also comprised of various assessments concerning the applicant entity.

⁴³ Guidebook, §2.2: “Initial Evaluation”, Module 2-4 (underlining added). See also Module 1-9: “String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS ...”

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 other applied-for gTLD strings;

[...]

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.

[...]

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. [footnote in the original: See <http://icann.sword-group.com/algorithm/>] Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

[...]

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, 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.⁴⁴

[Underlining added]

61. Module 4 of the Guidebook, as mentioned, concerns “situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.” As explained in Module 4:

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.

⁴⁴ Module 2-5 to 2-9. As regards the concept of string contention, see also Guidebook, §1.1.2.10: “String Contention”, Module 1-13: “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.”

(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.

[...]

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 ...

[...]

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation [NB: community priority evaluation applies only to so-called “community” applications; it is not relevant here] or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

[...]

62. As provided in Module 4, the two methods relevant to resolving a contention such as between .hotels and .hoteis are *self-resolution* (i.e., an agreement between the two applicants for the contending strings) and *auction*:

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.

[...]

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.

63. Module 5 of the Guidebook, titled *Transition to Delegation*, 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.”⁴⁵ Section 5.1 states:

*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.*⁴⁶

[Underlining added]

V. SUMMARY OF THE PARTIES' POSITIONS

64. The following brief summary of the parties' respective positions is provided with a view solely to assisting the reader to understand the present Declaration. It is *not* intended to recapitulate – and it does not recapitulate – the entirety of the parties' allegations and arguments. Additional references to the parties' positions, including submissions made by them in the course of the proceedings, are contained in the discussion at Part VI below.

A. Booking.com's position

(i) *The Panel's Authority*

65. Booking.com submits that the mandate of the Panel is “to determine whether the contested actions of the ICANN Board are consistent with applicable rules”.⁴⁷ According to Booking.com:

*The set of rules against which the actions of the ICANN Board must be assessed includes: (i) ICANN's Articles of Incorporation and Bylaws – both of which must be interpreted in light of ICANN's Affirmation of Commitments, and both of which require compliance with inter alia International law and generally accepted good governance principles – and (ii) secondary rules created by ICANN, such as the Applicant Guidebook. In setting up, implementing and supervising its policies and processes, the Board must comply with the fundamental principles embodied in these rules. That obligation includes a duty to ensure compliance with its obligations to act in good faith, transparently, fairly, and in a manner that is non-discriminatory and ensures due process.*⁴⁸

⁴⁵ Module 5-2.

⁴⁶ Module 5-4.

⁴⁷ Reply, ¶ 3.

⁴⁸ Reply, ¶ 3.

66. Booking.com submits that IRP panels have broad authority to evaluate actions of the ICANN Board. An overly restrictive interpretation of the standard of review, such as proposed by ICANN in these proceedings, would, says Booking.com, “fail to ensure accountability on the part of ICANN and would be incompatible with ICANN’s commitment to maintain (and improve) robust mechanisms for accountability, as required by Article 9.1 of ICANN’s Affirmation of Commitments and ICANN’s core values.”⁴⁹

(ii) Booking.com’s Claims

67. The purpose of the IRP initiated by Booking.com is, in its own words, “to challenge the ICANN Board’s handling of Booking.com’s application for the new gTLD .hotels.”⁵⁰ This includes the determination of the SSP to place .hotels and .hoteis in contention and the refusal of the Board (and its committees) to revise that determination. Elsewhere in its submissions, Booking.com makes an even broader claim; it asserts that it challenges the conduct of the ICANN Board in relation to what Booking.com refers to as the *setting up, implementation, supervision and review* of the entire of string similarity review process, and the Board’s alleged failure “to ensure due process and to respect its fundamental obligations to ensure good faith, transparency, fairness and non-discrimination” throughout.⁵¹
68. In effect, Booking.com’s specific claims can be divided into two broad categories: claims related to the string similarity review process generally; and claims related to the particular case of .hotels.
69. Booking.com professes that this case “is not about challenging a decision on the merits [i.e., the decision to place .hotels in contention]”; it is about “ICANN’s failure to respect fundamental [procedural] rights and principles in handling New gTLD applications, in particular in the context of String Similarity Review.”⁵²
70. Booking.com also repeatedly emphasizes – and this is crucial – that *it does not challenge the validity or fairness of the process as set out in the Guidebook*. Rather, as indicated, it contests “the way in which that process was established, implemented and supervised by (or under the authority of) the ICANN Board.”⁵³ Equally crucial, as will be seen, is Booking.com’s acknowledgment that *the established process was followed* in the case of the review of .hotels.

a. The string similarity review process

71. According to Booking.com, the problem began when the ICANN Board failed to “provide transparency in the SSP selection process,” in particular by failing “to make clear how

⁴⁹ Reply, ¶ 6.

⁵⁰ Reply, ¶ 7.

⁵¹ Reply, ¶ 15.

⁵² Reply, ¶ 14.

⁵³ Reply, ¶ 17.

[ICANN] would evaluate candidate responses or how it ultimately did so.”⁵⁴ The problem was compounded by the selection of ICC/University College London to perform string similarity reviews as the independent SSP. In Booking.com’s words:

[T]he identities of the unsuccessful candidates (if any) to perform the String Similarity Review remain unknown. Applicants have never been given any information in relation to the candidate responses that were submitted. ... There is no indication that any other candidate expressed an interest in performing the String Similarity Review. No information has been provided as to the steps (if any) taken by ICANN to reach out to other potential candidates. Numerous questions remain: How did ICANN deal with the situation if there was only one (or only a very few) respondent(s) wishing to perform the String Similarity Review? How did this impact on the discussions with InterConnect Communications? What are the terms of ICANN’s contract with InterConnect Communications?”⁵⁵

72. Booking.com also faults ICANN for “allowing the appointed SSP to develop and perform an unfair and arbitrary review process”, specifically, by allowing the SSP “to perform the String Similarity Review (i) without any (documented) plan or methodology ... (ii) without providing any transparency regarding the evaluators or the evaluation criteria ... and (iii) without informing applicants of its reasoning ...”.⁵⁶
73. Among other things, Booking.com takes ICANN to task for establishing and posting the SSP Process Description and the SSP Manager’s Letter (see Part III.C above) only long after the string similarity review process had ended.⁵⁷
74. It also alleges that the factors identified in the SSP Manager’s Letter are “arbitrary and baseless ... not supported by any methodology capable of producing compelling and defensible conclusions ... [which] has allowed applications with at least equally serious visual string similarity concerns – such as .parts/.paris, .maif/.mail, .srt/.srl, .vote/.voto and .date/.data ... – to proceed while singling out .hotels/.hoteis.”⁵⁸ According to Booking.com: “The failure to take actual human performance into account is at odds with the standard for assessment, *i.e.*, the likelihood of confusion on the part of the average Internet user. Hence, the approach is directly contrary to ICANN’s own policy.”⁵⁹
75. Booking.com further contends that the SSP process is unfair and non-transparent due to the fact that the identity of SSP members has never been publicly disclosed.⁶⁰
76. Further, Booking.com argues that the process is unfair, non-transparent and arbitrary – and thus violates ICANN policy – for failing to provide for a “well-documented rationale” for each

⁵⁴ Reply, ¶ 20.

⁵⁵ Reply, ¶ 20.

⁵⁶ Reply, ¶ 23.

⁵⁷ Reply, ¶ 24.

⁵⁸ Reply, ¶ 25.

⁵⁹ Reply, ¶ 25.

⁶⁰ Reply, ¶ 26-27.

SSP determination. In the absence of reasons for each string similarity determination, says Booking.com, “there is no basis on which decisions can be evaluated and, where appropriate, challenged.”⁶¹

77. Another ground for Booking.com’s challenge is the alleged failure by the ICANN Board to providing “effective supervision or quality control” of the SSP: “If nobody but the evaluator has any insight into how the evaluation was carried out, no effective quality control can be performed.”⁶² Nor, according to Booking.com, does the quality review of the SSP’s work supposedly performed by JAS Advisers (the independent consultant engaged by ICANN for this purpose) overcome the problem of a lack of transparency:

*Booking.com is not aware that any selection process was put in place in relation to the appointment of JAS Advisors to perform the String Similarity Review quality control. No criteria for performing the quality control were published. When ICANN was looking for evaluators, no call for expressions of interest or similar document was issued for the selection of quality controllers.*⁶³

78. In any case, says Booking.com, the “quality control review over a random sampling of applications to, among other things, test whether the process [set out in the Guidebook] was followed,” which ICANN claims was performed on the SSP’s work,⁶⁴ could not provide adequate quality control of the string similarity review process.⁶⁵ Finally, Booking.com argues that the arbitrary and unfair result of the string similarity review concerning .hotels – i.e., the decision to place .hotels and .hoteis in contention – demonstrates that, “whatever quality control review ICANN may have engaged in ... must therefore have been deficient.”⁶⁶

b. The case of .hotels

79. Booking.com argues, in part on the basis of expert evidence which it adduces in this IRP proceeding,⁶⁷ that “[t]here is no probability of user confusion if both .hotels and .hoteis were delegated as gTLD strings into the Internet root zone ... The SSP could not have reasonably found that the average reasonable Internet user is likely to be confused between the two strings.”⁶⁸ It continues:

⁶¹ Reply, ¶ 28-29.

⁶² Reply, ¶ 30.

⁶³ Reply, ¶ 31. Booking.com states that it “doubts” that any quality review was in fact performed, whether by JAS Advisers or any other entity.

⁶⁴ Response, ¶ 30.

⁶⁵ Reply, ¶ 34.

⁶⁶ Reply, ¶ 38.

⁶⁷ Request, Annex 20, Expert Report of Prof. Dr. Piet Desmet of the Faculty of Arts, Department of Linguistics of Leuven University, dated 10 March 2014. Portions of the work underlying Prof. Desmet’s report were performed by Dr. Emmanuel Keuleers, Research Fellow in the Department of Experimental Psychology at Ghent University.

⁶⁸ Request, ¶ 58.

Since .hotels and .hoteis are not confusingly similar, the determination that they are is contradictory to ICANN policy as established in the Applicant Guidebook. Acceptance of the determination, and repeated failure to remedy the wrongful determination, is a failure to act with due diligence and independent judgment, and a failure to neutrally and fairly apply established policies as required by Bylaws and Articles of Incorporation.⁶⁹

80. According to Booking.com, the Board should have acted to overturn the determination of the SSP either in the context of the Request for Reconsideration or under the authority accorded it by Module 5-4 of the Guidebook to “individually consider a gTLD application”.⁷⁰
81. Booking.com claims that its DIDP Request alerted the Board to the need to intervene to “correct the errors in the process” related to .hotels, and that its Request for Reconsideration of the SSP determination further informed the Board of the many errors in the SSP’s review of .hotels, “giving the Board ample opportunity to correct those errors.”⁷¹ Booking.com claims that the Board’s failure, when responding to the DIDP Request, “to offer any insight into the SSP’s reasoning”, its refusal to reconsider and overturn the SSP determination regarding .hotels on the sole ground (says Booking.com) that “the Reconsideration process ‘is not available as a mechanism to re-try the decisions of evaluation panels’”, and its failure to investigate Booking.com’s complaints of a lack of fairness and transparency in the SSP process, constitute violations of ICANN’s governing rules regarding string similarity review.⁷²
82. According to Booking.com, among the most compelling evidence of ICANN’s failure in this regard are the statements made on the record by several members of the NGPC during its 10 September 2013 meeting at which Booking.com’s Request for Reconsideration was denied.⁷³ Given the importance that the Panel attaches to these statements, they are addressed in some detail in the Analysis in Part VI, below.
83. In its written submissions Booking.com asks the Panel to grant the following relief:

Finding that ICANN breached its Articles of Incorporation, its Bylaws, and the gTLD Applicant Guidebook;

Requiring that ICANN reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set;

Awarding Booking.com its costs in this proceeding; and

⁶⁹ Request, ¶ 59.

⁷⁰ Reply, ¶ 39.

⁷¹ Reply, ¶ 41.

⁷² Reply, ¶ 41. In the passage of Booking.com’s submissions referred to here (as elsewhere), Booking.com speaks of violations of ICANN’s obligations of “due process”, which, it says, comprise concepts such as the right to be heard, the right to receive reasons for decisions, publicity, etc. For reasons explained in Part VI, below, the Panel prefers to use the terms *fairness* and *transparency* to connote the essence of ICANN’s obligations under review in this IRP.

⁷³ See Part II.C, above.

Awarding such other relief as the Panel may find appropriate or Booking.com may request.

84. At the hearing Booking.com *further* requested that the Panel not only require ICANN to disregard the SSP determination regarding .hotels/.hoteis, but also order ICANN to “delegate both .hotels and .hoteis.”

B. ICANN's position

85. ICANN's position is best summed up by ICANN itself:

Booking.com's IRP Request is really about Booking.com's disagreement with the merits of the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar. But the Panel's determination does not constitute Board action, and the Independent Review Process is not available as a mechanism to re-try the decisions of an independent evaluation panel. The IRP Panel is tasked only with comparing contested actions of the ICANN Board to ICANN's Bylaws and Articles of Incorporation; it is not within the IRP Panel's mandate to evaluate whether the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar was wrong.⁷⁴

86. According to ICANN, the Board “did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Guidebook.”⁷⁵

(i) *The Panel's Authority*

87. Throughout its submissions ICANN repeatedly stresses what it says is the very limited authority enjoyed by IRP panels.
88. As provided in Article IV, Section 3(4) of ICANN's Bylaws, ICANN observes that this Panel (as all IRP panels) is charged only 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.”⁷⁶
89. ICANN notes that, in undertaking this *compare-and-declare* mission, the Panel is further constrained to apply the very specific “standard of review” set out in Bylaw Article IV, Section 3(4), which requires the Panel to focus on three particular questions: “did the Board act without conflict of interest in taking its decision?”; “did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?”; and “did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company [ICANN]?”⁷⁷

⁷⁴ Response, ¶ 9.

⁷⁵ Response, ¶ 8. Both parties agree that, as submitted by Booking.com, the “rules” at issue, against which the conduct of the ICANN Board is to be assessed, include the relevant provisions of the Guidebook.

⁷⁶ See for example Response, ¶2, ¶ 9.

⁷⁷ Response, ¶ 2.

90. ICANN further asserts that the IRP process “is not available as a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved in ICANN activities,”⁷⁸ such as the action of the SSP which resulted in .hotels and .hoteis being placed in contention. Nor, says ICANN, may the IRP process be used as an “appeal mechanism” by which to overturn substantive decisions – such as the determination that .hotels and .hoteis are confusingly visually similar – with which an applicant may disagree.⁷⁹
91. In this regard ICANN states that the affirmative relief sought by Booking.com – specifically, a declaration requiring that ICANN “reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set” and (as requested at the hearing) that ICANN “delegate both .hotels and .hoteis” – exceeds the authority of the Panel.⁸⁰

(ii) ICANN's Response to Booking.com's Claims

a. The string similarity review process

92. According to ICANN, “[e]arly on in the iterations of the Guidebook, it was determined that, in the initial evaluation stage, the String Similarity Panel would only examine strings for visual confusion;” and “[i]f applied-for strings are determined to so nearly resemble each other visually that it is likely to deceive or cause confusion, the string will be placed in a contention set, which is then resolved pursuant to the contention set resolution processes in Module 4 of the Guidebook.”⁸¹
93. According to ICANN, it was also determined early on that, as stated in Section 2.2.1.1 of the Guidebook, “[t]his similarity review will be conducted by an independent String Similarity Panel,” not by ICANN itself. ICC was duly selected to perform the string similarity review further to “an open and public request for proposals,” pursuant to which, as the successful bidder, “ICC was responsible for the development of its own process documents and methodology for performing the String Similarity Review consistent with the provisions of the Guidebook.”⁸² ICANN emphasizes that “the Guidebook does not provide for any process by which ICANN (or anyone else) may conduct a substantive review of ICC’s results.”⁸³
94. In ICANN’s submission, the alternative proposed by Booking.com, that “the ICANN Board – and the ICANN Board alone – was obligated to perform the String Similarity Review for the more than 1,900 new gTLD applications submitted,” is “untenable and is not supported by ICANN’s Bylaws or Articles.”⁸⁴ As noted by ICANN, the Guidebook defines six distinct

⁷⁸ Response, ¶ 3.

⁷⁹ Response, ¶ 49.

⁸⁰ Response, ¶ 55.

⁸¹ Response, ¶ 15 (underlining in original).

⁸² Response, ¶ 16.

⁸³ Response, ¶ 17.

⁸⁴ Sur-Reply, ¶ 7.

review processes that every gTLD application is required to go through, including string similarity review; each of those review processes was conducted by independent experts specifically engaged by ICANN staff for the purpose.

95. ICANN submits that “there simply is no requirement – under ICANN’s governing documents or imposed by law – that would mandate that the ICANN Board inject itself into the day-to-day affairs of the evaluation process in the manner Booking.com proposes.”⁸⁵ It asserts that, consistent with well-settled legal principles, “neither ICANN’s Bylaws, nor the Articles, nor the Guidebook requires the ICANN Board to conduct any analysis of the decisions of third party experts retained to evaluate string similarity.”⁸⁶
96. Moreover, ICANN asserts that “[s]imply because the ICANN Board has the discretion [under Section 5.1 (Module 5-4) of the Guidebook] to consider individual applications does not mean it is required to do so or that it should do so, particularly at an initial evaluation stage.”⁸⁷
97. ICANN claims that that Booking.com’s repeated invocation of the Board’s so-called obligation to ensure “due process” in the administration of the New gTLD Program is misplaced. First, neither applicable California law nor any provision of the Bylaws, Articles of Incorporation or Guidebook “specifically affords any gTLD applicant a right to procedural ‘due process’ similar to that which is afforded in courts of law.”⁸⁸ Second, because ICANN conducts its activities in the public interest it nevertheless provides “more opportunity for parties to be heard and to dispute actions taken”⁸⁹ than most private corporate entities. Third, the “decision to proceed with the New gTLD Program followed many years of discussion, debate and deliberation within the ICANN community, including participation from end users, civil society, technical experts, business groups, governments and others.”⁹⁰ Fourth, and perhaps most importantly, “ICANN adhered to the policies and procedures articulated in its Bylaws, Articles of Incorporation, and the Guidebook, the latter of which was adopted only after being publicly vetted with ICANN’s stakeholders and the broader Internet community.”⁹¹
98. ICANN’s response to Booking.com’s various allegations regarding particular elements of the string similarity review process – including for example the selection of the SSP, the publication of the SSP’s methodology, the anonymity of the individuals SSP members, the supposed lack of quality control – is essentially three-fold: first, the actions challenged by Booking.com are *not Board actions*, but actions of ICANN staff or third parties, which cannot

⁸⁵ Sur-Reply, ¶ 10.

⁸⁶ Sur-Reply, ¶ 10.

⁸⁷ Sur-Reply, ¶ 11. It was established during the hearing that the several references to this discretionary authority in ICANN’s written and oral submissions refer specifically to the authority conferred by Section 5.1 (Module 5-4) of the Guidebook.

⁸⁸ Sur-Reply, ¶ 18.

⁸⁹ Sur-Reply, ¶ 18.

⁹⁰ Sur-Reply, ¶ 18, fn 18.

⁹¹ Sur-Reply, ¶ 18, fn 18.

be challenged by means of IRP proceedings; second, in any case, Booking.com's claims are *factually incorrect*, and there has been no violation of the Bylaws, Articles of Incorporation or Guidebook; third, Booking.com's claims are *time-barred* given that Article IV, Section 3(3) of the Bylaws requires that IRP requests "must be filed within thirty days of the posting of the minutes of the Board meeting ... that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation."⁹²

b. The case of .hotels

99. ICANN's position as regards the determination to place .hotels and .hoteis in contention is similar in many respects to its position regarding the string similarity review process generally. ICANN argues that the Board played no role whatsoever in performing the review of .hotels; that the SSP's determination was in any event well supported and there was no violation of applicable rules; and that the Guidebook does not provide for any process by which ICANN (or any other body, including an IRP panel) may conduct a substantive review of a string similarity determination.
100. In any event, ICANN asserts that .hotels and .hoteis in fact meet every one of the visual similarity criteria applied by the SSP, as set out in the SSP Manager's Letter. Moreover, .hotels and .hoteis scored a stunning 99% for visual similarity under the publicly available SWORD algorithm which, as provided by Section 2.2.1.1.2 (Module 2-7) of the Guidebook, establishes "one objective measure for consideration by the [SSP]". According to ICANN (in response to a question posed by the Panel during the hearing), this was the highest algorithmic score among the comparison of all non-identical pairs within the 1917 new gTLD applications received by ICANN;⁹³ the only other pair of non-exact match strings found to be confusingly visually similar – .unicorn and .unicom – scored only 94%.⁹⁴
101. According to ICANN, "it was not clearly 'wrong,' as Booking.com argues, for the [SSP] to find that .hotels/.hoteis are confusingly similar."⁹⁵
102. In conclusion, ICANN states that its conduct with respect to Booking.com's application for .hotels, including in evaluating Booking.com's Request for Reconsideration, was fully consistent with ICANN's Articles of Incorporation, its Bylaws and the procedures established in the Guidebook; and the fact that Booking.com disagrees with the SSP's determination to put .hotels and .hoteis in a contention set does not give rise to an IRP.
103. ICANN asks the Panel to deny Booking.com's IRP Request.

VI. ANALYSIS

A. The Panel's Authority

⁹² Sur-Reply, ¶¶ 20-42.

⁹³ A number of these applications were subsequently withdrawn.

⁹⁴ Identical pairs, of course, received a score of 100% for visual similarity under the SWORD algorithm.

⁹⁵ Response, ¶¶ 53.

104. The jurisdiction and authority of an IRP panel is expressly prescribed – and expressly limited – by the ICANN Bylaws. To recap, Article IV, Section 3 of the Bylaws provides:

4. [The IRP Panel] 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 [ICANN]?*

[...]

- 11. The IRP Panel shall have the authority to:*

[...]

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;

[...]

18. [...] The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties [...]

[Underlining added]

105. Similarly, Article 8 of the Supplementary Procedures reads:

8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the requestor will have established proper grounds for review.

106. There is no dispute as regards the Panel's duty to compare the actions of the Board to ICANN's Articles of Incorporation and Bylaws (and, in this case, Guidebook) with a view to

declaring whether those actions are inconsistent with applicable policies. Where the parties disagree is with respect to the standard of review to be applied by the Panel in assessing Board conduct.

107. ICANN submits that its Bylaws “specify that a deferential standard of review be applied when evaluating the actions of the ICANN Board ... the rules are clear that the appointed IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.”⁹⁶ Booking.com argues that this “is simply wrong. No such specification is made in ICANN’s Bylaws or elsewhere, and a restrictive interpretation of the standard of review would ... fail to ensure accountability on the part of ICANN and would be incompatible with ICANN’s commitment to maintain (and improve) robust mechanisms for accountability.”⁹⁷
108. In the opinion of the Panel, there can be no question but that the provisions of the ICANN Bylaws establishing the Independent Review Process and defining the role of an IRP panel specify that the ICANN Board enjoys a large degree of discretion in its decisions and actions. So long as the Board acts without conflict of interest and with due care, it is entitled – indeed, required – to exercise its independent judgment in acting in what it believes to be the best interests of ICANN. The only substantive check on the conduct of the ICANN Board is that such conduct may not be inconsistent with the Articles of Incorporation or Bylaws – or, the parties agree, with the Guidebook. In that connection, the Panel notes that Article 1, Section 2 of the Bylaws also clearly states that in exercising its judgment, the Board (indeed “[a]ny ICANN body making a recommendation or decision”) shall itself “determine which core values are most relevant and how they apply to the specific circumstances of the case at hand.”
109. In other words, in making decisions the Board is required to conduct itself reasonably in what it considers to be ICANN’s best interests; where it does so, the only question is whether its actions are or are not consistent with the Articles, Bylaws and, in this case, with the policies and procedures established in the Guidebook.
110. There is also no question but that the authority of an IRP panel to compare contested actions of the Board to the Articles of Incorporation and Bylaws, and to declare whether the Board has acted consistently with the Articles and Bylaws, does not extend to opining on the nature of those instruments. Nor, in this case, does our authority extend to opining on the nature of the policies or procedures established in the Guidebook. In this regard it is recalled that Booking.com itself repeatedly stresses that it does not contest the validity or fairness of the string similarity review process as set out in the Guidebook, but merely whether ICANN’s actions were consistent with various elements of that process. Stated differently, our role in this IRP includes assessing whether the applicable rules – in this case, the rules regarding string similarity review – were followed, not whether such rules are appropriate or advisable.
111. Nevertheless, this does not mean that the IRP Panel may only review ICANN Board actions or inactions under the deferential standard advocated by ICANN in these proceedings. Rather, as explained below, the IRP Panel is charged with “objectively” determining whether

⁹⁶ Response, ¶ 24.

⁹⁷ Reply, ¶ 6.

or not the Board's actions are in fact consistent with the Articles, Bylaws and Guidebook, which the Panel understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness.

112. In the only other IRP of which the Panel is aware in which such questions were addressed in a published decision, the distinguished members of the IRP panel had this to say about the role of an IRP panel, and the applicable standard of review, in appraising Board action:

The Internet Corporation for Assigned Names and Numbers is a not-for profit corporation established under the law of the State of California. That law embodies the 'business judgment rule'. Section 309 of the California Corporations Code provides that a director must act 'in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders...' and shields from liability directors who follow its provisions. However ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In 'recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization' – including ICANN -- ICANN is charged with 'promoting the global public interest in the operational stability of the Internet...' ICANN 'shall 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...' Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International [sic] Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN's sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and nonprofit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN ... that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.⁹⁸

[Underlining added.]

113. While on no way bound by that decision, we agree with its conclusions in this respect.
114. At the end of the day we fail to see any significant difference between the parties' positions in this regard. The process is clear, and both parties acknowledge, that the Panel is tasked with determining whether or not the Board's actions are consistent with ICANN's Articles of Incorporation, Bylaws and the Guidebook. Such a determination calls for what the panel in

⁹⁸ ICDR Case No. 50 117 T 00224 08, *ICM Registry, LLC v. ICANN*, Declaration dated 19 February 2010 ("*ICM Registry*"), ¶ 136.

the *ICM Registry* matter called an “objective” appraisal of Board conduct as measured against the policies and rules set out in those instruments; all agree that it is the Articles, Bylaws and Guidebook which are determinative.

115. That being said, we also agree with ICANN to the extent that, in determining the consistency of Board action with the Articles, Bylaws and Guidebook, an “IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board.” In other words, it is not for the Panel to opine on whether the Board could have acted differently than it did; rather, our role is to assess whether the Board’s action was consistent with applicable rules found in the Articles, Bylaws and Guidebook. Nor, as stated, is it for us to purport to appraise the policies and procedures established by ICANN in the Guidebook (since, again, this IRP is not a challenge to those policies and procedures themselves⁹⁹), but merely to apply them to the facts.
116. With the foregoing firmly in mind, the Panel turns now to the issues to be determined in order to resolve the present dispute.

B. The String Similarity Review Process

117. The Panel is not unsympathetic to Booking.com’s complaints regarding the string similarity review process as established by the Guidebook. There is no question but that that process lacks certain elements of transparency and certain practices that are widely associated with requirements of fairness. For example, the Guidebook provides no means for applicants to provide evidence or make submissions to the SSP (or any other ICANN body) and so be fully “heard” on the substantive question of the similarity of their applied-for gTLD strings to others.
118. Indeed, as stated at the outset of this Declaration, these observations and the concerns that they engender were voiced by several members of the ICANN Board’s New gTLD Program Committee which voted to accept the BGC’s Recommendation to deny Booking.com’s Request for Reconsideration. The Panel can do no better than reproduce the statements made by the NGPC members in this respect, as recorded in the minutes of the NGPC’s 10 September 2013 meeting.¹⁰⁰

⁹⁹ As discussed in more detail in the following section (at para. 117 and following) and again at Part IV of this Declaration, the important questions that Booking.com highlights in its pleadings, as to whether the string similarity review process is consistent with ICANN’s guiding principles of transparency and fairness, and regarding the published views of various members of ICANN’s NGPC in this respect, are matters which the ICANN Board, in its discretion, may wish to consider on its own motion in the context of the present case, in accordance with its authority under Section 5.1 (Module 5-4) of the Guidebook, or when it issues the Guidebook for round two of the New gTLD Program. Those questions include a lack of clarity surrounding the way in which the string similarity review is conducted by the SSP, and the absence of any means for applicants to be heard in the string similarity review process where they may have evidence to adduce or arguments to make (such as the evidence and arguments presented by Booking.com to this Panel), which could in fact be relevant to the SSP’s determination.

¹⁰⁰ Request, Annex 16.

- Mr. George Sadowski stated his intention to abstain from the vote because, although “he understood that the BGC did the right thing, [he] thought the end result that was contrary to ICANN’s ... and the user’s best interests.”
 - Ms. Olga Madruga-Forti also stated her intention to abstain from voting on the BGC recommendation “because there was not sufficient rationale provided for why the string similarity review panel made its determination.”
 - In response to a comment by the Chair that the Request for Reconsideration deserved to be denied “[b]ecause the process was followed,” Mr. Ray Plzak “agreed that the process was followed, but noted that the process needs to be reviewed to potentially add a mechanism that would allow persons who don’t agree with the outcome to make an objection, other than using a Reconsideration Request.”
 - Mr. Plzak “recommended the Committee send a strong signal to the BGC, or adopt a resolution recommending that the BGC consider development of a different mechanism to provide an avenue for the community to appeal the outcome of a decision based on the merits.”
 - Ms. Madruga-Forti agreed and “recommended that in the future, a remand or appeals mechanism may help alleviate the concerns noted.”
 - Mr. Bill Graham also agreed with Mr. Plzak’s suggestion, and noted that “generally, there is a considerable level of discomfort and dissatisfaction with the process as expressed by Committee members.”
 - The Chair “agreed with [Mr. Graham’s] sentiment.”
 - The General Counsel and Secretary noted that ICANN ... “has tried to encourage more use of the ombudsman, or other accountability mechanisms for these types of concerns.”
119. Ultimately, five members of the NGPC voted in favour of the resolution accepting the BGC’s Recommendation; two members were unavailable to vote; and four members abstained. The abstaining members offered the following voting statements:
- Mr. Plzak stated that he abstained from voting “because he is disappointed in what is being done to remedy the situation. [He] would like to see more resolve to fix the process.”
 - Ms. Madruga-Forti stated that:

[T]he BGC has done an appropriate job of applying a limited review standard to the application for reconsideration, but unfortunately, in this circumstance, to apply that limited review accompanied by a lack of information regarding the rationale of the string similarity review panel is not possible in a logical and fair manner. The public interest would not be served by applying the limited review standard without proper information on the basis and reasoning for the decision of the panel. In my opinion, the public interest would be better served by abstaining and continuing to explore ways to

establish a better record of the rationale of the string similarity review panel in circumstances such as this.

- Mr. Kuo-Wei Wu agreed with Ms. Madruga-Forti's and Mr. Plzak's voting statements.
- Mr. Sadowsky provided the following detailed statement:

I have a strong concern regarding the ratification of the BGC recommendation to deny the reconsideration request regarding string contention between .hoteis and .hotels, and I therefore have therefore abstained when the vote on this issue was taken.

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the ... community and/or Internet users in general.

The rationale underlying the rejection of the reconsideration claim is essentially that the string similarity process found that there was likely to be substantial confusion between the two, and that therefore they belonged in a contention set. Furthermore, no process has been identified as having been violated and therefore there is nothing to reconsider. As a Board member who is aware of ICANN's ... Bylaws, I cannot vote against the motion to deny reconsideration. The motion appears to be correct based upon the criteria in the Bylaws that define the reconsideration process and the facts in this particular case. However, I am increasingly disturbed by the growing sequence of decisions that are based upon a criterion for user confusion that, in my opinion, is not only both incomplete and flawed, but appears to work directly against the concept that users should not be confused. I am persuaded by the argument made by the proponents of reconsideration in this case that users will in fact not be confused by .hoteis and .hotels, since if they enter the wrong name, they are very likely to be immediately confronted by information in a language that they did not anticipate.

Confusion is a perceptual issue. String similarity is only one consideration in thinking about perceptual confusion and in fact it is not always an issue. In my opinion, much more perceptual confusion will arise between .hotel and .hotels than between .hotels and .hoteis. Yet if we adhere strictly to the Guidebook and whatever instructions have or have not been given to string similarity experts, it is my position that we work against implementing decisions that assist in avoiding user confusion, and we work in favor of decisions that are based upon an incorrect, incomplete and flawed ex ante analysis of the ICANN Network real issues with respect to user confusion.

The goal of the string similarity process is the minimization of user confusion and ensuring user trust in using the DNS ... The string similarity exercise is one of the means in the new gTLD ... process to minimize such confusion and to strengthen user trust. In placing our emphasis, and in fact our decisions, on string similarity only, we are unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.

I cannot and will not vote in favor of a motion that reflects, directly or indirectly, an unwillingness to depart from what I see as such a flawed position and which does not reflect in my opinion an understanding of the current reality of the situation.

120. These statements reflect to an important degree the Panel's own analysis.
121. The elements of the string similarity review process were established and widely published several years ago, after extensive consultation and debate among ICANN stakeholders and the Internet community. Booking.com correctly describes the process established (or "crystallized") in the Guidebook as a component of "a consensus policy" concerning the introduction of new gTLDs.¹⁰¹
122. The Guidebook makes clear that, as part of the initial evaluation to which all applied-for gTLDs are subject, each string would be reviewed for a number of factors, one of which is "string similarity", which involves a determination of "whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion"¹⁰². The term "user" is elaborated elsewhere in the Guidebook, which speaks of confusion arising "in the mind of the average, reasonable Internet user."¹⁰³
123. The Guidebook explains that string similarity review comprises merely a "visual similarity check",¹⁰⁴ with a view to identifying only "visual string similarities that would create a probability of user confusion."¹⁰⁵
124. The Guidebook makes clear that string similarity reviews would be conducted by an independent third party – the SSP – that would have wide (though not complete) discretion both in formulating its methodology and in determining string similarity on the basis of that methodology.
125. Section 2.2.1.1.2 of the Guidebook, titled "Review Methodology", provides that the SSP "is informed in part by an algorithmic score for ... visual similarity," which "will provide one objective measure for consideration by the [SSP]." Section 2.2.1.1.2 further states that, in addition to "examin[ing] all the algorithm data," the SSP will "perform its own review of similarities between strings and whether they rise to the level of string confusion." It is noted that the objective algorithmic score is to be treated as "only indicative". Crucially, "the final determination of similarity is entirely up to the [SSP's] judgment." (Underlining added)
126. In sum, the Guidebook calls for the SSP to determine whether two strings are so "visually similar" as to create a "probability of confusion" in the mind of an "average, reasonable Internet user." In making this determination, the SSP is informed by an "algorithmic score", to ensure that the process comprises at least one "objective measure". However, the algorithmic score is not determinative. The SSP also develops and performs "its own review". At the end of the day, the determination is entirely a matter of "the [SSP's] judgment."

¹⁰¹ Request, ¶ 13.

¹⁰² Guidebook, §2.2 (Module 2-4).

¹⁰³ Guidebook, §2.2.1.1.2. (Underlining added)

¹⁰⁴ Guidebook, §2.2.1.1. (Underlining added)

¹⁰⁵ Guidebook, §2.2.1.1.1. (Underlining added)

127. By its very nature this process is highly discretionary. It is also, to an important degree, subjective. The Guidebook provides no definition of “visual similarity”, nor any indication of how such similarity is to be objectively measured other than by means of the SWORD algorithm. The Guidebook provides no definition of “confusion,” nor any definition or description of an “average, reasonable Internet user.” As Mr. Sadowski of the NGPC put it: “Confusion is a perceptual issue.” (Mr. Sadowski further noted: “String similarity is only one consideration in thinking about perceptual confusion, and in fact it is not always an issue.) The Guidebook mandates the SSP to develop and apply “its own review” of visual similarity and “whether similarities rise to the level of user confusion”, in addition to SWORD algorithm, which is intended to be merely “indicative”, yet provides no substantive guidelines in this respect.
128. Nor does the process as it exists provide for gTLD applicants to benefit from the sort of procedural mechanisms – for example, to inform the SSP’s review, to receive reasoned determinations from the SSP, or to appeal the merits of those determinations – which Booking.com claims are required under the applicable rules. Clearly, certain ICANN NGPC members themselves consider that such input would be desirable and that changes to the process are required in order for the string similarity review process to attain its true goal, which Mr. Sadowski referred to as “the minimization of user confusion and ensuring user trust in using the DNS”. However, as even the abstaining members of the NGPC conceded, the fact is that the sort of mechanisms that Booking.com asserts are required (and which those NGPC members believe should be required) are simply not part of the string similarity review process as currently established. As to whether they *should* be, it is not our place to express an opinion, though we note that such additional mechanisms surely would be consistent with the principles of transparency and fairness.
129. We add that we agree with ICANN that the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com’s claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN’s Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws. As ICANN expressed during the hearing, if Booking.com believed that there were problems with the Guidebook, it should have objected at the time the Guidebook was first implemented.
130. When asked during the hearing about its failure to object timely, Booking.com argued that it could not have known how the Board’s actions – that is, how the process established in the Guidebook – would affect it prior to the submission of its application for .hotels. However, that is not a persuasive or meritorious answer. As did all stakeholders, Booking.com had the opportunity to challenge the Board’s adoption of the Guidebook, at the time, if it considered any of its elements to be inconsistent with ICANN’s Articles of Incorporation or Bylaws.

C. The Case of .hotels

131. In the light of the preceding analysis of Booking.com’s challenge concerning the ICANN Board’s actions in relation to the string similarity review process generally, the Panel is not

persuaded by its challenge concerning the Board's conduct in relation to the review of .hotels specifically.

132. There are two principal elements to this part of Booking.com's case: a challenge in relation to the process followed by the SSP; and a challenge in relation to the Board's handling of Booking.com's Request for Reconsideration of the SSP's determination. However, the fundamental obstacle to Booking.com's case is that *the established process was followed in all respects*.
133. Booking.com itself acknowledges that "the process was followed" by the SSP, which determined that .hotels and .hoteis were so visually similar as to warrant being placed in a contention set. So too did all of the NGPC members who commented on the matter recognize that "the process was followed" – for all their stated misgivings concerning the outcome of the process.
134. The same is true of the Request for Reconsideration. The Panel is struck by the extent and thoughtfulness not only of the NGPC's consideration of the issue, certain aspects of which are discussed above, but of the BGC's detailed analysis and its Recommendation to the NGPC, on the basis of which Booking.com's Request for Reconsideration was denied. Contrary to Booking.com's allegations, in neither instance was this merely a blind acceptance of a decision of a subordinate body. In fact, the reconsideration process itself, however limited and perhaps imperfect it may be, is inconsistent with Booking.com's claims of lack of "due process".
135. Although not addressed in great detail by the parties, the Panel considers several observations made by the BGC in its 1 August 2013 Recommendation to be particularly apposite:
- *These standing requirements [for Requests for Reconsideration] are intended to protect the reconsideration process from abuse and to ensure that it is not used as a mechanism simply to challenge an action with which someone disagrees, but that it is limited to situations where the staff [for the Board] acted in contravention of established policies.*¹⁰⁶
 - *Although the String Similarity Review was performed by a third party, ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision.*¹⁰⁷
 - *Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the [SSP] decision on placing .hotels and .hoteis in contention sets. Instead, Booking.com is supplanting what it believes the review*

¹⁰⁶ BGC Recommendation, p. 2.

¹⁰⁷ BGC Recommendation, p. 4. The BGC explains that "Because the basis for the Request is not Board conduct, regardless of whether the 20 December 2012 version, or the 11 April 2013 version, of the Reconsideration Bylaws is operative, the BGC's analysis and recommendation below would not change."

methodology for assessing visual similarity should have been, as opposed to the methodology set out at Section 2.2.1.1.2 of the Applicant Guidebook. In asserting a new review methodology, Booking.com is asking the BGC (and the Board through the New gTLD Program Committee (NGPC)) to make a substantive evaluation of the confusability of the strings and to reverse the decision. In the context of the New gTLD Program, the Reconsideration process is not however intended for the Board to perform a substantive review of [SSP] decisions. While Booking.com may have multiple reasons as to why it believes that its application for .hotels should not be in contention set with .hoteis, Reconsideration is not available as a mechanism to re-try the decisions of the evaluation panels.¹⁰⁸

▪ *Booking.com also claims that its assertions regarding the non-confusability of the .hotels and .hoteis strings demonstrate that “it is contrary to ICANN policy to put them in a contention set.” (Request, pages 6-7.) This is just a differently worded attempt to reverse the decision of the [SSP]. No actual policy or process is cited by Booking.com, only the suggestion that – according to Booking.com – the standards within the Applicant Guidebook on visual similarity should have resulted in a different outcome for the .hotels string. This is not enough for Reconsideration.¹⁰⁹*

▪ *Booking.com argues that the contention set decision was taken without material information, including Booking.com’s linguistic expert’s opinion, or other “information that would refute the mistaken contention that there is likely to be consumer confusion between ‘.hotels’ and ‘.hoteis.’” (Request, page 7.) However, there is no process point in the String Similarity Review for applicants to submit additional information. This is in stark contrast to the reviews set out in Section 2.2.2 of the Applicant Guidebook, including the Technical/Operational review and the Financial Review, which allow for the evaluators to seek clarification or additional information through the issuance of clarifying questions. (AGB, Section 2.2.2.3 (Evaluation Methodology).)¹¹⁰*

▪ *Just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com’s call for further information on the decision to place .hotels and .hoteis in a contention set ... is similarly not rooted in any established ICANN process at issue.[...] While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.¹¹¹*

▪ *[W]hile we understand the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the [SSP’s] decision, no such narrative is called for in the process.¹¹²*

▪ *The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the [SSP] in applying the methodology*

¹⁰⁸ BGC Recommendation, p. 5.

¹⁰⁹ BGC Recommendation, p. 6.

¹¹⁰ BGC Recommendation, p. 6.

¹¹¹ BGC Recommendation, pp. 6-7.

¹¹² BGC Recommendation, p. 7.

set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of [SSP's] reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity. Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).¹¹³

▪ *The [SSP] reviewed all applied for strings according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the [SSP], ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) That the [SSP] considered its output as "advice" to ICANN (as stated in its process documentation) is not the end of the story. Whether the results are transmitted as "advice" or "outcomes" or "reports", the important query is what ICANN was expected to do with that advice once it was received. ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. Therefore, Booking.com is actually proposing a new and different process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.¹¹⁴*

▪ *As there is no indication that either the [SSP] or ICANN staff violated any established ICANN policy in reaching or accepting the decision on the placement of .hotels and .hotelis in a non-exact contention set, this Request should not proceed.¹¹⁵*

136. These excerpts of the BGC Recommendation not only illustrate the seriousness with which Booking.com's Request for Reconsideration was heard, they mirror considerations to which we fully subscribe and which we find apply as well, with equal force and effect, in the context of Booking.com's IRP Request.
137. It simply cannot be said – indeed, it is not even alleged by Booking.com – that the established process was not followed by the ICANN Board or any third party either in the initial string similarity review of .hotels or in the reconsideration process.
138. Booking.com was asked at the hearing to identify *with particularity* the ICANN Board's actions (including inactions) in this case that it claims are inconsistent with ICANN's Articles of Incorporation, Bylaws or the Guidebook and regarding which it asks the Panel to render a declaration. It identified four:
- The Board's adoption of certain provisions of the Guidebook, including the allegedly ill-defined, unfair and non-transparent procedures for selecting the SSP and supervising the SSP's performance of the string similarity review process. As discussed, any claims in this regard are time-barred.

¹¹³ BGC Recommendation, p. 7.

¹¹⁴ BGC Recommendation, p. 8.

¹¹⁵ BGC Recommendation, p. 10.

- The Board's acceptance of the SSP determination. As ICANN argues, there was no action (or inaction) by the Board here, no decision made (or not made) by the Board or any other body to accept the SSP's determination. The Guidebook provides that applied-for strings "will be placed in contention set" where the SSP determines the existence of visual similarity likely to give rise to user confusion. Simply put, under the Guidebook the Board is neither required nor entitled to intervene at this stage to accept or not accept the SSP's determination. Booking.com is correct that the Board could nevertheless have stepped in and reversed the SSP determination under Section 5.1 (Module 5-4) of the Guidebook, but did not do so; that inaction is addressed below.
 - The Board's denial of Booking.com's Request for Reconsideration. As discussed above, there is nothing in the evidence that even remotely suggests that ICANN's conduct in this regard was inconsistent with its Articles, Bylaws or the Guidebook. On the contrary, we have already stated that the detailed analysis performed by the BGC and the extensive consideration of the BGC Recommendation by the NGCP undermine any claim that ICANN failed to exercise due care and independent judgment, or that its handling of the Request for Reconsideration was inconsistent with applicable rules or policy. As discussed above, just as in the present IRP, the question in the reconsideration process is whether the established process was followed. This was the question that the BGC and NGPC asked themselves in considering Booking.com's Request for Reconsideration, and which they properly answered in the affirmative in denying Booking.com's request.
 - The Board's refusal to "step in" and exercise its authority under Section 5.1 (Module 5-4) of the Guidebook to "individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community." As pointed out by ICANN during the hearing, the fact that the ICANN Board enjoys such discretion and may choose to exercise it any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by Booking.com. In any case, the Panel does not believe that the Board's inaction in this respect was inconsistent with ICANN's Articles of Incorporation or Bylaws or indeed with ICANN's guiding principles of transparency and fairness, given (1) Booking.com's concession that the string similarity review process was followed; (2) the indisputable conclusion that any challenge to the adoption of the SSP process itself is time-barred; (3) the manifestly thoughtful consideration given to Booking.com's Request for Reconsideration by the BGC; and (4), the fact that, notwithstanding its protestations to the contrary, Booking.com's real dispute seems to be with the process itself rather than how the process was applied in this case (given that, as noted, Booking.com concedes that the process was indeed followed).
139. The Panel further considers that these – in addition to any and all other potential (and allegedly reviewable) actions identified by Booking.com during the course of these proceedings – fail on the basis of Booking.com's dual acknowledgement that it does not challenge the validity or fairness of the string similarity review process, and that that process was duly followed in this case.

140. Finally, the panel notes that Booking.com's claim – largely muted during the hearing – regarding alleged “discrimination” as regards the treatment of its application for .hotels also founders on the same ground. Booking.com acknowledges that the established string similarity review process was followed; and there is absolutely no evidence whatsoever that .hotels was treated any differently than any other applied-for gTLD string in this respect. The mere fact that the *result* of the string similarity review of .hotels differed from the results of the reviews of the vast majority of other applied-for strings does not suggest discriminatory treatment. In any event, the Panel cannot but note the obvious, which is that .hotels is not alone in having been placed in contention by the SSP. So too was .hoteis; and so too were .unicom and .unicorn. Moreover, and once again, it is recalled that Booking.com does not claim to challenge the merits of the string similarity review, that is, the determination that .hotels and .hoteis are so visually similar as to warrant placement in a contention set.

D. Conclusion

141. In launching this IRP, Booking.com no doubt realized that it faced an uphill battle. The very limited nature of IRP proceedings is such that any IRP applicant will face significant obstacles in establishing that the ICANN Board acted inconsistently with ICANN's Articles of Incorporation or Bylaws. In fact, Booking.com acknowledges those obstacles, albeit inconsistently and at times indirectly.
142. Booking.com purports to challenge “the way in which the [string similarity review] process was established, implemented and supervised by (or under the authority of) the ICANN Board”; yet it also claims that it *does not challenge the validity or fairness of the string similarity review process as set out in the Guidebook*. It asks the Panel to overturn the SSP's determination in this case and to substitute an alternate result, in part on the basis of its own “expert evidence” regarding similarity and the probability of user confusion as between .hotels and .hoteis; yet it claims that it *does not challenge the merits of the SSP determination and it acknowledges that the process set out in the Guidebook was duly followed* in the case of its application for .hotels.
143. In sum, Booking.com has failed to overcome the very obstacles that it recognizes exist.
144. The Panel finds that Booking.com has failed to identify any instance of Board action or inaction, including any action or inaction of ICANN staff or a third party (such as ICC, acting as the SSP), that could be considered to be inconsistent with ICANN's Articles of Incorporation or Bylaws or with the policies and procedures established in the Guidebook. This includes the challenged actions of the Board (or any staff or third party) in relation to what Booking.com calls the implementation and supervision of the string similarity review process generally, as well as the challenged actions of the Board (or any staff or third party) in relation to the string similarity review of .hotels in particular.
145. More particularly, the Panel finds that the string similarity review performed in the case of .hotels was not inconsistent with the Articles or Bylaws or with what Booking.com refers to as the “applicable rules” as set out in the Guidebook.
146. To the extent that the Board's adoption and implementation of specific elements of the new gTLD Program and Guidebook, including the string similarity review process, could

potentially be said to be inconsistent with the principles of transparency or fairness that underlie ICANN's Articles and Incorporation and Bylaws (which the Panel does not say is the case), the time to challenge such action has long since passed.

147. Booking.com's IRP Request must be denied.

VII. THE PREVAILING PARTY; COSTS


148. Article IV, Section 3(18) of the Bylaws requires that the Panel "specifically designate the prevailing party." This designation is germane to the allocation of costs, given that Article IV, Section 3(18) provides that the "party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider."
149. The same provision of the Bylaws also states that "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."
150. Similarly, the Supplementary Procedures state, at Article 11:
- The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.*
- In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP PANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.*
151. The "IRP Provider" is the ICDR, and, in accordance with the ICDR Rules, the costs to be allocated between the parties – what the Bylaws call the "costs of the IRP Provider", and the Supplementary Procedures call the "costs of the proceedings" – include the fees and expenses of the Panel members and of the ICDR (we refer to all of these costs as "**IRP costs**").
152. ICANN is undoubtedly the prevailing party in this case. That being said, the Panel considers that the nature and significance of the issues raised by Booking.com, and the contribution to the "public interest" of its submissions, are such that it is appropriate and reasonable that the IRP costs be shared equally by the parties. We consider that the extraordinary circumstances of case – in which some members of ICANN's New gTLD Program Committee have publicly declared that, in their view, the rules on the basis of which Booking.com's claims fail should be reconsidered by ICANN – warrants such a holding.
153. The Panel cannot grant Booking.com the relief that it seeks. A panel such as ours can only declare whether, on the facts as we find them, the challenged actions of ICANN are

or are not inconsistent with ICANN's Articles of Incorporation and Bylaws. We have found that the actions in question are not inconsistent with those instruments. The process established by ICANN under its Articles of Incorporation and Bylaws and set out in the Guidebook was followed, and the time to challenge that process (which Booking.com asserts is not its intention in these proceedings in any event) has long passed.

154. However, we can – and we do – acknowledge certain legitimate concerns regarding the string similarity review process raised by Booking.com, discussed above, which are evidently shared by a number of prominent and experienced ICANN NGPC members. And we can, and do, encourage ICANN to consider whether it wishes to address these issues in an appropriate manner and forum, for example, when drafting the Guidebook for round two of the New gTLD Program or, more immediately, in the exercise of its authority under Section 5.1 (Module 5-4) of the Guidebook (which it may choose to exercise at any time, in its discretion) to consider whether, notwithstanding the result of the string similarity review of .hotels and .hoteis, approval of both of Booking.com's and Despegar's proposed strings would be in the best interest of the Internet community.

FOR THE FOREGOING REASONS, the Panel hereby declares:

- (1) Booking.com's IRP Request is denied;
- (2) ICANN is the prevailing party;
- (3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US\$4,600.00, as well as the compensation and expenses of the Panelists totaling US\$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US\$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com
- (4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.



 Hon. A. Howard Matz
 Date: March 2, 2015

 David H. Bernstein
 Date:

 Stephen L. Drymer,
 Chair of the IRP Panel
 Date:

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

March 2, 2015
Date


Hon. A. Howard Matz

I, David H, Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Stephen L. Drymer


or are not inconsistent with ICANN's Articles of Incorporation and Bylaws. We have found that the actions in question are not inconsistent with those instruments. The process established by ICANN under its Articles of Incorporation and Bylaws and set out in the Guidebook was followed, and the time to challenge that process (which Booking.com asserts is not its intention in these proceedings in any event) has long passed.

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Hon. A. Howard Matz
Date:



David H. Bernstein
Date: March 2, 2015

Stephen L. Drymer,
Chair of the IRP Panel
Date:

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Hon. A. Howard Matz

I, David H, Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

March 2, 2015
Date



David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Stephen L. Drymer

or are not inconsistent with ICANN's Articles of Incorporation and Bylaws. We have found that the actions in question are not inconsistent with those instruments. The process established by ICANN under its Articles of Incorporation and Bylaws and set out in the Guidebook was followed, and the time to challenge that process (which Booking.com asserts is not its intention in these proceedings in any event) has long passed.

154. However, we can – and we do – acknowledge certain legitimate concerns regarding the string similarity review process raised by Booking.com, discussed above, which are evidently shared by a number of prominent and experienced ICANN NGPC members. And we can, and do, encourage ICANN to consider whether it wishes to address these issues in an appropriate manner and forum, for example, when drafting the Guidebook for round two of the New gTLD Program or, more immediately, in the exercise of its authority under Section 5.1 (Module 5-4) of the Guidebook (which it may choose to exercise at any time, in its discretion) to consider whether, notwithstanding the result of the string similarity review of .hotels and .hoteis, approval of both of Booking.com's and Despegar's proposed strings would be in the best interest of the Internet community.

FOR THE FOREGOING REASONS, the Panel hereby declares:


- (1) Booking.com's IRP Request is denied;
- (2) ICANN is the prevailing party;
- (3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US\$4,600.00, as well as the compensation and expenses of the Panelists totaling US\$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US\$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com
- (4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.

Hon. A. Howard Matz

Date:

David H. Bernstein

Date:


Stephen L. Drymer,
Chair of the IRP Panel
Date: 3 March 2015

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Hon. A. Howard Matz

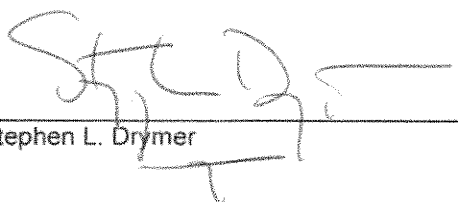
I, David H, Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

3 March 2015
Date



Stephen L. Drymer

R-31

RESPONDENT'S EXHIBIT

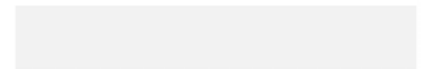
From: Christopher Bare <christopher.bare@icann.org>
Sent: Friday, May 30, 2014 2:33 PM
To: Russ Weinstein
Subject: CPE results discussion
Attachments: Draft CPE Result GMBH 04_RW_CB.docx; Draft CPE Result LLP 04_CB.docx; Draft CPE Result LLC 04_RW_CB.docx
Signed By: christopher.bare@icann.org

Here are the ones I had comments on for our discussion.

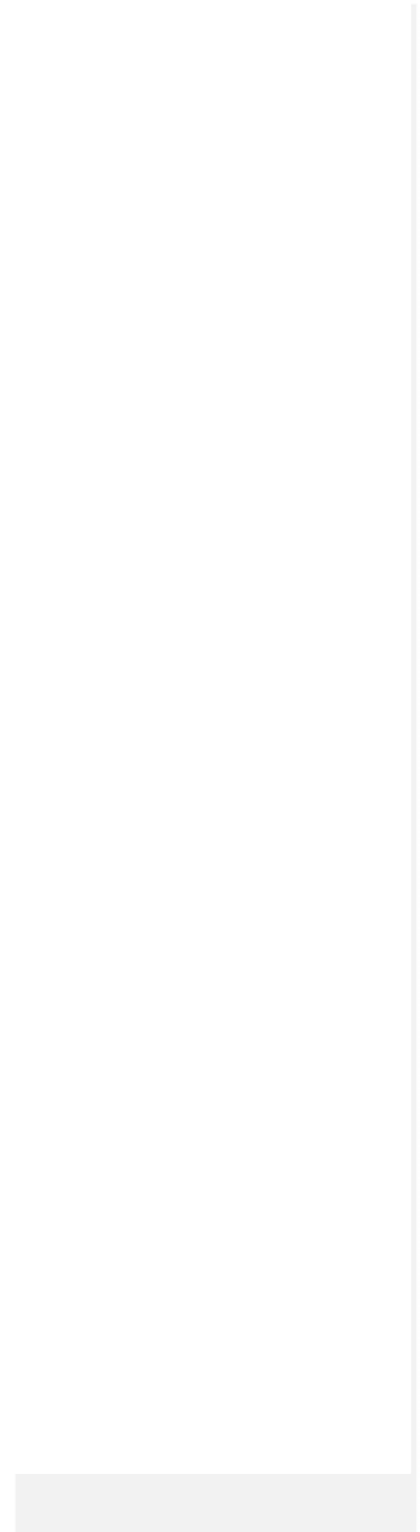
Chris

Confidential Third Party Information

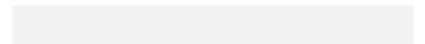
Confidential Third Party Information



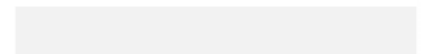
Confidential Third Party Information



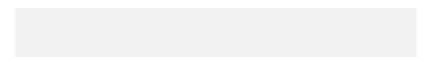
Confidential Third Party Information



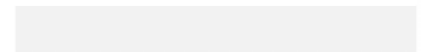
Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information





New gTLD Program
Community Priority Evaluation Report
Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Preval
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
I-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion I-A: Delineation.</p> <p>Delineation Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLC") is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC's) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC's commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC's are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC's are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC's share a key characteristic with partnerships through the availability of pass-through income taxation. LLC's are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC's can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC's are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC's level of good standing based on their commercial interactions with both the state and consumers.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the LLC application, there is no

Comment [A1]: To Russ' point, use of a different word than community would cause less confusion. Perhaps 'defined group'.

Comment [A2]: I dont think we should say the community is clearly delineated here, We go on to say that the application does not satisfy the requirements for delineation. Probably just need a different word, like defined or broad.

Comment [A3]: I think we need to restructure or add a few words to this sentence. awareness and recognition of what?

Comment [A4]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, 'While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.' That may be too specific, especially the 'no evidence..' part.

Comment [A5]: While i agree, i'd like to see some substantiation. something like... "based on our research we could not find any widespread evidence of LLCs from different sectors acting as a community" maybe that belongs in the organization section.

Comment [A6]: I like this point

Comment [A7]: State agencies? The office of secretary of state

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

Comment [A8]: should we mention that you are considering the filing of these forms to be documented community activities and why?

Comment [A9]: Think we cover the forms issue 2 paragraphs up when we talk about 'fulfilling a function'

Comment [A10]: Do we need this word? I know it's from the AGB but does it substantially impact interpretation of the statement to lose it? While the comment seems true, the word itself seems a bit belittling

I-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion I-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:

With the number of registered LLC's in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word

Comment [A11]: same comment as above...also should we add something to the effect of, "as previously stated"

as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Comment [A12]: Not sure we need to repeat this, but i understand why you did, for consistency to other repeated sections.

Comment [A13]: Same as above

Comment [A14]: same comment as above

Criterion #2: Nexus between Proposed String and Community 3/4 Point(s)
2-A Nexus 0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:

“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.

LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

Comment [A15]: Question: if they had gotten letters of non-objection or support from something like the equivalent of the secretaries of state of other countries saying they can use this string, would that have changed this assessment? if so, maybe we should mention it.

2-B Uniqueness 0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

3/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement		<i>2/4 Point(s)</i>
4-A Support		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>		
4-B Opposition		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>		

Comment [A16]: i think this is good

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

Comment [A17]: The way i read this, is that its relevant because its from an organization of non-negligible size. I dont think that is the intention. Can we rephrase to say something to effect of a an organization with standing and of non-negligible size, and perhaps even define the standing it has.

CONFIDENTIAL DRAFT



New gTLD Program
Community Priority Evaluation Report
Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
I-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion I-A: Delineation.</p> <p>Delineation Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLP") is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP's) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state's law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP's therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability partnerships operating in different sectors of the economy. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles / functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007

(when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

0/4 Point(s)

2-A Nexus

0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

"LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...

LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that LLP as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

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Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant</p>	

Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement

2-4 Point(s)

4-A Support

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

Comment [A1]: This paragraph is not in the other 2 related reports. What is the difference here?

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

From: Christopher Bare <christopher.bare@icann.org>
EIU Contact Information Redacted Russ Weinstein<russ.weinstein@icann.org>
EIU Contact Information Redacted Daniel Halloran<daniel.halloran@icann.org>
Subject: Re: Updated draft results (4)
Received(Date): Fri, 30 May 2014 17:34:40 -0700
[Draft CPE Result LLP 04_CB.docx](#)
[Draft CPE Result LLC 04_RW_CB.v2.docx](#)
[Draft CPE Result GMBH 04_RW_CB.v2.docx](#)
[smime.p7s](#)

Privileged and Confidential.

Hj EIU Contact Information Redacted

Russ and I reviewed the first 4 drafts (GMBH, LLC, LLP, INC) and had a few more comments. We really like several of the additional details you updated.

I've attached 3 documents with track changes on so you can see our comments.

- **Many comments apply across reports. We tried not to repeat comments on each report.**
- **We are not sure all comments need to be addressed in the reports, but we should make sure that we are prepared to discuss at next week's briefing as we would expect similar questions to come up.**
- **You will see that there are a couple areas where we still are unsure about how best to capture the research and reasoning that led to the conclusion. We can expect that some of the subjective decisions will be questioned and we want to try to alleviate some of that by detailing some of what was done.**
- **We were also discussing how best to message the issue of clarifying construed community. Several applicants seem to have had trouble defining the community they are intending to serve and have instead defined a large group that includes members that are only peripherally relevant.**

Confidential Third Party Information

Thanks

Chris

From: EIU Contact Information Redacted
Date: Thursday, May 29, 2014 4:48 PM
To: Christopher Bare <christopher.bare@icann.org>, Russ Weinstein <russ.weinstein@icann.org>
Cc: EIU Contact Information Redacted
Subject: Updated draft results (4)

Hi Chris and Russ,

I have attached the revised set of four corporate designation results (draft). We addressed most of your comments.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing bodydoes not meet requirements for the group to be considered a community.....

Added in language from the AGB. Second paragraph under 4.2.3.

2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.

We will keep an open mind about fragmented communities.

3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?

EIU feedback: too difficult to define such activities because of how they would vary across community. Moreover, it's not defined in the AGB, so the EIU decided not to add any clarification on this.

4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?

Added examples where appropriate. If the applicant did not score a 2 or a 3 on Nexus, then they are ineligible for a score of 1 on Uniqueness and this is the explanation that we provided.

5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?

Yes, we added in more information on this.

6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters from the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulator....etc.

We used the definitions provided in the AGB to add clarity on this section.

7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Already discussed-- likely difficult to add this.

Once you have the opportunity to take a second look, please feel free to provide feedback via phone or email that we can incorporate ahead of the meeting next week.

Best wishes,

EIU Contact Information
Redacted

Economist Intelligence Unit
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Website: research.eiu.com

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New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLP") is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP's) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state's law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP's therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability partnerships operating in different sectors of the economy. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007

(when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

0/4 Point(s)

2-A Nexus

0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

"LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...

LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that LLP, as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

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Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant</p>	

Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement **2/4 Point(s)**

4-A Support **1/2 Point(s)**

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

Comment [A1]: This paragraph is not in the other 2 related reports. What is the difference here?

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition **1/2 Point(s)**

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

[CPE](#)

New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
<u>Criteria</u>	<u>Earned</u>	<u>Achievable</u>
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass <u>14</u>		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLC”) is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC’s) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC’s commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC’s are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC’s are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC’s share a key characteristic with partnerships through the availability of pass-through income taxation. LLC’s are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC’s can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC’s are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC’s level of good standing based on their commercial interactions with both the state and consumers.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no

Comment [A1]: I don't think we should say the community is clearly delineated here, We go on to say that the application does not satisfy the requirements for delineation. Probably just need a different word, like defined or broad. We may need to stay away from the delineation word since it has a meaning in the scoring as well. Perhaps something like 'While broad, the proposed community is clearly defined....'?

Comment [A2]: I think we need to restructure or add a few words to this sentence. "...awareness and recognition..." of what?

Comment [A3]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, 'While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.'

That may be too specific, especially the 'no evidence...' part.

Possibly something like... "based on our research we could not find any widespread evidence of LLCs from different sectors acting as a community".

Maybe that belongs in the organization section.

Comment [A4]: We like this point

Comment [A5]: State agencies? The office of secretary of state? We should clarify.

documented evidence of community activities.	
The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.	
<u>Pre-existence</u>	
To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).	
The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).	
The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.	
1-B Extension	<i>0/2 Point(s)</i>
The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.	
<u>Size</u>	
Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.	
The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:	
With the number of registered LLC's in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.	
However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.	
The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.	
<u>Longevity</u>	
Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.	
The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word	

Comment [A6]: Can we remove this word from this sentence? I know it's from the AGB but does it substantially impact interpretation of the statement to lose it? The word itself seems a bit belittling on top of the sentence content.

Comment [A7]: Same as above. Also we should probably add something to the effect of, "as previously stated". By acknowledging that it was already stated earlier it would help to avoid sounding sterile and machine like.

as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Comment [A8]: Similar to the comment above, a few words like ‘as mentioned above’, ‘as previously stated’.

Comment [A9]: Same as above

Comment [A10]: Same as above

Criterion #2: Nexus between Proposed String and Community 0/4 Point(s)

2-A Nexus 0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:

“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.

LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

Comment [A11]: Question: if they had gotten letters of non-objection or support from the equivalent of the secretaries of state of other countries saying they can use this string, would that have changed this assessment? If so, maybe we can mention it.

2-B Uniqueness 0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state’s registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant’s legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant’s abuse policies. (Comprehensive details are provided in</p>	

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement		2/4 Point(s)
4-A Support		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>		
4-B Opposition		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>		

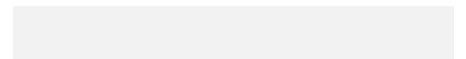
Comment [A12]: This is good

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

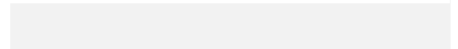
The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

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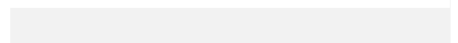
Confidential Third Party Information



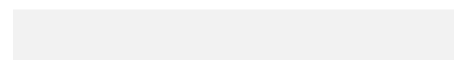
Confidential Third Party Information



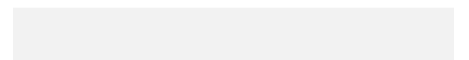
Confidential Third Party Information



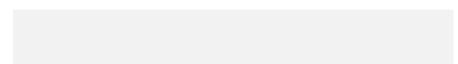
Confidential Third Party Information



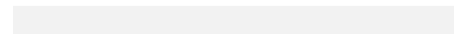
Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



From: Russ Weinstein <russ.weinstein@icann.org>
Sent: Tuesday, June 03, 2014 6:41 PM
To: EIU Contact Information Redacted Christopher Bare
Cc: EIU Contact Information Redacted Daniel Halloran
Subject: Re: Updated draft results (4)
Signed By: russ.weinstein@icann.org

Hi EIU Contact Information Redacted

Thanks for these. On my initial review they looked very good. We will discuss the rationale in the presentation tomorrow. I would ask we make one change to all of the reports prior to final version, when discussing the research conducted related to organizing around sectors rather than corporate identifiers, there is a phrase that says "our research..." can this be modified to the "the Panel's research" or something to that effect. Since the report is on ICANN logo and we try and differentiate the CPE Panel determined, I think the term "our" could create be less than precise.

Thanks, talk to you tomorrow.

Russ Weinstein
 Sr. Manager gTLD Operations
 ICANN
 Contact Information Redacted

Russ.Weinstein@icann.org

From: EIU Contact Information Redacted
Date: Tuesday, June 3, 2014 10:33 AM
To: Chris Bare <christopher.bare@icann.org>
Cc: Russ Weinstein <russ.weinstein@icann.org>, EIU Contact Information Redacted Daniel Halloran <daniel.halloran@icann.org>
Subject: Re: Updated draft results (4)

Hi Chris,

Back to you. All changes were made in track changes so that you can easily review. We've also responded to some of your comments in comment boxes.

Best wishes,

Hilary

On 2 June 2014 21:23, Christopher Bare <christopher.bare@icann.org> wrote:
 EIU Contact Information Redacted

For INC, the changes should be the same as the others. The only reason we didn't mark up that document was that the recommendations were identical.

Thanks
 Chris

From: EIU Contact Information Redacted
Date: Monday, June 2, 2014 5:58 PM
To: Christopher Bare <christopher.bare@icann.org>
Cc: Russ Weinstein <russ.weinstein@icann.org>, EIU Contact Information Redacted Daniel Halloran <daniel.halloran@icann.org>
Subject: Re: Updated draft results (4)

Hi Chris,

I've made the suggested changes and sent along to Leila for a review to make sure I captured everything. Quick question: is there a reason why you didn't send back .INC? Should we make the same changes for that evaluation?

Best wishes,

EIU Contact Information Redacted

On 2 June 2014 12:07, EIU Contact Information Redacted wrote:
Thanks, Chris. I will look through and let you know of any questions and next steps.

On 30 May 2014 17:34, Christopher Bare <christopher.bare@icann.org> wrote:

Privileged and Confidential.

Hi EIU Contact Information Redacted

Russ and I reviewed the first 4 drafts (GMBH, LLC, LLP, INC) and had a few more comments. We really like several of the additional details you updated.

I've attached 3 documents with track changes on so you can see our comments.

- Many comments apply across reports. We tried not to repeat comments on each report.
- We are not sure all comments need to be addressed in the reports, but we should make sure that we are prepared to discuss at next week's briefing as we would expect similar questions to come up.
- You will see that there are a couple areas where we still are unsure about how best to capture the research and reasoning that led to the conclusion. We can expect that some of the subjective decisions will be questioned and we want to try to alleviate some of that by detailing some of what was done.
- We were also discussing how best to message the issue of clarifying construed community. Several applicants seem to have had trouble defining the community they are intending to serve and have instead defined a large group that includes members that are only peripherally relevant.

Confidential Third Party Information

Thanks

Chris

From: EIU Contact Information Redacted
Date: Thursday, May 29, 2014 4:48 PM
To: Christopher Bare <christopher.bare@icann.org>, Russ Weinstein <russ.weinstein@icann.org>
Cc: EIU Contact Information Redacted
Subject: Updated draft results (4)

Hi Chris and Russ,

I have attached the revised set of four corporate designation results (draft). We addressed most of your comments.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing bodydoes not meet requirements for the group to be considered a community.....

Added in language from the AGB. Second paragraph under 4.2.3.

2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.

We will keep an open mind about fragmented communities.

3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?

EIU feedback: too difficult to define such activities because of how they would vary across community. Moreover, it's not defined in the AGB, so the EIU decided not to add any clarification on this.

4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?

Added examples where appropriate. If the applicant did not score a 2 or a 3 on Nexus, then they are ineligible for a score of 1 on Uniqueness and this is the explanation that we provided.

5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?

Yes, we added in more information on this.

6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters from the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulator....etc.

We used the definitions provided in the AGB to add clarity on this section.

7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Already discussed-- likely difficult to add this.

Once you have the opportunity to take a second look, please feel free to provide feedback via phone or email that we can incorporate ahead of the meeting next week.

Best wishes,

EIU Contact
Information
Redacted

Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

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New gTLD Program
Community Priority Evaluation Report
Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result **Did Not Prevail**

Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.

Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.

Panel Summary

Overall Scoring		5 Point(s)
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16

Minimum Required Total Score to Pass 14

Criterion #1: Community Establishment **0/4 Point(s)**

1-A Delineation **0/2 Point(s)**

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.

Delineation

Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.

The community defined in the application ("LLC") is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC's) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC's commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC's are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC's are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC's share a key characteristic with partnerships through the availability of pass-through income taxation. LLC's are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated/defined, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel's research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC's can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC's are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC's level

Comment [A1]: I don't think we should say the community is clearly delineated here. We go on to say that the application does not satisfy the requirements for delineation. Probably just need a different word, like defined or broad. We may need to stay away from the delineation word since it has a meaning in the scoring as well. Perhaps something like 'While broad, the proposed community is clearly defined....'?

Comment [A2]: Agreed—revised.

Comment [A3]: I think we need to restructure or add a few words to this sentence. "...awareness and recognition..." of what?

Comment [A4]: "of a community". Revised in documents.

Comment [A5]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, 'While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.'

That may be too specific, especially the 'no evidence...' part.

Possibly something like... "based on the Panel's research we could not find any widespread evidence of LLCs from different sectors acting as a community".

Maybe that belongs in the organization section.

Comment [A6]: Revised

Comment [A7]: We like this point

Comment [A8]: State agencies? The office of secretary of state? We should clarify.

Comment [A9]: Clarified

<p>of good standing based on their commercial interactions with both the state and consumers.</p> <p>The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no documented evidence of community activities.</p> <p>The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.</p> <p><u>Pre-existence</u></p> <p>To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).</p> <p>The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).</p> <p>The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.</p>	
I-B Extension	<i>0/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion I-B: Extension.</p> <p><u>Size</u></p> <p>Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.</p> <p>The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:</p> <p style="padding-left: 40px;">With the number of registered LLC’s in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.</p> <p>However, as previously stated the community as defined in the application does not have awareness and recognition of a community among its members. [This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.]</p> <p>The Community Priority Evaluation panel determined that the community as defined in the application only</p>	

Comment [A10]: Can we remove this word from this sentence? I know it's from the AGB but does it substantially impact interpretation of the statement to lose it? The word itself seems a bit belittling on top of the sentence content.

Comment [A11]: Deleted all instances

Comment [A12]: Same as above. Also we should probably add something to the effect of, “as previously stated”. By acknowledging that it was already stated earlier it would help to avoid sounding sterile and machine like.

Comment [A13]: Revised

satisfies one of the two conditions to fulfill the requirements for size.

Longevity
Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). [The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. [This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the AGB. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Comment [A14]: Similar to the comment above, a few words like 'as mentioned above', 'as previously stated'.

Comment [A15]: Same as above

Comment [A16]: Same as above. Also we should probably add something to the effect of, "as previously stated". By acknowledging that it was already stated earlier it would help to avoid sounding sterile and machine like.

Comment [A17]: Revised

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:</p> <p>“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “LLC” would be the simplest, most straight forward way to accurately represent our community.</p> <p>LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. The Panel’s research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.</p>	

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness 0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Comment [A18]: Question: if they had gotten letters of non-objection or support from the equivalent of the secretaries of state of other countries saying they can use this string, would that have changed this assessment? If so, maybe we can mention it.

Comment [A19]: No, that would not suffice because Nexus only looks at the applied-for string and the community as defined by the applicant. Support or non-objection is considered under criterion 4.

Criterion #3: Registration Policies 3/4 Point(s)

3-A Eligibility 1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection 1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	3/4 Point(s)
4-A Support	1/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/ member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/ organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p><u>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/ member organization(s), nor did it have documented authority to represent the community, or</u></p>	

documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

Comment [A20]: This is good

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.



New gTLD Program
Community Priority Evaluation Report
Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result **Did Not Prevail**

Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.

Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.

Panel Summary

Overall Scoring		5 Point(s)
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment 0/4 Point(s)

1-A Delineation 0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.

Delineation

Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.

The community defined in the application ("LLP") is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP's) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state's law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP's therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. [This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on our research the Panel's research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Comment [A1]: I think we need to restructure or add a few words to this sentence. "...awareness and recognition..." of what?

Comment [A2]: "of a community". Revised in documents.

Comment [A3]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, 'While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.'

That may be too specific, especially the 'no evidence...' part.

Possibly something like... "based on the Panel's research we could not find any widespread evidence of LLCs from different sectors acting as a community".

Maybe that belongs in the organization section.

<p><u>Pre-existence</u> To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).</p> <p>The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).</p> <p>The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.</p>	
<p><u>I-B Extension</u></p> <p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.</p> <p><u>Size</u> Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.</p> <p>The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”</p> <p>However, <u>as previously stated</u>, the community as defined in the application does not have awareness and recognition of a community among its members. <u>This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on our research the Panel’s research, there is no evidence of LLPs from different sectors acting as a community as defined by the AGB. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.</u></p> <p>The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.</p> <p><u>Longevity</u> Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.</p> <p>The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.</p>	0/2 Point(s)

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on our research the Panel's research, there is no evidence of LLPs from different sectors acting as a community as defined by the AGB. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

0/4 Point(s)

2-A Nexus

0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

"LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...

LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research The Panel's research indicates that LLP, as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1

point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

1/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the

application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

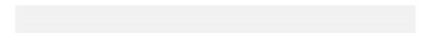
Criterion #4: Community Endorsement		<i>2/4 Point(s)</i>
4-A Support		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/ member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/ member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/ member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/ member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/ member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>		

Comment [A4]: This paragraph is not in the other 2 related reports. What is the difference here?

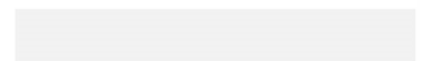
4-B Opposition	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p> <p>To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.</p> <p>The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.</p>	

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at newgtlds.icann.org.

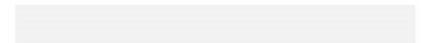
Confidential Third Party Information



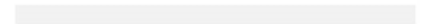
Confidential Third Party Information



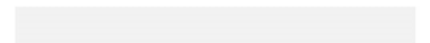
Confidential Third Party Information



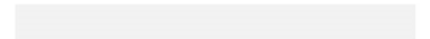
Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information





New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35979
Applied-for String:	INC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“INC”) is:

Members of the community are defined as businesses registered as corporations within the United States or its territories. This would include Corporations, Incorporated Businesses, Benefit Corporations, Mutual Benefit Corporations and Non-Profit Corporations. Corporations or “INC’s” as they are commonly abbreviated, represent one of the most complex business entity structures in the U.S. Corporations commonly participate in acts of commerce, public services, and product creation....

A corporation is defined as a business created under the laws of a State as a separate legal entity, that has privileges and liabilities that are distinct from those of its members. While corporate law varies in different jurisdictions, there are four characteristics of the business corporation that remain consistent: legal personality, limited liability, transferable shares, and centralized management under a board structure. Corporate statutes typically empower corporations to own property, sign binding contracts, and pay taxes in a capacity separate from that of its shareholders.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a corporation with the relevant US state. In addition, corporations must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on our research the Panel’s research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Corporations can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. Corporation formation guidelines are dictated by state law and can vary based on each State’s regulations. Persons form a corporation by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Incorporation. These are considered public documents and are similar to articles of organization, which establish a limited liability company as a legal entity. At minimum, the Articles of Incorporation give a brief description of proposed business activities, shareholders, stock issued and the registered business address.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .INC application, there is no

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed ~~merely~~ to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .INC as defined in the application is large in terms of number of members. According to the application:

With almost 470,000 new corporations registered in the United States in 2010 (as reported by the International Association of Commercial Administrators) resulting in over 8,000,000 total corporations in the US, it is hard for the average consumer to not conduct business with a corporation.

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on our research/the Panel's research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed ~~merely~~ to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .INC community are not of a lasting, non-transient nature.

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on our research the Panel's research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.INC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

“INC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language the word incorporation is primarily shortened to Inc. when used to delineate business entity types. For example, McMillion Incorporated would additionally be referred to as McMillion Inc. Since all of our community members are incorporated businesses we believed that “.INC” would be the simplest, most straightforward way to accurately represent our community.

Inc. is a recognized abbreviation in all 50 states and US Territories denoting the corporate status of an entity. ~~Our research~~ The Panel's research indicates that Inc. as corporate identifier is used in three other jurisdictions (Canada, Australia, and the Philippines) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Canada, Australia and the Philippines. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

3/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered corporations and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.

3-D Enforcement

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement

2/4 Point(s)

4-A Support

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate

registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

From: EIU Contact Information Redacted
To: Christopher Bare <christopher.bare@icann.org>
CC: EIU Contact Information Redacted ;Russ Weinstein
<russ.weinstein@icann.org>
Sent: 7/17/2014 3:25:01 PM
Subject: Re: Response needed: background info on LLC, LLP, INC evaluations

Hi Chris,

We have thoroughly reviewed the evaluations and relevant materials and have provided our responses below.

1. Which organization was the one you identified as relevant and of non-negligible size? Was it one of the two mentioned?

The EIU identified the European Commission as the relevant organization of non-negligible size.

2. Was EIU aware of the application comment and posted correspondence that rescinded the opposition? If so, was this considered in the evaluation?

The EIU was not aware of the second *application comment* from the European Commission. The EIU follows a process once an evaluation is commenced. This process includes receiving *application comments* from ICANN via the external shared drive at the start of each evaluation. The EIU then reviews and evaluates the relevance of each comment. The European Commission's first comment, an objection, was included in the *application comments* documentation provided by ICANN.

The EIU's process has never included the retrieval or review of additional *application comments* posted to the ICANN website, nor was the EIU ever asked or instructed to undertake such a review of *application comments*. As a result, the EIU was not aware of the second comment posted by the European Commission at a later date.

The EIU process does include a weekly review of *correspondence* (*i.e. letters*) posted to ICANN's correspondence page. On a weekly basis, an EIU team member reviews the correspondence section of the website for all new correspondence, and determines whether there are any new letters relevant to CPE.

The EIU was aware of the posted correspondence from the US state of Delaware and reviewed the correspondence during the evaluation process.

3. How did the opposition letter referenced in the evaluation report impact the overall scoring? (e.g. Applicant got 1 point instead of 2 for opposition) Would it have made a material difference to the score?

If the EIU had considered the letter from the European Commission withdrawing its opposition, the score for Opposition would have increased to two (2), up from one (1) previously, for the evaluations in question. However, this would have had no material impact on the final outcome

of the evaluation.

Please let me know if you have any follow-up questions.

Best wishes,

EIU Contact Information Redacted

On 16 July 2014 19:20, Christopher Bare <christopher.bare@icann.org> wrote:
EIU Contact Information Redacted

The applicant for LLC, LLP, and INC (Dot Registry, LLC) has filed Reconsideration Requests (RR) with the ICANN board. Our legal team is currently drafting a response to these RRs and need some additional information from EIU.

In the RRs, the applicant is questioning the one opposition letter that 'was determined to be relevant opposition from an organization of non-negligible size'. The applicant is claiming that the 2 opposition letters they were aware of from organizations of non-negligible size (Secretary of State for Delaware, European Commission) were rescinded later by the authors. The State of Delaware was rescinded via application comments on 20 March and the European Commission via correspondence posted on 25 March.

What we need to know from you in order to write our response:

1. Which organization was the one you identified as relevant and of non-negligible size? Was it one of the two mentioned?
2. Was EIU aware of the application comment and posted correspondence that rescinded the opposition? If so, was this considered in the evaluation?
3. How did the opposition letter referenced in the evaluation report impact the overall scoring? (e.g. Applicant got 1 point instead of 2 for opposition) Would it have made a material difference to the score?

We would like the information as soon as possible. Tomorrow would be great. Thursday at the latest as we want to have the response ready for the board meeting later this week.

Here are the links to the RRs for your reference. They make for some interesting reading.

LLC: <https://www.icann.org/resources/pages/14-30-2014-06-25-en>

INC: <https://www.icann.org/resources/pages/14-32-2014-06-26-en>

LLP: <https://www.icann.org/resources/pages/14-33-2014-06-26-en>

Let us know if you have any questions about what we are asking.

Thanks
Chris

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From: Christopher Bare <christopher.bare@icann.org>
To: EIU Contact Information Redacted
Cc: Russ Weinstein <russ.weinstein@icann.org>
Subject: Feedback on draft reports
Received(Date): Tue, 27 May 2014 09:29:09 -0700
[smime.p7s](#)

EIU Contact Information Redacted

Russ and I reviewed the draft reports and have some feedback.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing bodydoes not meet requirements for the group to be considered a community.....
2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.
3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?
4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?
5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?
6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters from the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulator....etc.
7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Russ, anything else to add?

Thanks
Chris

From: EIU Contact Information Redacted
To: ChristopherBare <christopher.bare@icann.org>; Russ Weinstein <russ.weinstein@icann.org>
CC: EIU Contact Information Redacted
Sent: 5/29/2014 11:48:47 PM
Subject: Updated draft results (4)
Attachments: Draft CPE Result GMBH 04.docx; Draft CPE Result INC 04.docx; Draft CPE Result LLC 04.docx; Draft CPE Result LLP 04.docx

Hi Chris and Russ,

I have attached the revised set of four corporate designation results (draft). We addressed most of your comments.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing body §. does not meet requirements for the group to be considered a community §§

Added in language from the AGB. Second paragraph under 4.2.3.

2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.

We will keep an open mind about fragmented communities.

3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?

EIU feedback: too difficult to define such activities because of how they would vary across community. Moreover, it's not defined in the AGB, so the EIU decided not to add any clarification on this.

4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?

Added examples where appropriate. If the applicant did not score a 2 or a 3 on Nexus, then they are ineligible for a score of 1 on Uniqueness and this is the explanation that we provided.

5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?

Yes, we added in more information on this.

6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters from the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulator's, etc.

We used the definitions provided in the AGB to add clarity on this section.

7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Already discussed-- likely difficult to add this

Once you have the opportunity to take a second look, please feel free to provide feedback via phone or email that we can incorporate ahead of the meeting next week.

Best wishes,

EIU Contact
Information
Redacted

Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

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New Generic Top-Level
Domains

New gTLD Program
Community Priority Evaluation Report
Report Date: 19 May 2014

Application ID:	1-880-35979
Applied-for String:	INC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“INC”) is:

Members of the community are defined as businesses registered as corporations within the United States or its territories. This would include Corporations, Incorporated Businesses, Benefit Corporations, Mutual Benefit Corporations and Non-Profit Corporations. Corporations or “INC’s” as they are commonly abbreviated, represent one of the most complex business entity structures in the U.S. Corporations commonly participate in acts of commerce, public services, and product creation....

A corporation is defined as a business created under the laws of a State as a separate legal entity, that has privileges and liabilities that are distinct from those of its members. While corporate law varies in different jurisdictions, there are four characteristics of the business corporation that remain consistent: legal personality, limited liability, transferable shares, and centralized management under a board structure. Corporate statutes typically empower corporations to own property, sign binding contracts, and pay taxes in a capacity separate from that of its shareholders.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a corporation with the relevant US state. In addition, corporations must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Having the same corporate legal structure is not sufficient to forge a sense of community between corporations operating in different sectors of the economy. These corporations would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Corporations can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. Corporation formation guidelines are dictated by state law and can vary based on each State’s regulations. Persons form a corporation by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Incorporation. These are considered public documents and are similar to articles of organization, which establish a limited liability company as a legal entity. At minimum, the Articles of Incorporation give a brief description of proposed business activities, shareholders, stock issued and the registered business address.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .art application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does

not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .INC as defined in the application is large in terms of number of members. According to the application:

With almost 470,000 new corporations registered in the United States in 2010 (as reported by the International Association of Commercial Administrators) resulting in over 8,000,000 total corporations in the US, it is hard for the average consumer to not conduct business with a corporation.

However, the community as defined in the application does not have awareness and recognition among its members. This is because corporations operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed

merely to get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .INC community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because corporations operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.INC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

"INC" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language the word incorporation is primarily shortened to Inc. when used to delineate business entity types. For example, McMillion Incorporated would additionally be referred to as McMillion Inc. Since all of our community members are incorporated businesses we believed that ".INC" would be the simplest, most straightforward way to accurately represent our community.

Inc. is a recognized abbreviation in all 50 states and US Territories denoting the corporate status of an entity. Our research indicates that Inc. as corporate identifier is used in three other jurisdictions (Canada, Australia, and the Philippines) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Canada, Australia and the Philippines. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for nexus.

2-B Uniqueness	0/1 Point(s)
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The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered corporations and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in</p>	

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	2/4 Point(s)
4-A Support	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>	
4-B Opposition	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>	

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

CONFIDENTIAL DRAFT



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLC") is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC's) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC's commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC's are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC's are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC's share a key characteristic with partnerships through the availability of pass-through income taxation. LLC's are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC's can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC's are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC's level of good standing based on their commercial interactions with both the state and consumers.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:

With the number of registered LLC's in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

0/4 Point(s)

2-A Nexus

0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:

“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.

LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in</p>	

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.

3-D Enforcement

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement

2/4 Point(s)

4-A Support

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

CONFIDENTIAL DRAFT



New Generic Top-Level
Domains

New gTLD Program
Community Priority Evaluation Report
Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLP") is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP's) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US. Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state's law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP's therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability partnerships operating in different sectors of the economy. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007

(when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

0/4 Point(s)

2-A Nexus

0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

"LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...

LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that LLP, as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

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Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant</p>	

Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement	2/4 Point(s)
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4-A Support	1/2 Point(s)
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The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition	1/2 Point(s)
----------------	---------------------

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

CONFIDENTIAL DRAFT

From: Christopher Bare <christopher.bare@icann.org>
EIU Contact Information Redacted Russ Weinstein <russ.weinstein@icann.org>
EIU Contact Information Redacted

Subject: Re: EIU team update
Received(Date): Thu, 5 Jun 2014 17:28:00 -0700
Confidential Third Party Information; Nonresponsive Information
[Draft CPE Result LLC Revised 03_CB_RW.docx](#)
Confidential Third Party Information; Nonresponsive
Information

Privileged and Confidential

EIU Contact Information Redacted

Here are a few more comments for the corporate identifiers. We have only included LLC and GmbH, but the comments should apply across all reports.

Confidential Third Party Information

One thing to note: When we read the reports, we tried to put ourselves in the mind frame of the applicant to see what areas were controversial or difficult to understand. We want to make sure that any assertions made have some justification to help explain. References to the AGB are great. As are explanations as to why an application fell short of the AGB criteria.

We appreciate the changes made through these revisions and want to thank you and the team for all the hard work. We hope to get the final draft (I hope) back from you by the beginning of next week so we can start the process of getting them approved and posted. Let me know if you see any problems with that timing.

Thanks again,
Chris

From: EIU Contact Information Redacted
Date: Thursday, June 5, 2014 1:41 PM
To: Russ Weinstein <russ.weinstein@icann.org>
Cc: EIU Contact Information Redacted
EIU Contact Information Redacted Christopher Bare <christopher.bare@icann.org>
Subject: Re: EIU team update

Hi Russ,

EIU Contact Information Redacted

will be taking on a bigger share of the workload. Here's a quick status update:

Confidential Third Party Information; Nonresponsive Information
Finalizing results: INC, LLP, LLC,
Confidential Third Party Information

Best wishes,

EIU Contact Information Redacted

On 5 June 2014 11:30, Russ Weinstein <russ.weinstein@icann.org> wrote:

EIU Contact Information Redacted

EIU Contact Information

Thank you for the update. Sounds like the team is going to be a little short staffed in June, Redacted I am optimistic there will be minimal impact to schedule, given where we are with evaluation progress. Will the team be ready to ramp back up for more reviews in early July?

EIU Contact Information Redacted

Congratulations on your new position. It has been a pleasure working with you, we appreciate all your hard work and dedication to the success of the CPE so far. Thanks much, best of luck.

Russ Weinstein
Sr. Manager gTLD Operations
ICANN
Contact Information Redacted

Russ.Weinstein@icann.org

From: EIU Contact Information Redacted

Date: Thursday, June 5, 2014 11:06 AM

To: Chris Bare <christopher.bare@icann.org>, Russ Weinstein <russ.weinstein@icann.org>, EIU Contact Information Redacted

EIU Contact Information Redacted

Cc: EIU Contact Information Redacted

Subject: EIU team update

Hi Russ and Chris,

EIU Contact Information

EIU Contact Information Redacted

After a year working with us on the ICANN project, Redacted . Her last day is TBD, but will likely be Wednesday, June 25th. In the interim, EIU Contact Information and I will remain on the team and provide continuity. Redacted

Please let me know if you have any questions.

Best wishes,

EIU Contact Information Redacted

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EIU Contact Information Redacted

Economist Intelligence Unit
Custom Research

EIU Contact Information Redacted

Website: research.eiu.com

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EIU Contact Information Redacted

Economist Intelligence Unit
Custom Research

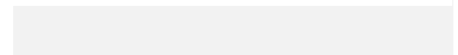
EIU Contact Information Redacted

Website: research.eiu.com

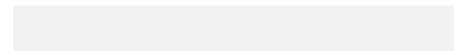
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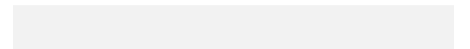
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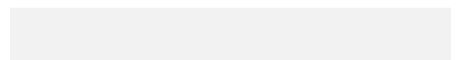
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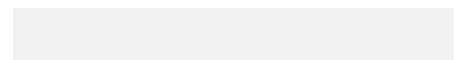
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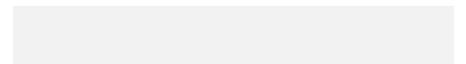
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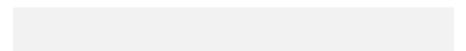
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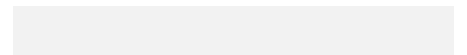
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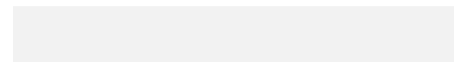
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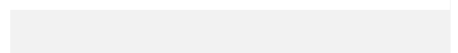
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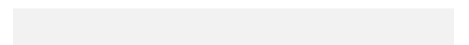
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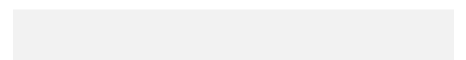
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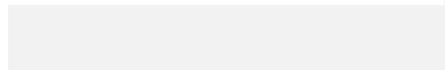
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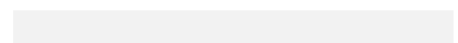
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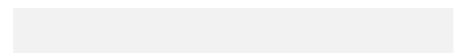
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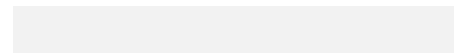
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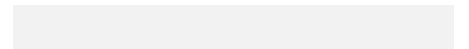
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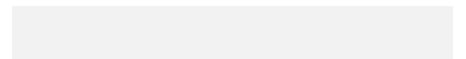
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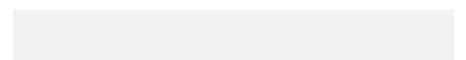
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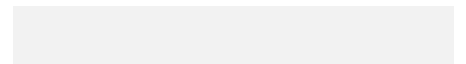
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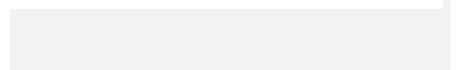
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New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLC”) is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC’s) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC’s commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC’s are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC’s are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC’s share a key characteristic with partnerships through the availability of pass-through income taxation. LLC’s are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC’s can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC’s are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC’s level of good standing based on their commercial interactions with both the state and consumers.

Comment [A1]: Sentence is an assertion and needs some justification. Also the sentence may need to be rephrased to allow for some variance from the absolute. (e.g. ‘companies would not typically...’, ‘companies would not likely...’, ‘no evidence of companies that...’)

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence
To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

- Comment [A2]:** Let's add 'merely' back in to the AGB quote for accuracy, but keep it out of the determination sentence later in the paragraph
- Comment [A3]:** Delete the 'a'
- Comment [A4]:** Sentence is an assertion and needs some justification. Also may need rephrasing. 'Generic word' may not apply to these corporate identifiers.

1-B Extension *0/2 Point(s)*

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size
Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:

With the number of registered LLC's in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.

However, as previously stated the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel's research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity
Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

- Comment [A5]:** Same as above

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the AGB. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Comment [A6]: Let’s add ‘merely’ back in to the AGB quote for accuracy, but keep it out of the determination sentence later in the paragraph

Comment [A7]: Delete extra space

Comment [A8]: Same as above

Comment [A9]: Same as above

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:</p> <p>“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.</p> <p>LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. The Panel’s research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.</p> <p>While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.</p>	

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.	
2-B Uniqueness	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.</p> <p>To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.</p>	
Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	<i>1/1 Point(s)</i>
The Community Priority Evaluation panel determined that the application met the criterion for Content and	

Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.	
To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	0/1 Point(s)
The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.	
Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.	

Criterion #4: Community Endorsement	2/4 Point(s)
4-A Support	1/2 Point(s)
The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.	
To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.	
The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.	
The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not	

the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

From: EIU Contact Information Redacted
To: russ.weinstein@icann.org <russ.weinstein@icann.org>; christopher.bare@icann.org <christopher.bare@icann.org>
CC: EIU Contact Information Redacted
Sent: 6/10/2014 5:50:04 PM
Subject: Corporate identifiers
Attachments: Confidential Third Party Information; Nonresponsive Information;; Draft CPE Result INC.docx; Draft CPE Result LLC.docx; Draft CPE Result LLP.docx

Hi Russ and Chris

Please find attached the revised drafts of the four corporate identifiers, which address your comments.

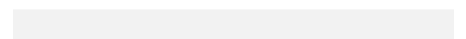
Please let me know if anything is unclear.

Best, EIU Contact Information Redacted

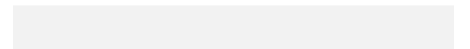
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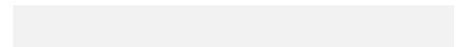
Confidential Third Party Information



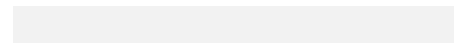
Confidential Third Party Information



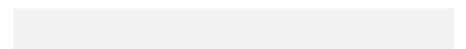
Confidential Third Party Information



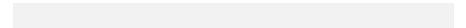
Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



New gTLD Program
Community Priority Evaluation Report
 Report Date: 10 June 2014

Application ID:	1-880-35979
Applied-for String:	INC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“INC”) is:

Members of the community are defined as businesses registered as corporations within the United States or its territories. This would include Corporations, Incorporated Businesses, Benefit Corporations, Mutual Benefit Corporations and Non-Profit Corporations. Corporations or “INC’s” as they are commonly abbreviated, represent one of the most complex business entity structures in the U.S. Corporations commonly participate in acts of commerce, public services, and product creation....

A corporation is defined as a business created under the laws of a State as a separate legal entity, that has privileges and liabilities that are distinct from those of its members. While corporate law varies in different jurisdictions, there are four characteristics of the business corporation that remain consistent: legal personality, limited liability, transferable shares, and centralized management under a board structure. Corporate statutes typically empower corporations to own property, sign binding contracts, and pay taxes in a capacity separate from that of its shareholders.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a corporation with the relevant US state. In addition, corporations must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on the Panel’s research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. There is no evidence that these incorporated firms would associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Corporations can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. Corporation formation guidelines are dictated by state law and can vary based on each State’s regulations. Persons form a corporation by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Incorporation. These are considered public documents and are similar to articles of organization, which establish a limited liability company as a legal entity. At minimum, the Articles of Incorporation give a brief description of proposed business activities, shareholders, stock issued and the registered business address.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .INC application, there is no

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed to obtain a sought-after corporate identifier as a gTLD string, as these corporations would typically not associate themselves with being part of the community as defined by the applicant. The community therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .INC as defined in the application is large in terms of number of members. According to the application:

With almost 470,000 new corporations registered in the United States in 2010 (as reported by the International Association of Commercial Administrators) resulting in over 8,000,000 total corporations in the US, it is hard for the average consumer to not conduct business with a corporation.

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on the Panel’s research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed to obtain a sought-after corporate identifier as a gTLD string, as these corporations would typically not associate themselves with being part of the community as defined by the applicant. Therefore, the pursuits of the .INC community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on the Panel’s research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.INC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:</p> <p>“INC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language the word incorporation is primarily shortened to Inc. when used to delineate business entity types. For example, McMillion Incorporated would additionally be referred to as McMillion Inc. Since all of our community members are incorporated businesses we believed that “.INC” would be the simplest, most straightforward way to accurately represent our community.</p> <p>Inc. is a recognized abbreviation in all 50 states and US Territories denoting the corporate status of an entity. Our research indicates that Inc. as corporate identifier is used in three other jurisdictions (Canada, Australia, and the Philippines) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.</p> <p>While the string identifies the name of the community, it captures a wider geographical remit than the</p>	

community has, as the corporate identifier is used in Canada, Australia and the Philippines. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

3/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered corporations and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	
Criterion #4: Community Endorsement	
<i>2/4 Point(s)</i>	
4-A Support	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p><u>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.</u></p>	

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

New gTLD Program
Community Priority Evaluation Report
 Report Date: 10 June 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLC”) is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC’s) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC’s commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC’s are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC’s are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC’s share a key characteristic with partnerships through the availability of pass-through income taxation. LLC’s are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. **There is no evidence that these limited liability companies would associate themselves with being part of the community as defined by the applicant.**

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC’s can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC’s are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC’s level of good standing based on their commercial interactions with both the state and consumers.

Comment [A1]: Sentence is an assertion and needs some justification. Also the sentence may need to be rephrased to allow for some variance from the absolute. (e.g. ‘companies would not typically...’, ‘companies would not likely...’, ‘no evidence of companies that...’)

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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). The Community Priority Evaluation panel determined that this application refers to a “community” construed to obtain a sought-after corporate identifier as a gTLD string, as these limited liability companies would typically not associate themselves with being part of the community as defined by the applicant. The community therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension 0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:

With the number of registered LLC’s in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.

However, as previously stated the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability companies would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Comment [A2]: Sentence is an assertion and needs some justification. Also the sentence may need to be rephrased to allow for some variance from the absolute. (e.g. ‘companies would not typically...’, ‘companies would not likely...’, ‘no evidence of companies that...’)

Comment [A3]: Sentence is an assertion and needs some justification. Also may need rephrasing. ‘Generic word’ may not apply to these corporate identifiers.

Comment [A4]: Same as above

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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). The Community Priority Evaluation panel determined that this application refers to a “community” construed to obtain a sought-after corporate identifier as a gTLD string as these limited liability companies would typically not associate themselves with being part of the community as defined by the applicant. Therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability companies would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Comment [A5]: Let’s add ‘merely’ back in to the AGB quote for accuracy, but keep it out of the determination sentence later in the paragraph

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:</p> <p>“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.</p> <p>LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. The Panel’s research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.</p> <p>While the string identifies the name of the community, it captures a wider geographical remit than the</p>	

community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness *0/1 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies **3/4 Point(s)**

3-A Eligibility *1/1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection *1/1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use *1/1 Point(s)*

<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	2/4 Point(s)
4-A Support	1/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to</p>	

constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

New gTLD Program
Community Priority Evaluation Report
 Report Date: 10 June 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u></p> <p>Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLP”) is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP’s) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state’s law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP’s therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner’s misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on the Panel’s research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook. There is no evidence that these limited liability partnerships would associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Comment [A1]: “of a community”. Revised in documents.

Comment [A2]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, ‘While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.’

That may be too specific, especially the ‘no evidence...’ part.

Possibly something like... “based on the Panel’s research we could not find any widespread evidence of LLCs from different sectors acting as a community”.

Maybe that belongs in the organization section.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed to obtain a sought-after corporate identifier as a gTLD string, as these limited liability partnerships would typically not associate themselves with being part of the community as defined by the applicant. The community therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “.LLP’s represent a small but prestigious sector of business in the United States.”

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on the Panel’s research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability partnerships would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE 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 a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to

Comment [A3]: Sentence is an assertion and needs some justification. Also the sentence may need to be rephrased to allow for some variance from the absolute. (e.g. ‘companies would not typically...’, ‘companies would not likely...’, no evidence of companies that...)

Comment [A4]: Sentence is an assertion and needs some justification. Also may need rephrasing. ‘Generic word’ may not apply to these corporate identifiers.

a “community” construed to obtain a sought-after corporate identifier as a gTLD string, as these limited liability partnerships would typically not associate themselves with being part of the community as defined by the applicant. Therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on the Panel’s research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability partnerships would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:</p> <p>“LLP” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...</p> <p>LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that LLP as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.</p> <p>While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.</p> <p>The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.</p>	

2-B Uniqueness	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.</p> <p>To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.</p>	

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p>	

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	<i>2/4 Point(s)</i>
4-A Support	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one</p>	

particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

From: EIU Contact Information Redacted
Sent: Friday, July 18, 2014 8:30 AM
To: Russ Weinstein <russ.weinstein@icann.org>
Cc: EIU Contact Information Redacted Christopher Bare
 <christopher.bare@icann.org>; EIU Contact Information Redacted
Subject: Re: Quick question on evaluator assignments

Hi Russ,

Here it is:

INC
1 and 2

LLC
3 and 2

LLP
3 and 4

Confidential Third Party Information; Nonresponsive Information

Best,

EIU Contact Information Redacted

On 18 July 2014 16:18, Russ Weinstein <russ.weinstein@icann.org> wrote:
EIU Contact Information Redacted

Sorry we got a last minute question from our legal dept as they prepare the report for the board regarding the reconsideration requests for the LLC, LLP, INC evaluations.

Was it the same 2 evaluators who evaluated all 3 apps?

Confidential Third Party Information; Nonresponsive Information

No need to reveal names. If you could help us understand the pairings of be evaluators on each app that would be great. If you want to say eval 1 and 2 did XYZ while 3 & 4 did ABC and 1 & 4 did EFG. That would be fine.

Just need the facts. No wrong answers. Thanks

Russ,
Sent from my mobile

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From: EIU Contact Information Redacted
Sent: Thursday, June 5, 2014 12:38 PM
To: Russ Weinstein <russ.weinstein@icann.org>; ChristopherBare <christopher.bare@icann.org>; EIU Contact Information Redacted
Subject: Follow up from yesterday's meeting

Hi Russ and Chris,

I wanted to check with you as to whether there are any To Dos or changes to the evaluation write ups that we should work on based on feedback from yesterday's meeting? Please let us know of any updates you would like us to make, or what, if any, To Dos there are prior to submitting final versions of the four results (GMBH, INC, LLP, and LLC).

Best,

EIU Contact Information Redacted

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EIU Contact Information Redacted

Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

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RESPONDENT'S EXHIBIT

Little Birch LLC and Minds + Machines Group Limited v. ICANN (Internet Corporation for Assigned Names and Numbers) (.ECO) & Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC v. ICANN (Internet Corporation for Assigned Names and Numbers) (.HOTEL)

<ul style="list-style-type: none"> • Final Declaration (/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf) [PDF, 2.15 MB] • Redaction Determination (/en/system/files/files/irp-despegar-online-et-al-redaction-determination-12feb16-en.pdf) [PDF, 57 KB] 	12 February 2016
<ul style="list-style-type: none"> • ICANN (Internet Corporation for Assigned Names and Numbers)'s Sur-Reply to the Reply of Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC and Radix FZC (.HOTEL) (/en/system/files/files/irp-despegar-online-et-al-icann-sur-reply-redacted-10nov15-en.pdf) [PDF, 854 KB] <ul style="list-style-type: none"> • Exhibits 6 to 7 (/en/system/files/files/irp-despegar-online-et-al-exhibits-6-10nov15-en.pdf) [PDF, 728 KB] 	10 November 2015
<ul style="list-style-type: none"> • ICANN (Internet Corporation for Assigned Names and Numbers)'s Sur-Reply to the Reply of Little Birch, LLC and Minds + Machines Group Limited (.ECO) (/en/system/files/files/irp-little-birch-et-al-icann-sur-reply-10nov15-en.pdf) [PDF, 728 KB] 	10 November 2015

<p>icann-sur-reply-redacted-10nov15-en.pdf) [PDF, 862 KB]</p> <ul style="list-style-type: none"> • Exhibits 6 to 7 (/en/system/files/files/irp-little-birch-et-al-exhibits-6-10nov15-en.pdf) [PDF, 728 KB] 	
<ul style="list-style-type: none"> • Additional Submission Reply to ICANN (Internet Corporation for Assigned Names and Numbers)'s Response By Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC (/en/system/files/files/irp-despegar-online-et-al-additional-submission-19oct15-en.pdf) [PDF, 5.61 MB] <ul style="list-style-type: none"> • Annexes #16 and #17 (/en/system/files/files/irp-despegar-online-et-al-annexes-16-redacted-19oct15-en.pdf) [PDF, 1.22 MB] • Reference Materials #32 to #50 (/en/system/files/files/irp-despegar-online-et-al-reference-materials-32-redacted-19oct15-en.pdf) [PDF, 25.5 MB] 	19 October 2015
<ul style="list-style-type: none"> • Additional Submission Reply to ICANN (Internet Corporation for Assigned Names and Numbers)'s Response By Little Birch and Minds + Machines Group Limited (/en/system/files/files/irp-little-birch-et-al-additional-submission-19oct15-en.pdf) [PDF, 4.92 MB] <ul style="list-style-type: none"> • Reference Materials #35 to #53 (/en/system/files/files/irp-little-birch-et-al-reference-materials-35-redacted-19oct15-en.pdf) [PDF, 25.5 MB] 	19 October 2015
<p>Procedural Order No. 1 (/en/system/files/files/procedural-order-1-03sep15-en.pdf) [PDF, 58 KB]</p>	3 September 2015

<ul style="list-style-type: none"> • <u>ICANN (Internet Corporation for Assigned Names and Numbers)'s Response to Little Birch and Minds + Machine Group Limited's Request for Independent Review Process</u> (/en/system/files/files/icann-response-birch-mmx-irp-request-redacted-27apr15-en.pdf) [PDF, 712 KB] <ul style="list-style-type: none"> • <u>Exhibits</u> (/en/system/files/files/icann-response-birch-mmx-irp-request-exhibits-27apr15-en.pdf) [PDF, 5.25 MB] 	27 April 2015
<ul style="list-style-type: none"> • <u>ICANN (Internet Corporation for Assigned Names and Numbers)'s Response to Despegar Online, Donuts, Famous Four Media, Fegistry and Radix's Request for Independent Review Process</u> (/en/system/files/files/icann-response-irp-request-redacted-17apr15-en.pdf) [PDF, 695 KB] <ul style="list-style-type: none"> • <u>Exhibits</u> (/en/system/files/files/icann-response-irp-request-exhibits-17apr15-en.pdf) [PDF, 5.24 MB] 	17 April 2015
<ul style="list-style-type: none"> • <u>Notice of Independent Review Process from Little Birch and Minds + Machine Group Limited</u> (/en/system/files/files/birch-mmx-irp-notice-redacted-24mar15-en.pdf) [PDF, 432 KB] • <u>Request for Independent Review Process from Little Birch and Minds + Machine Group Limited</u> (/en/system/files/files/birch-mmx-irp-request-redacted-24mar15-en.pdf) [PDF, 664 KB] <ul style="list-style-type: none"> • <u>Annexes 1 to 15</u> (/en/system/files/files/birch-mmx-irp-annex-redacted-24mar15-en.pdf) [PDF, 3.31 MB] • <u>Reference Materials 1 to 9</u> (/en/system/files/files/birch-mmx-irp- 	24 March 2015

<p>reference-material-1-redacted-24mar15-en.pdf) [PDF, 11.4 MB]</p> <ul style="list-style-type: none"> • Reference Materials 10 to 33 (/en/system/files/files/birch-mmx-irp-reference-material-2-redacted-24mar15-en.pdf) [PDF, 17.9 MB] 	
<ul style="list-style-type: none"> • Notice of Independent Review Process from Despegar Online, Donuts, Famous Four Media, Fegistry and Radix (/en/system/files/files/irp-notice-redacted-10mar15-en.pdf) [PDF, 793 KB] • Request for Independent Review Process from Despegar Online, Donuts, Famous Four Media, Fegistry and Radix (/en/system/files/files/irp-request-redacted-10mar15-en.pdf) [PDF, 3.41 MB] <ul style="list-style-type: none"> • Annexes 1 to 15 (/en/system/files/files/irp-annex-redacted-10mar15-en.pdf) [PDF, 7.82 MB] • Reference Materials 1 to 9 (/en/system/files/files/irp-reference-material-1-10mar15-en.pdf) [PDF, 6.73 MB] • Reference Materials 10 to 31 (/en/system/files/files/irp-reference-material-2-10mar15-en.pdf) [PDF, 13.8 MB] 	<p>10 March 2015</p>

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RESPONDENT'S EXHIBIT

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

INDEPENDENT REVIEW PANEL

ICDR No. 01-16-0000-7056

In the Matter of an Independent Review Process

Between:

**AMAZON EU S.A.R.L.,
Claimant,**

-and-

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent.**

**ORDER NO. 3: DENYING AMAZON’S OBJECTIONS TO REDACTIONS
OF CERTAIN PORTIONS OF THE HEARING TRANSCRIPT AND
EXHIBITS**

By letter brief dated May 26, 2017, Claimant Amazon EU S. a. r. l. (“Amazon”) objected to certain proposed redactions contained in the transcript of the hearing conducted on May 1-2, 2017. By letter brief dated June 1, 2017, ICANN responded to and opposed Amazon’s objections to the redactions.

All of the redactions involve explicit references to or information contained in certain exhibits, seven in total, that prior to the hearing were designated either CONFIDENTIAL or HIGHLY CONFIDENTIAL under a stipulated Protective Order entered by the Panel on January 4, 2017. Amazon br., Ex. 1. The Protective Order, titled Joint Stipulation Against Unauthorized Use or Disclosure of Confidential Information (“Joint Stipulation”), set forth the criteria for confidentiality designations. Thus, it permitted either party to designate certain documents

produced to the other in pre-hearing discovery as either “CONFIDENTIAL” based on a good faith belief that such document, *inter alia*, contained non-public “confidential or proprietary information or contained information covered by a legitimate privacy right or interest” or “HIGHLY CONFIDENTIAL” based on a good faith belief that the disclosure of same “would result in a serious competitive disadvantage to the producing party or otherwise seriously harm the producing Party.” Ex. 1, paras. 1 and 3. The parties stipulated that CONFIDENTIAL and HIGHLY CONFIDENTIAL documents or information derived from them is to be redacted from transcripts of, *inter alia*, the IRP hearing. Ex. 1, para. 9. In making designations, both parties were to have due regard for ICANN’s commitment to operate “to the maximum extent feasible in an open and transparent manner”, as provided for under Article III, Sections 3.1 and 3.2 of its By-Laws. Ex., para. 7.

The Joint Stipulation further provided for a procedure for the non-designating party to challenge or object to the producing party’s classification before this Panel, but required that it do so within five days after conferring with the other party concerning its objection. Ex. 1, para. 6. No challenge or objection was filed with this Panel by either party until Amazon’s challenge of May 26, 2017, well after the confidentiality designations had been made as to the seven exhibits in question.

Amazon contends that the redactions and, therefore, the underlying seven exhibits, must be disclosed, pursuant to transparency obligations of ICANN’s By-Laws. In addition, Amazon cites to ICANN’s Publication Practices (Amazon br., Ex. 2) as further support for its position. Among other things, chapter III relates to ICANN’s Documentary Information Disclosure Policy – Defined Conditions of Disclosure (“DIDP”). Chapter IV relates to Independent Review Process Materials. Amazon argues that the redactions are inconsistent with ICANN’s transparency obligations under the By-Laws and the provisions of the DIDP.

ICANN argues, in essence, that Amazon agreed to the criteria for confidentiality designations in the Joint Stipulation. It also contends that in the context on an IRP, such confidentiality protections may be, and in this case, were necessary to the full exchange of relevant documents. While ICANN has a commitment to transparency, its By-Laws and the DIDP recognize that there are situations where non-disclosure is appropriate.

Having reviewed and considered the letter briefs, the Joint Stipulation, the seven exhibits designated CONFIDENTIAL or HIGHLY CONFIDENTIAL, the redactions of limited portions of the hearing transcript, including the testimony of Akram Atallah and closing argument of counsel and colloquy between counsel and the Panel relating to the CONFIDENTIAL or HIGHLY CONFIDENTIAL exhibits, and ICANN’s Publication Practices, and for the reasons set forth below, the Panel declares that Amazon’s objections to the redactions are not well taken. They are, therefore, denied.

Six of the exhibits used by Amazon in its examination of Mr. Atallah and in closing argument were and are designated as Confidential (two were downgraded from Highly Confidential to Confidential at or near the time of the hearing) and one is still designated Highly Confidential. Upon review, the underlying exhibits appear to have been appropriately designated in the first instance, based upon the criteria agreed to by parties in their Joint Stipulation. (Ex. 1,

paras. 1, 3). The designations appear to have been made in good faith by ICANN, and there is no evidence to the contrary. Moreover, notwithstanding ICANN's transparency commitment, both ICANN'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 and sensitive private communications between ICANN and government officials may contain information that is appropriately protected against disclosure. See, e.g., Ex. 2, Chapter III, first and second bullets.

Based on our review, the redactions of hearing transcript appear to be directly related to information contained in the exhibits designated Confidential or Highly Confidential and, therefore, those portions of the transcript are properly redacted, pursuant to the Joint Stipulation. Ex. 1, para. 6; see also, Ex. 2, Chapter IV.C.

In light of our ruling, we do not reach ICANN's argument that Amazon has waived its objections to some or all of the exhibits and to redactions from the transcript containing information revealed in those exhibits.

After conferring with his co-Panelists, the Chair was authorized to sign this Order on behalf of the entire Panel.

SO ORDERED this 7th day of June, 2017



Robert C. Bonner
Chair and on behalf of the Panel

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RESPONDENT'S EXHIBIT

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 (Internet Corporation for Assigned Names and Numbers) bylaws are always available at:

<https://www.icann.org/resources/pages/governance/bylaws-en>
([/resources/pages/governance/bylaws-en](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 (Internet Corporation for Assigned Names and Numbers)") 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 (Internet Corporation for Assigned Names and Numbers):

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 (Domain Name System)");
 - b. Internet protocol ("IP (Internet Protocol or Intellectual Property)") addresses and autonomous system ("AS (Autonomous System ("AS") Numbers)") numbers; and
 - c. Protocol (Protocol) port and parameter numbers.
2. Coordinates the operation and evolution of the DNS (Domain Name System) 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 (Internet Corporation for Assigned Names and Numbers):

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 (Internet Corporation for Assigned Names and Numbers)'s activities to those matters within ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organizations), and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (ix) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers), 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 (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Supporting Organizations) (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Advisory Committee) and take duly into account any advice timely presented by the Governmental Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) budget, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) actions and periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) policy(ies); or

 - b. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)

website. at

<http://www.icann.org/en/groups/board/governance/reconsideration> ([/en/groups/board/governance/reconsideration](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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN (Internet Corporation for Assigned Names and Numbers).
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 (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers).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 (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the request for independent review, the IRP Panel must award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

1. The Board shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all members of the Board.

- 2. The Governmental Advisory Committee (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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) budget recommended by the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers));
4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

1. No ICANN (Internet Corporation for Assigned Names and Numbers) employee, Board member, or other participant in Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) shall prevent or impede the Ombudsman's contact with the ICANN (Internet Corporation for Assigned Names and Numbers) community (including employees of ICANN (Internet Corporation for Assigned Names and Numbers)). ICANN (Internet Corporation for Assigned Names and Numbers) employees and Board members shall direct members of the ICANN (Internet Corporation for

Assigned Names and Numbers) community who voice problems, concerns, or complaints about ICANN (Internet Corporation for Assigned Names and Numbers) to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

2. ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) structure, procedures, processes, or any conduct by the ICANN (Internet Corporation for Assigned Names and Numbers) 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

R-35

RESPONDENT'S EXHIBIT

13 DECEMBER 2017

ANALYSIS OF THE APPLICATION OF THE COMMUNITY PRIORITY EVALUATION (CPE) CRITERIA BY THE CPE PROVIDER IN CPE REPORTS

PREPARED FOR JONES DAY



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I. Introduction

On 17 September 2016, the Board of Directors of the Internet Corporation for Assigned Names and Numbers (ICANN organization) directed the President and CEO or his designees to undertake a review of the "process by which ICANN [organization] interacted with the [Community Priority Evaluation] CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider" as part of the New gTLD Program.¹ The Board's action was part of the ongoing discussions regarding various aspects of the CPE process, including some issues that were identified in the Final Declaration from the Independent Review Process (IRP) proceeding initiated by Dot Registry, LLC.²

On 18 October 2016, the Board Governance Committee (BGC) discussed potential next steps regarding the review of pending Reconsideration Requests relating to the CPE process.³ The BGC determined that, in addition to reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1), the review would also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (ii) a compilation of the reference material relied upon by the CPE Provider to the extent such reference material exists for the evaluations which are the subject of pending Reconsideration Requests (Scope 3).⁴ Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. FTI Consulting, Inc.'s (FTI) Global Risk and Investigations Practice and Technology Practice were retained by Jones Day on behalf of its client ICANN organization in order to conduct the CPE Process Review.

¹ <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

² *Id.*

³ <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

⁴ *Id.*

On 26 April 2017, Chris Disspain, the Chair of the BGC, provided additional information about the scope and status of the CPE Process Review.⁵ Among other things, he identified eight Reconsideration Requests that would be on hold until the CPE Process Review was completed.⁶ On 2 June 2017, ICANN organization issued a status update.⁷ ICANN organization informed the community that the CPE Process Review was being conducted on two parallel tracks by FTI. The first track focused on gathering information and materials from ICANN organization, including interviewing relevant ICANN organization personnel and document collection. This work was completed in early March 2017. The second track focused on gathering information and materials from the CPE Provider, including interviewing relevant personnel. This work was still ongoing at the time ICANN issued the 2 June 2017 status update.

On 1 September 2017, ICANN organization issued a second update, advising that the interview process of the CPE Provider's personnel that were involved in CPEs had been completed.⁸ The update further informed that FTI was working with the CPE Provider to obtain the CPE Provider's communications and working papers, including the reference material cited in the CPE reports prepared by the CPE Provider for the evaluations that are the subject of pending Reconsideration Requests. On 4 October 2017, FTI completed its investigative process relating to the second track.

This report addresses Scope 2 of the CPE Process Review and specifically details FTI's evaluation of whether the CPE Provider consistently applied the CPE criteria throughout each CPE.

⁵ <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

⁶ *See id.* The eight Reconsideration Requests that the BGC placed on hold pending completion of the CPE Process Review are: 14-30 (.LLC) (withdrawn on 7 December 2017, see <https://www.icann.org/en/system/files/files/dotregistry-llc-withdrawal-redacted-07dec17-en.pdf>), 14-32 (.INC) (withdrawn on 11 December 2017, see <https://www.icann.org/en/system/files/files/reconsideration-14-32-dotregistry-request-redacted-11dec17-en.pdf>), 14-33 (.LLP), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCK).

⁷ <https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>.

⁸ <https://newgtlds.icann.org/en/applicants/cpe/process//newgtlds.icann.org/en/applicants/cpe/podcast-qa-1-review-update-01sep17-en.pdf>.

II. Executive Summary

FTI concludes that the CPE Provider consistently applied the criteria set forth in the New gTLD Applicant Guidebook (Applicant Guidebook)⁹ and the CPE Guidelines throughout each CPE. This conclusion is based upon FTI's review of the written communications and documents and FTI's interviews with the relevant personnel described in Section III below.

Throughout its investigation, FTI carefully considered the claims raised in Reconsideration Requests and Independent Review Process (IRP) proceedings related to CPE. FTI specifically considered the claim that certain of the CPE criteria were applied inconsistently across the various CPEs as reflected in the CPE reports. FTI found no evidence that the CPE Provider's evaluation process or reports deviated in any way from the applicable guidelines; nor did FTI observe any instances where the CPE Provider applied the CPE criteria in an inconsistent manner. While some applications received full points for certain criterion and others did not, the CPE Provider's findings in this regard were not the result of inconsistent application of the criteria. Rather, based on FTI's investigation, it was observed that the CPE Provider's scoring decisions were based on a consistent application of the Applicant Guidebook and the CPE Guidelines.

III. Methodology

A. FTI's Investigative Approach.

In Scope 2 of the CPE Process Review, FTI was tasked with evaluating whether the CPE Provider applied the CPE criteria consistently throughout each CPE. This type of evaluation is commonly referred to in the industry as a "compliance investigation." In a compliance investigation, an investigator analyzes applicable policies and procedures and evaluates whether a person, corporation, or other entity complied with or properly applied those policies and procedures in carrying out a specific task. Here, FTI

⁹ See Applicant Guidebook, Module 4.2 at Pgs. 4-7 to 4-19 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

employed the aforementioned compliance-focused investigative methodology and strategy in connection with Scope 2 of the CPE Process Review.

FTI also incorporated aspects of a traditional investigative approach promulgated by the Association of Certified Fraud Examiners (ACFE).¹⁰ This international investigative methodology is used by both law enforcement and private investigative companies worldwide.

These types of investigations begin with the formation of an investigative plan which identifies documentation, communications, individuals, and entities that may be potentially relevant to the investigation. The next step involves the collection and review of all potentially relevant materials and documentation, including applicable procedures, materials, and communications pertaining to the subject of the investigation. After gaining a comprehensive understanding of the relevant background facts, investigators then interview relevant individuals deemed to have knowledge pertinent to the subject being investigated.

Investigators then re-review relevant documents and materials, compare information contained in those materials to the information obtained in interviews, identify any gaps, inconsistencies, or contradictions within the information gathered, and ascertain any need for additional information. This step also frequently results in follow-up interviews in order to either confirm or rule out any gaps, inconsistencies, or contradictions. Follow-up interviews also may be conducted to re-confirm with interviewees certain facts or ask for elaboration on certain issues.

Investigators then re-analyze all relevant documentation to prepare for writing the investigative report.

¹⁰ THE ACFE is the largest and most prestigious anti-fraud organization globally; it grants certification to members who meet its standards of professionalism. See www.acfe.com. FTI's investigative team, which includes published authors and frequent speakers on investigative best practices, holds this certification.

B. FTI's Investigative Steps for Scope 2 of the CPE Process Review.

Consistent with the above-described methodology, FTI undertook the following process to evaluate whether the CPE criteria were applied consistently throughout each CPE.

Specifically, FTI did the following:

- Reviewed publicly available documents pertaining to CPE, including:
 1. New gTLD Applicant Guidebook (the entire Applicant Guidebook with particular attention to Module 4.2):
<https://newgtlds.icann.org/en/applicants/agb>;
 2. CPE page: <https://newgtlds.icann.org/en/applicants/cpe>;
 3. CPE Panel Process document: <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>;
 4. CPE Guidelines document: <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>;
 5. Updated CPE FAQs: <https://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>;
 6. Contract and SOW between ICANN organization and the CPE Provider, available at: <https://newgtlds.icann.org/en/applicants/cpe>;
 7. CPE results and reports: <https://newgtlds.icann.org/en/applicants/cpe#invitations>;
 8. Preparing Evaluators for the New gTLD Application Process: <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>;
 9. New gTLDs: Call for Applicant Evaluation Panel Expressions of Interest: <https://www.icann.org/news/announcement-2009-02-25-en>;
 10. Evaluation Panels: <https://newgtlds.icann.org/en/program-status/evaluation-panels>;
 11. Evaluation Panels Selection Process: <https://newgtlds.icann.org/en/about/evaluation-panels-selection-process>;

12. Application Comments:
<https://gtldcomment.icann.org/applicationcomment/viewcomments>;
13. External media: news articles on ICANN organization in general as well as the CPE process in particular;
14. BGC's comments on Recent Reconsideration Request:
<https://www.icann.org/news/blog/bgc-s-comments-on-recent-reconsideration-request>;
15. Relevant Reconsideration Requests:
<https://www.icann.org/resources/pages/accountability/reconsideration-en>;
16. CPE Archive Resources:
<https://newgtlds.icann.org/en/applicants/cpe#archive-resources>;
17. Relevant Independent Review Process Documents:
<https://www.icann.org/resources/pages/accountability/irp-en>;
18. New gTLD Program Implementation Review regarding CPE, section 4.1,
<https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf>;
19. Community Priority Evaluation Process Review Update:
<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>;
20. Community Priority Evaluation>Timeline:
<https://newgtlds.icann.org/en/applicants/cpe/timeline-10sep14-en.pdf>;
21. Community Priority Evaluation Teleconference – 10 September 2013, Additional Questions & Answers:
<https://newgtlds.icann.org/en/applicants/cpe/podcast-qa-10sep13-en.pdf>;
22. Community Priority Evaluation Process Review Update:
<https://newgtlds.icann.org/en/applicants/cpe/process//newgtlds.icann.org/en/applicants/cpe/podcast-qa-1-review-update-01sep17-en.pdf>;
23. Board Governance Committee:
<https://www.icann.org/resources/pages/governance-committee-2014-03-21-en>;
24. ICANN Bylaws:
<https://www.icann.org/resources/pages/governance/bylaws-en>;
25. Relevant Correspondence related to CPE:
<https://www.icann.org/resources/pages/correspondence>;

26. Board Resolution 2016.09.17.01 and Rationale for Resolution:
<https://www.icann.org/resources/board-material/resolutions-2016-09-17-en>;
 27. Minutes of 17 September 2016 Board Meeting:
<https://www.icann.org/resources/board-material/minutes-2016-09-17-en>;
 28. BGC Minutes of the 18 October 2016 Meeting:
<https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>;
 29. Letter from Chris Disspain to All Concerned Parties, dated 17 April 2016:
<https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>;
 30. New gTLD Program Implementation Review Report,
<https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf>; and
 31. Case 15-00110, In a matter of an Own Motion Investigation by the ICANN Ombudsman, <https://omblog.icann.org/index.html%3Fm=201510.html>.
- Requested, received, and reviewed the following from ICANN organization:
 1. Internal emails among relevant ICANN organization personnel relating to the CPE process and evaluations (including email attachments); and
 2. External emails between relevant ICANN organization personnel and relevant CPE Provider personnel relating to the CPE process and evaluations (including email attachments).
 - Requested the following from the CPE Provider:
 1. Internal emails among relevant CPE Provider personnel, including evaluators, relating to the CPE process and evaluations (including email attachments);
 2. External emails between relevant CPE Provider personnel and relevant ICANN organization personnel related to the CPE process and evaluations (including email attachments); and
 3. The CPE Provider's internal documents pertaining to the CPE process and evaluations, including working papers, draft reports, notes, and spreadsheets.

FTI did not receive documents from the CPE Provider in response to Items 1 or 2. FTI did receive and reviewed documents from ICANN Organization that were

responsive to the materials FTI requested from the CPE Provider in Item 2 (i.e., emails between relevant CPE Provider personnel and relevant ICANN organization personnel related to the CPE process and evaluations (including email attachments)). FTI received and reviewed documentation produced by the CPE Provider in response to Item 3.

- Interviewed relevant ICANN organization personnel.
- Interviewed relevant CPE Provider personnel.
- Compared the information obtained from both ICANN organization and the CPE Provider.

FTI understands that various applicants requested that they be interviewed in connection with the CPE Process Review. FTI determined that such interviews were not necessary or appropriate because FTI's task is to evaluate whether the CPE Provider consistently applied the CPE criteria as set forth in the Applicant Guidebook and CPE Guidelines, and neither of those governing documents provide for applicant interviews. Further, in keeping with the Applicant Guidebook and CPE Guidelines, the CPE Provider did not interview applicants during its evaluation process; accordingly, FTI determined that it was not warranted to do so in connection with Scope 2 of the CPE Process Review. FTI did obtain an understanding of applicants' concerns through a comprehensive review and analysis of the materials described above, including claims raised in all relevant Reconsideration Requests and IRP proceedings.

In the context of Scope 2 of the CPE Process Review, FTI examined all aspects of the CPE Provider's evaluation process in evaluating whether the CPE Provider consistently applied the CPE criteria throughout each CPE. Specifically, FTI's investigation included the following steps:

1. FTI formulated an investigative plan and, based on that plan, collected potentially relevant materials (as described above).
2. FTI analyzed all relevant materials (as described above) to ensure that FTI had a solid understanding of the CPE process and specifically the guidelines pertaining to the scoring of the CPE criteria.

3. With that foundation, FTI then evaluated the materials and email communications (including attachments) provided by ICANN organization and the CPE Provider (as described above). FTI also analyzed drafts and final versions of the CPE reports, as well materials submitted in relevant Reconsideration Requests and IRP proceedings challenging CPE outcomes. These documents were particularly relevant to Scope 2 of the CPE Process Review because they reflect the manner in which the CPE Provider applied the CPE criteria to each application and the concerns raised by various applicants regarding the CPE process.
4. FTI then interviewed relevant ICANN organization personnel separately. FTI asked each individual to describe the CPE process and his/her role in that process. FTI also asked each individual to explain his/her interaction with the CPE Provider and his/her understanding of the steps the CPE Provider undertook in order to perform CPE.
5. FTI then interviewed two members of the CPE Provider's staff and asked each to explain in detail his/her understanding of the CPE guidelines. As noted in FTI's report addressing Scope 1 of the CPE Process Review, these two individuals were the only two remaining personnel who participated in the CPE process (both were also part of the core team for all 26 evaluations). Each explained in detail his/her understanding of the CPE criteria. The interviewees also explained the evaluation process the CPE Provider undertook to perform CPE.
6. FTI then analyzed the CPE Provider's working papers associated with each evaluation, including documents capturing the evaluators' work, spreadsheets prepared by the core team for each evaluation and which reflect the initial scoring decisions, notes, and every draft of each CPE report including the final report as published by ICANN organization.
7. FTI engaged in follow-up communications with CPE Provider personnel in order to clarify details discussed in the earlier interviews and in the materials provided.
8. FTI then re-analyzed the Reconsideration Requests and materials submitted in IRP proceedings pertaining to CPE with a specific focus on identifying any claims that the CPE Provider inconsistently applied the CPE criteria.
9. FTI then reviewed the written materials produced by ICANN organization and the CPE Provider and prepared this report for Scope 2 of the CPE Process Review.

IV. Background on CPE

CPE is a contention resolution mechanism available to applicants that self-designated their applications as community applications.¹¹ CPE is defined in Module 4.2 of the Applicant Guidebook, and allows a community-based application to undergo an evaluation against the criteria as defined in section 4.2.3 of the Applicant Guidebook, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus prevail over other applications in the contention set.¹² CPE will occur only if a community-based applicant selects to undergo CPE for its relevant application and after all applications in the contention set have completed all previous stages of the new gTLD evaluation process. CPE is performed by an independent provider (CPE Provider).¹³

As noted, the standards governing CPE are set forth in Module 4.2 of the Applicant Guidebook.¹⁴ The CPE Provider personnel interviewed by FTI stated that they were strict constructionists and used the Applicant Guidebook as their "bible." Further, the CPE Provider stated that it relied first and foremost on material provided by the applicant. The CPE Provider informed FTI that it only accessed reference material when the evaluators or core team decided that research was needed to address questions that arose during the review.

In addition, the CPE Provider published the CPE Panel Process Document, explaining that the CPE Provider was selected to implement the Applicant Guidebook's CPE provisions.¹⁵ The CPE Provider also published supplementary guidelines (CPE Guidelines) that provided more detailed scoring guidance, including scoring rubrics,

¹¹ See Applicant Guidebook, Module 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>). See also <https://newgtlds.icann.org/en/applicants/cpe>.

¹² *Id.* at Module 4.2 at Pg. 4-7 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹³ *Id.*

¹⁴ <https://newgtlds.icann.org/en/applicants/agb>.

¹⁵ See CPE Panel Process Document (<http://newgtlds.icann.org/en/applicant/cpe/panel-process-07aug14-en.pdf>).

definitions of key terms, and specific questions to be scored.¹⁶ The CPE Provider personnel interviewed by FTI stated that the CPE Guidelines were intended to increase transparency, fairness, and predictability around the assessment process. As discussed in further detail below, the CPE Guidelines set forth the methodology that the CPE Provider undertook to evaluate each criterion.

Based upon the materials reviewed and interviews with ICANN organization and CPE Provider personnel, FTI learned that each evaluation began with a notice of commencement from ICANN organization to the CPE Provider via email. As part of the notice of commencement, ICANN organization identified the materials in scope, which included: application questions 1-30a, application comments, correspondence, objection outcomes, and outside research (as necessary). ICANN organization delivered to the CPE Provider the public comments available at the time of commencement of the CPE process. The CPE Provider was responsible for gathering the application materials, including letters of support and correspondence, from the public ICANN organization website.¹⁷

The CPE Provider personnel responsible for CPE consisted of a core team, a Project Director, a Project Coordinator, and independent evaluators. Before the CPE Provider commenced CPE, all evaluators, including members of the core team, confirmed that no conflicts of interest existed. In addition, all evaluators underwent regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which was followed by regular training sessions to ensure that all evaluators had the same understanding of the evaluation process and procedures.¹⁸

Two independent evaluators were assigned to each evaluation. The evaluators worked independently to assess and score the application in accordance with the Applicant

¹⁶ See CPE Guidelines (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

¹⁷ See CPE Panel Process Document (<http://newgtlds.icann.org/en/applicant/cpe/panel-process-07aug14-en.pdf>).

¹⁸ *Id.*

Guidebook and CPE guidelines. During its investigation, FTI learned that the CPE Provider's evaluators primarily relied upon a database to capture their work (i.e., all notes, research, and conclusions) pertaining to each evaluation. The database was structured with the following fields for each criterion: Question, Answer, Evidence, Sources. The Question section mirrored the questions pertaining to each sub-criterion set forth in the CPE Guidelines. For example, section 1.1.1. in the database was populated with the question, "Is the community clearly delineated?"; the same question appears in the CPE Guidelines. The Answer section had space for the evaluator to input his/her answer to the question; FTI observed that the answer generally took the form of a "yes" or "no" response. In the Evidence section, the evaluator provided his/her reasoning for his/her answer. In the Source section, the evaluator could list the source(s) he/she used to formulate an answer to a particular question, including but not limited to, the application (or sections thereof), reference material, or letters of support or opposition. The same questions were asked and the same criteria were applied to every application, and the responses and resulting evaluations formed the basis for the evaluators' scoring decisions.

According to the CPE Provider interviewees, each evaluator separately presented his/her findings in the database and then discussed his/her findings with the Project Coordinator. Then, the Project Coordinator created a spreadsheet that included sections detailing the evaluators' answers to the Question section in the database and summarizing the evaluators' conclusions on each criterion and sub-criterion. The core team then met to review and discuss the evaluators' work and scores. Following internal deliberations among the core team, the initial evaluation results were documented in the spreadsheet. The interviewees stated that, at times, the evaluators came to different conclusions on a particular score or issue. In these circumstances, the core team evaluated each evaluator's work and then referred to the Applicant Guidebook and CPE Guidelines in order to reach a conclusion as to scoring. Consistent with the CPE Panel Process Document, before the core team reached a conclusion, an evaluator may be asked to conduct additional research to answer

questions that arose during the review.¹⁹ The core team would then deliberate and coming up with a consensus as to scoring.

The process of drafting a CPE report would then commence. Each sub-criterion and the scoring rationale were addressed in each relevant section of the draft report. As discussed in further detail in FTI's report relating to Scope 1 of the CPE Process Review, ICANN organization had no role in the evaluation process and no role in the writing of the initial draft CPE report. Based upon FTI's investigation, the CPE Provider followed the same evaluation process in each CPE.²⁰ The CPE Provider's role was to determine whether the community-based application fulfilled the four community priority criteria set forth in Section 4.2.3 of the Applicant Guidebook. As discussed in detail below, the four criteria include: (i) Community Establishment; (ii) Nexus between Proposed String and Community; (iii) Registration Policies; and (iv) Community Endorsement. The sequence of the criteria reflects the order in which they will be assessed by the panel.²¹ To prevail in CPE, an application must receive at least 14 out of 16 points on the scoring of the foregoing criteria, each of which is worth a maximum of four points.²² The CPE criteria is discussed further below.

A. Criterion 1: Community Establishment.

The Community Establishment criterion evaluates "the community as explicitly identified and defined according to statements in the application."²³ The Community Establishment criterion is measured by two sub-criterion: (i) 1-A, "Delineation;" and (ii) 1-B, "Extension."²⁴

¹⁹ *Id.*

²⁰ See Report Re: Scope 1 of CPE Process Review.

²¹ See Applicant Guidebook, Module 4.2.3 at Pgs. 4-10-4-17 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

²² *Id.* at Pg. 4-10.

²³ *Id.*

²⁴ *Id.*

An application may receive a maximum of four points on the Community Establishment criterion, including up to two points for each sub-criterion, which are Delineation and Extension. To obtain two points for Delineation, the community must be "clearly delineated, organized, and pre-existing."²⁵ One point is awarded if a community is a "clearly delineated and pre-existing community" but does not fulfill the requirements for a score of 2.²⁶ Zero points are awarded if there is "insufficient delineation and pre-existence for a score of 1."²⁷

To obtain two full points for Extension, the community must be "of considerable size and longevity."²⁸ One point is awarded if the community is "of either considerable size or longevity, but not fulfilling the requirements for a score of 2."²⁹ Zero points are awarded if the community is "of neither considerable size nor longevity."³⁰

For sub-criterion 1-A, Delineation, the CPE Guidelines state that the following questions must be evaluated when considering the application:

- Is the community clearly delineated?³¹
- Is there at least one entity mainly dedicated to the community?³²
- Does the entity have documented evidence of activities?³³
- Has the community been active since at least September 2007?³⁴

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See CPE Guidelines at Pg. 3 (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

The CPE Guidelines provide additional guidance on factors that can be considered when evaluating these four questions.³⁵

For sub-criterion 1-B, Extension, the CPE Guidelines state that the following questions must be evaluated when considering the application:

- Is the community of considerable size?³⁶
- Does the community demonstrate longevity?³⁷

B. Criterion 2: Nexus between Proposed String and Community.

The Nexus criterion evaluates "the relevance of the string to the specific community that it claims to represent."³⁸ The Nexus criterion is measured by two sub-criterion: (i) 2-A, "Nexus"; and (ii) 2-B, "Uniqueness."³⁹

An application may receive a maximum of four points on the Nexus criterion, including up to three points for Nexus and one point for Uniqueness. To obtain three points for Nexus, the applied-for string must "match the name of the community or be a well-known short-form or abbreviation of the community."⁴⁰ For a score of 2, the applied-for string should closely describe the community or the community members, without overreaching 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

³⁵ *Id.* at Pgs. 3-5.

³⁶ *Id.* at Pg. 5.

³⁷ *Id.*

³⁸ See Applicant Guidebook, Module 4.2.3 at Pg. 4-13 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

³⁹ *Id.* at Pgs. 4-12-4-13.

⁴⁰ *Id.*

qualify for a 2.⁴¹ Zero points are awarded if the string "does not fulfill the requirements for a score of 2."⁴² It is not possible to receive a score of one for this sub-criterion.

To obtain one point for Uniqueness, the applied-for string must have "no other significant meaning beyond identifying the community described in the application."⁴³ 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 phrase "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.⁴⁴ 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."⁴⁵ Zero points are awarded if the string "does not fulfill the requirements for a score of 1."⁴⁶

For sub-criterion 2-A, Nexus, the CPE Guidelines state that the following question must be evaluated when considering the application:

- Does the string match the name of the community or is it a well-known short-form or abbreviation of the community name? The name may be, but does not need to be, the name of an organization dedicated to the community.⁴⁷

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at Pg. 4-13.

⁴⁴ *Id.* at Pgs. 4-13-4-14.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See CPE Guidelines at Pg. 7 (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

For sub-criterion 2-B, Uniqueness, the CPE Guidelines state that the following question must be evaluated when considering the application:

- Does the string have any other significant meaning (to the public in general) beyond identifying the community described in the application?⁴⁸

C. Criterion 3: Registration Policies.

The Registration Policies criterion evaluates the registration policies set forth in the application on four elements: (i) 3-A, "Eligibility"; (ii) 3-B, "Name Selection"; (iii) 3-C, "Content and Use"; and (iv) 3-D, "Enforcement."⁴⁹ An application may receive a maximum of four points on the Registration Policies criterion, including one point for each of the four sub-criterion stated above.

For sub-criterion 3-A, Eligibility, one point is awarded if "eligibility is restricted to community members."⁵⁰ If there is a "largely unrestricted approach to eligibility," zero points are awarded.⁵¹

For sub-criterion 3-B, Name Selection, one point is awarded if the policies set forth in an application "include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD."⁵²

For sub-criterion 3-C, Content and Use, one point is awarded if the policies set forth in an application "include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD."⁵³

For sub-criterion 3-D, Enforcement, one point is awarded if the policies set forth in an application "include specific enforcement measures (e.g., investigation practices,

⁴⁸ *Id.* at Pgs. 9-10.

⁴⁹ See Applicant Guidebook, Module 4.2.3 at Pgs. 4-14-4-15 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

⁵⁰ *Id.* at Pg. 4-14.

⁵¹ *Id.*

⁵² *Id.* at Pg. 4-15.

⁵³ *Id.*

penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms."⁵⁴

For sub-criterion 3-A, Eligibility, the CPE Guidelines state that the following question must be evaluated when considering the application:

- Is eligibility for being allowed as a registrant restricted?⁵⁵

For sub-criterion 3-B, Name Selection, the CPE Guidelines state that the following questions must be evaluated when considering the application:

- Do the policies set forth in the application include name selection rules?⁵⁶
- Are name selection rules consistent with the articulated community-based purpose of the applied-for gTLD?⁵⁷

For sub-criterion 3-C, Content and Use, the CPE Guidelines state that the following question must be evaluated when considering the application:

- Do the policies set forth in the application include content and use rules?⁵⁸
- If yes, are the content and use rules consistent with the articulated community-based purpose of the applied-for gTLD?⁵⁹

For sub-criterion 3-D, Enforcement, the CPE Guidelines state that the following question must be evaluated when considering the application:

- Do the enforcement policies set forth in the application include specific enforcement measures constituting a coherent set with appropriate appeal mechanisms?⁶⁰

⁵⁴ *Id.*

⁵⁵ See CPE Guidelines at Pg. 11 (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

⁵⁶ *Id.* at Pg. 12.

⁵⁷ *Id.*

⁵⁸ *Id.* at Pg. 13.

⁵⁹ *Id.*

⁶⁰ *Id.* at Pg. 14.

D. Criterion 4: Community Endorsement.

The Community Endorsement criterion evaluates community support for and/or opposition to an application.⁶¹ The Community Endorsement criterion is measured by two sub-criterion: (i) 4-A, "Support"; and (ii) 4-B, "Opposition."⁶² An application may receive a maximum of four points on the Community Endorsement criterion, including up to two points for each sub-criterion.

To obtain two points for the Support sub-criterion, an applicant must be the recognized community institution/member organization or have documented support from the recognized community institution/member organization, or have otherwise documented authority to represent the community.⁶³ "Recognized" community institutions are those institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.⁶⁴ In cases of multiple institutions/organizations, there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.⁶⁵ 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.⁶⁶

One point is awarded if the applicant has submitted documented support with its application from at least one group with relevance,⁶⁷ but does not have documented support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent

⁶¹ See Applicant Guidebook, Module 4.2.3 at Pg. 4-17 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at Pgs. 4-17-4-18.

⁶⁵ *Id.* at Pg. 4-18.

⁶⁶ *Id.*

⁶⁷ *Id.* at Pg. 4-17.

the community with its application.⁶⁸ Zero points are awarded 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.⁶⁹

To obtain two points for the Opposition sub-criterion, there must be "no opposition of relevance" to the application.⁷⁰ One point is awarded if there is "relevant opposition from one group of non-negligible size."⁷¹ Zero points are awarded if there is "relevant opposition from two or more groups of non-negligible size."⁷² 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. 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.⁷³

For sub-criterion 4-A, Support, the CPE Guidelines state that the following questions must be evaluated when considering the application:

- Is the applicant the recognized community institution or member organization?⁷⁴
- Does the applicant have documented support from the recognized community institution(s)/member organization(s) to represent the community?⁷⁵

⁶⁸ *Id.* at Pg. 4-18.

⁶⁹ *Id.*

⁷⁰ *Id.* at Pg. 4-17.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at Pgs. 4-18-4-19 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

⁷⁴ See CPE Guidelines at Pgs. 16-17 (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

⁷⁵ *Id.*

- Does the applicant have documented authority to represent the community?⁷⁶
- Does the applicant have support from at least one group with relevance?⁷⁷

For sub-criterion 4-B, Opposition, the CPE Guidelines state that the following question must be evaluated when considering the application:

- Does the application have any opposition that is deemed relevant?⁷⁸

V. The CPE Provider Applied The CPE Criteria Consistently In All CPEs.

FTI assessed whether the CPE Provider consistently followed the same evaluation process in all CPEs, and whether the CPE Provider applied the CPE criteria on a consistent basis throughout the evaluation process. FTI found that the CPE Provider consistently followed the same evaluation process in all CPEs and that it consistently applied each CPE criterion and sub-criterion in the same manner in each CPE. In particular, as explained in detail below, the CPE Provider evaluated each application in the same way. While some applications received full points, others received partial points, and others received zero points for any given criterion, the scoring decisions were not the result of any inconsistent or disparate treatment by the CPE Provider. Instead, the CPE Provider's scoring decisions were based on a rigorous and consistent application of the requirements set forth in the Applicant Guidebook and CPE Guidelines. FTI also evaluated whether the CPE Provider was consistent in the use of Clarifying Questions, and concludes that a consistent approach was employed.

FTI's investigation was informed by the concerns raised in the Reconsideration Requests, IRP proceedings and correspondence submitted to ICANN organization related to the CPE process. Reconsideration is an accountability mechanism available under ICANN organization's Bylaws and involves a review process administered by the

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at Pg. 19.

BGC.⁷⁹ Since the commencement of the New gTLD Program, more than 20 Reconsideration Requests have been filed where the requestor sought reconsideration of CPE results. FTI reviewed in detail these requests and the corresponding BGC's recommendations and/or determinations, as well as the Board's actions associated with these requests.⁸⁰ Several requestors made claims that are of particular relevance to Scope 2 of the CPE Process Review. Specifically, FTI observed several claims that certain CPE criteria were applied inconsistently across the various CPEs as reflected in the CPE reports, particularly with respect to the Community Establishment and Nexus criteria. FTI also reviewed claims raised by various claimants in IRP proceedings challenging CPE outcomes. FTI factored the CPE-related claims raised in both the Reconsideration Requests and the IRPs into its investigation. It is noted, however, that FTI's task is to evaluate whether the CPE criteria as set forth in the Applicant Guidebook and CPE Guidelines were applied consistently throughout each CPE.⁸¹ FTI was not asked to re-evaluate the applications. Ultimately, as detailed below, FTI found no evidence of inconsistent or disparate treatment by the CPE Provider.

A. The Community Establishment Criterion (Criterion 1) was Applied Consistently in all CPEs.

To assess whether the Community Establishment criterion was applied consistently, FTI evaluated how the CPE Provider applied each sub-criterion, i.e., Delineation and Extension. In doing so, FTI considered whether the CPE Provider approached in a consistent manner the questions that, pursuant to the Applicant Guidebook and CPE Guidelines, must be asked by the CPE Provider when evaluating each sub-criterion. In order to complete this evaluation, FTI reviewed the CPE Provider's scoring and

⁷⁹ Prior to 22 July 2017, the BGC was tasked with reviewing reconsideration requests. See ICANN organizations Bylaws, 1 October 2016, ART. 4, § 4.2 (e) (<https://www.icann.org/resources/pages/bylaws-2016-09-30-en#article4>). Following 22 July 2017, the Board Accountability Mechanisms Committee (BAMC) is tasked with reviewing and making recommendations to the Board on reconsideration requests. See ICANN organization Bylaws, 22 July 2017, 4, § 4.2 (e) (<https://www.icann.org/resources/pages/governance/bylaws-en/#article4>).

⁸⁰ *Id.*

⁸¹ See <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>; see also <https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>.

corresponding rationale for each sub-criterion for Community Establishment for each report and compared all reports to each other to determine if the CPE Provider applied each sub-criterion consistently and in accordance with the Applicant Guidebook and CPE Guidelines.

As noted above, the Community Establishment criterion is measured by two sub-criterion: (i) Delineation (worth two points); and (ii) Extension (worth two points).⁸² While some applications received full points for the Community Establishment criterion and others did not, the CPE Provider's findings in this regard were not the result of inconsistent application of the criterion. Rather, based on its investigation, FTI concludes that all applications were evaluated on a consistent basis by the CPE Provider.

1. Sub-criterion 1-A: Delineation

To receive two points for Delineation, the Applicant Guidebook and CPE Guidelines require that the community as defined in the application be clearly delineated, organized, and pre-existing.⁸³ FTI observed that all 26 CPE reports revealed that the CPE Provider methodically evaluated each element across all 26 CPEs. As reflected in twelve CPE reports, the relevant applications received the maximum two points;⁸⁴ as

⁸² Applicant Guidebook, Module 4.2.3 at Pg. 4-10 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

⁸³ *Id.* See also CPE Guidelines at Pg. 3 (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

⁸⁴ Twelve CPE reports recorded the maximum two points. See OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); and MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>).

shown in one CPE report, the relevant application received one point;⁸⁵ and as noted in 13 CPE reports, the relevant applications received zero points.⁸⁶

a. Clearly Delineated

Two conditions must be met for a community to be clearly delineated: (i) there must be a clear, straightforward membership definition; and (ii) there must be awareness and recognition of a community as defined by the application among its members.⁸⁷

FTI observed that "a clear and straightforward membership" definition was deemed to be sufficiently demonstrated where membership could be determined through formal registration, certification, or accreditation (i.e., license, certificate of registration, etc.).⁸⁸ This was the case even if the CPE Provider found the community definition to be

⁸⁵ One CPE report recorded one point. See RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

⁸⁶ Thirteen CPE reports recorded zero points. See IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>).

⁸⁷ Applicant Guidebook, Module 4.2.3 at Pg. 4-11 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

⁸⁸ The CPE Provider determined that six of the 13 applications that received zero points for the Delineation sub-criterion were not "clearly delineated" because they did not demonstrate "a clear and straightforward membership." See ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>), GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); and SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>).

broad.⁸⁹ On the other hand, the CPE Provider determined that a community definition did not demonstrate a "clear and straightforward membership" if it was too broadly defined in the application and could not be determined through formal registration, or was "unbound and dispersed" because the community may not resonate with all stakeholders that it seeks to represent.⁹⁰ The CPE Provider also determined that a community definition showed a clear and straightforward membership where the membership was dependent on having a clear connection to a defined geographic area.⁹¹

FTI observed that the CPE Provider determined that there was "awareness and recognition of a community as defined by the application among its members" where membership could be determined through formal registration, certification, or accreditation (i.e., license, certificate of registration, etc.).⁹² On the other hand, the CPE Provider determined that the community as defined in the application did not have awareness and recognition among its members if the affiliated businesses and sectors had only a tangential relationship with the core community. In those instances, the CPE Provider found that the affiliated businesses and sectors would not associate

⁸⁹ See, e.g., TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); and LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>).

⁹⁰ See Applicant Guidebook, Module 4.2.3 at Pg. 4-11 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

⁹¹ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); and CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>).

⁹² See, e.g., MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

themselves with the community as defined.⁹³ The CPE Provider also determined that commonality of interest was not enough to satisfy the "awareness and recognition of a community" element because it did not provide substantive evidence of what the Applicant Guidebook defines as "cohesion."⁹⁴

The applications underlying the 12 CPE reports that recorded two points, and the one CPE report that recorded one point satisfied both aspects of the clearly delineated prong of the Delineation sub-criterion: the applications demonstrated a "clear and straightforward membership" of community and an "awareness and recognition of a community as defined by the application among its members."⁹⁵ Of the applications underlying the 13 CPE reports that recorded zero points for the clearly delineated prong of the Delineation sub-criterion, six did not satisfy either element for the clearly delineated prong.⁹⁶ The applications underlying the seven CPE reports that recorded

⁹³ See, e.g., IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); and LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>).

⁹⁴ See, e.g., ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); and KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>).

⁹⁵ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

⁹⁶ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report ([26](https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-</p>
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zero points for the clearly delineated prong were determined to have demonstrated a "clear and straightforward membership" of community, but failed to demonstrate an "awareness and recognition of a community as defined by the application among its members."⁹⁷ The applications underlying all 13 of the CPE reports that recorded zero points failed to satisfy the "awareness" element of the clearly delineated prong of the Delineation sub-criterion.

b. Organization

Two conditions must be met to fulfill the requirements for organization: (i) there must be at least one entity mainly dedicated to the community; and (ii) there must be documented evidence of community activities.⁹⁸

FTI observed that, where the CPE Provider determined that there was not "at least one entity mainly dedicated to the community," then the existing entities did not represent a majority of the community as defined in the application.⁹⁹ If the CPE Provider determined that an application failed to satisfy either prong under the "clearly delineated" analysis (*see infra*), then the CPE Provider also determined that there was not "at least one entity mainly dedicated to the community" as defined in the application.¹⁰⁰ All applications that received two points for the Delineation sub-criterion

46695-en.pdf); and SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>).

⁹⁷ TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); and SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>).

⁹⁸ See Applicant Guidebook, Module 4.2.3 at Pg. 4-11 (<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>).

⁹⁹ See, e.g., IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); and GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>).

¹⁰⁰ See IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840->

were determined to have "at least one entity mainly dedicated to the community."¹⁰¹ Of the applications underlying the 13 CPE reports that recorded zero points and the one report that recorded one point for the Delineation sub-criterion, all were deemed to lack "at least one entity mainly dedicated to the community" as defined.¹⁰²

With respect to the "documented evidence of community activities" prong, FTI observed that an application was deemed to have satisfied this condition where community

en.pdf); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>).

¹⁰¹ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); and MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>).

¹⁰² IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

activities were documented through formal membership or registration.¹⁰³ On the other hand, if the CPE Provider determined that an application was unable to demonstrate that there existed at least one entity mainly dedicated to the community as defined, then that application did not satisfy this prong. Of the applications underlying the 12 CPE reports that recorded two points for the Delineation sub-criterion, all satisfied the "documented evidence of community activities" prong.¹⁰⁴ All of the applications underlying the 14 CPE reports that were deemed to lack "at least one entity mainly dedicated to the community" as defined in the application, were also deemed to lack "documented evidence of community activities."¹⁰⁵

¹⁰³ See, e.g., HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); and TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>).

¹⁰⁴ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); and MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>).

¹⁰⁵ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

c. Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).¹⁰⁶

Thirteen applications failed to satisfy the pre-existence prong;¹⁰⁷ twelve applications satisfied this prong.¹⁰⁸

FTI observed that, if the community as defined in the application was determined by the CPE Provider to be a "construed" community,¹⁰⁹ then the CPE Provider also found that the community did not exist prior to September 2007, even if its constituent parts may have been active prior to September 2007.¹¹⁰ Further, if the CPE Provider determined

¹⁰⁶ Applicant Guidebook, Module 4.2.3 at Pg. 4-11 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹⁰⁷ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>).

¹⁰⁸ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹⁰⁹ Applicant Guidebook, Module 4.2.3 at Pg. 4-9 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹¹⁰ See, e.g., IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>).

that an application failed to satisfy either prong under the "clearly delineated" analysis (see *infra*), then the CPE Provider also determined that the application did not satisfy the requirements for pre-existence.¹¹¹ Each of the applications underlying the 13 CPE reports that recorded zero points for the Delineation sub-criterion were deemed by the CPE Provider to set forth a "construed community."¹¹² Each of the applications underlying the 12 CPE reports that recorded two points and the one that recorded one point for the Delineation sub-criterion were determined to have demonstrated pre-existence prior to September 2007.¹¹³

18840-en.pdf); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); and ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>).

¹¹¹ See Applicant Guidebook, Module 4.2.3 at Pg. 4-10

(<https://newgtlds.icann.org/en/applicants/agg/string-contention-procedures-04jun12-en.pdf>).

¹¹² IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>).

¹¹³ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

2. Sub-Criterion 1-B: Extension

The Applicant Guidebook and CPE Guidelines require a community of considerable size and longevity to receive full points for the Extension sub-criterion.¹¹⁴

a. Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members. The CPE Provider determined that all community applicants defined communities of considerable size.¹¹⁵ FTI observed that, where the CPE Provider determined that the community lacked clear and straightforward membership or there was not awareness of a community (i.e., where the CPE Provider found that the

¹¹⁴ See Applicant Guidebook, Module 4.2.3 at Pg. 4-10, (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>). See also CPE Guidelines at Pg. 5 (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

¹¹⁵ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

community as defined in the application was not "clearly delineated"), then the CPE Provider determined that the size requirements could not be met.¹¹⁶ All of the applications underlying the 13 CPE Reports that recorded zero points for the "clearly delineated" prong failed to demonstrate awareness of a community among its members.¹¹⁷ Therefore, despite the fact that the CPE provider concluded that these 13 applications demonstrated communities of considerable size, all 13 that received zero points for the "clearly delineated" prong could not satisfy the size requirements.¹¹⁸ Each of the applications underlying the 12 CPE reports that recorded two points and the one that recorded one point for the Delineation sub-criterion satisfied the awareness requirement for the clearly delineated prong.¹¹⁹ Consequently, each of the applications

¹¹⁶ See, e.g., MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>) (application failed to satisfy size requirements because it did not satisfy the awareness requirement of the "clearly delineated" prong); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>) (application failed to satisfy size requirements because it did not satisfy either the clear and straightforward membership requirement or the awareness requirement of the clearly delineated prong).

¹¹⁷ IMMO (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>).

¹¹⁸ See *id.*

¹¹⁹ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); MERCK (KGA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>);

underlying the 13 CPE reports that recorded points for Delineation also satisfied the awareness requirement for size.¹²⁰

b. Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.¹²¹ FTI observed that, where the CPE Provider determined that the community lacked clear and straightforward membership or there was not awareness of a community (i.e., where the CPE Provider found that the community as defined in the application was not "clearly delineated"), then the CPE Provider determined that the longevity requirement could not be met. Of the 13 CPE Reports that recorded zero points for the "clearly delineated" prong, all 13 corresponding applications failed to demonstrate awareness of a community among its members.¹²² Therefore, each of the applications underlying the 13 CPE reports that recorded zero points for the "clearly delineated" prong could not satisfy the longevity requirements. Because each of the applications underlying the 12 CPE reports that recorded two points and the one that recorded one point for the Delineation sub-criterion satisfied the awareness requirement for the "clearly delineated" prong as well as the pre-existence prong, each of the

and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹²⁰ See *id.*

¹²¹ See Applicant Guidebook, Module 4.2.3 at Pgs. 4-11-4-12 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹²² IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>).

applications that received points for Delineation satisfied both requirements for longevity.¹²³

The CPE Guidelines state that if an application obtains zero points for Delineation, an application will receive zero points for Extension.¹²⁴ Accordingly, the 13 applications that received zero points for Delineation also received zero points for Extension.

One application received three out of a possible four points for the Community Establishment criterion.¹²⁵ For the Delineation sub-criterion, the application received one point because the CPE Provider determined that there was not one entity mainly dedicated to the community as defined in the application, and therefore the community as defined in the application was deemed not sufficiently organized.¹²⁶ The application received the full two points on the Extension sub-criterion.

Twelve applications received full points on the Community Establishment criterion. Ultimately, FTI observed that the CPE Provider engaged in a consistent evaluation process that strictly adhered to the criteria and requirements set forth in the Applicant Guidebook and CPE Guidelines. FTI observed no instances where the CPE Provider's evaluation process deviated from the applicable guidelines. Based on FTI's investigation, FTI concludes that the CPE Provider consistently applied the Community

¹²³ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹²⁴ See Applicant Guidebook, Module 4.2 at Pg. 4-12, (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹²⁵ RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹²⁶ *Id.* at Pgs. 2-3.

Establishment criterion in all CPEs. While the CPE Provider awarded different scores to different applications, the scoring decisions were based on the same rationale, namely a failure to satisfy the requirements that are set forth in the Applicant Guidebook and CPE Guidelines.

B. The Nexus Criterion (Criterion 2) was Applied Consistently in all CPEs.

To assess whether the Nexus criterion was applied consistently, FTI evaluated how the CPE Provider applied each sub-criterion, i.e., Nexus and Uniqueness. In doing so, FTI considered whether the CPE Provider approached in a consistent manner the questions that, pursuant to the Applicant Guidebook and CPE Guidelines, must be asked by the CPE Provider when evaluating each sub-criterion. In order to complete this evaluation, FTI reviewed the CPE Provider's scoring and corresponding rationale for each sub-criterion for Nexus for each report and compared all CPE reports to each other to determine if the CPE Provider applied each sub-criterion consistently and in accordance with the Applicant Guidebook and CPE Guidelines.

As noted above, the Nexus criterion is measured by two sub-criterion: (i) Nexus (worth three points); and (ii) Uniqueness (worth one point).¹²⁷ While some applications received full points for the Nexus criterion and others did not,¹²⁸ the CPE Provider's

¹²⁷ Applicant Guidebook, Module 4.2.3 at Pgs. 4-12-4-13
(<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹²⁸ Of the 26 CPE reports, the CPE Provider determined that 19 applications received zero points for Nexus. SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); SHOP CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); MUSIC (.music LLP) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085->

findings in this regard were not the result of inconsistent application of the criterion. Rather, based on FTI's investigation, it was observed that all applications were evaluated on a consistent basis by the CPE Provider.

1. Sub-Criterion 2-A: Nexus

To receive a partial score of two points for Nexus,¹²⁹ the applied-for string must identify the community. According to the Applicant Guidebook, "'Identify' means that the applied-for string closely describes the community or the community members, without over-reaching substantially beyond the community."¹³⁰ In order to receive the maximum score of three points, the applied-for string must: (i) "identify" the community; and (ii) match the name of the community or be a well-known short-form or abbreviation of the community.

FTI observed that the CPE Provider determined that the applications underlying 19 CPE reports received zero points for the Nexus sub-criterion because, in the CPE Provider's determination, the applications failed to satisfy both of the requirements described above. First, for the applications underlying 11 of the 19 CPE reports that recorded zero points for the Nexus sub-criterion, the CPE Provider determined that the applied-for string did not identify the community because it substantially overreached the

en.pdf); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); and MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>).

¹²⁹ The Applicant Guidebook does not provide for one point to be awarded for the Nexus sub-criterion. An application only may receive two points or three points for the Nexus sub-criterion.

¹³⁰ Applicant Guidebook, Module 4.2.3 at Pg. 4-13 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

community as defined in the application by indicating a wider or related community of which the applicant is a part but is not specific to the applicant's community.^{131, 132}

Second, for the applications underlying eight of the 19 CPE reports that recorded zero points for the Nexus sub-criterion, the CPE Provider found that the applied-for string did not match the name of the community or was not a well-known short form or abbreviation. In this regard, the CPE Provider determined that, although the string identified the name of the core community members, it failed to match or identify the peripheral industries and entities included in the definition of the community set forth in the application. Therefore, there was a misalignment between the proposed string and the proposed community.¹³³ In several cases, the CPE Provider's conclusion that the

¹³¹ MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>).

¹³² See Applicant Guidebook, Module 4.2.3 Criterion 2 definitions and Criterion 2 guidelines at Pg. 4-13 (<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>).

¹³³ GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>) ("While the string identifies the name of the core community members (i.e. companies with the legal form of a GmbH), it does not match or identify the regulatory authorities, courts and other institutions that are included in the definition of the community as described in Criterion 1-A."); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>) (where community is defined to include tangentially related industries, applied-for string name of "TAXI" fails to match or identify the peripheral industries and entities that are included in the defined community); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>) (applied for string identifies only the name of the core community members (primary and secondary real estate members), but fails to identify peripheral industries and entities described as part of the community by the applicant and does not match the defined community); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>) ("While the string identifies the name of the core community members (i.e. artists and organized members of the arts community) it does not match or identify the art supporters that are included in the definition of the community as described in Criterion 1-A" such as "audiences, consumers, and donors"); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>) (concluding that although applied-for string identifies the core community members—kids—it fails to closely describe other community members such as parents, who are not commonly known as "kids"); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>) (applied

string did not identify the entire community was the consequence of the CPE Provider's finding that the proposed community was not clearly delineated because it described a dispersed or unbound group of persons or entities.¹³⁴ Without a clearly delineated community, the CPE Provider concluded that the one-word string could not adequately identify the community.

Five CPE reports recorded two points for the Nexus sub-criterion.¹³⁵ FTI observed that these CPE reports recorded partial points because the CPE Provider determined that the underlying applications satisfied only the two-point requirement for Nexus: the applied-for string must identify the community.¹³⁶ The CPE Provider determined that, although the applied-for string identified the proposed community as defined in the application, it did not "match" the name of the community nor constitute a well-known short-form or abbreviation of the community name.¹³⁷ Specifically, the CPE Provider concluded that, for the applications underlying these five CPE reports, the community definition encompassed individuals or entities that were tangentially related to the proposed community as defined in the application and therefore, the general public may

for string is over inclusive, identifying more individuals than are included in the defined community); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>) (the applied-for string refers to a large group of individuals – all gay people worldwide – of which the community as defined by the applicant is only a part); and GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>) (applied-for string "GAY" is commonly used to refer to men and women who identify as homosexual but not necessarily to others in the defined community).

¹³⁴ See, e.g., KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); and IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>).

¹³⁵ HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹³⁶ Applicant Guidebook, Module 4.2.3 at Pgs. 4-12-4-13 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹³⁷ See, e.g., ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>) (concluding that string "ECO" identifies community of environmentally responsible organizations, but is not a match or well-known name because the various organizations in the defined community are generally identified by use of the word "environment" or by words related to "eco" but not by "eco" itself or on its own).

not necessarily associate all of the members of the defined community with the string.¹³⁸ Thus, for these applications, there was no "established name" for the applied-for string to match, as required by the Applicant Guidebook for a full score on Nexus.¹³⁹ For all CPE reports that did not record the full three points for the Nexus sub-criterion, the CPE Provider's rationale was based on the definition of the community as defined in the application.

Two CPE reports recorded the full three points for the Nexus sub-criterion.¹⁴⁰ The CPE Provider determined that the applied-for string in the applications underlying these two CPE reports was closely aligned with the community as defined in the application,¹⁴¹

¹³⁸ HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>) (applied-for string "HOTEL" identifies core members of the defined community but is not a well-known name for other members of the community such as hotel marketing associations that are only related to hotels); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>) (concluding that because the community defined in the application is a collection of many categories of individuals and organizations, there is no "established name" for the applied-for string to match, as required by the Applicant Guidebook for a full score on Nexus, but that partial points may be awarded because the string "MUSIC" identifies all member categories, and successfully identifies the individuals and organizations included in the applicant's defined community); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>) (concluding that string "ECO" identifies community of environmentally responsible organizations, but is not a match or well-known name because the various organizations in the defined community are generally identified by use of the word "environment" or by words related to "eco" but not by "eco" itself or on its own); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>) (applied-for string "ART" identifies defined community, but, given the subjective meaning of what constitutes art, general public may not associate all members of the broadly defined community with the applied-for string); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>) (applied-for string "RADIO" identifies core members of the defined community but is not a well-known name for other members of the community such as companies providing specific services that are only related to radio).

¹³⁹ See, e.g., MUSIC (DotMusic Limited) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>).

¹⁴⁰ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); and SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>).

¹⁴¹ SPA CPE Report at Pg. 4 (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); and OSAKA CPE Report at Pgs. 3-4 (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>).

and/or was the established name by which the community is commonly known by others.¹⁴²

2. Sub-Criterion 2-B: Uniqueness

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application.¹⁴³ According to the Applicant Guidebook and CPE Guidelines, if an application did not receive at least two points for the Nexus sub-criterion, it could not receive the one point available for the Uniqueness sub-criterion.¹⁴⁴ Therefore, the CPE Provider determined that the applications underlying the 19 CPE reports that recorded zero points for Nexus were ineligible for a score of one for Uniqueness. Each of the applications underlying the five CPE reports that recorded two points for Nexus,¹⁴⁵ as well as the applications underlying the two CPE reports that recorded three points for Nexus,¹⁴⁶ received one point for Uniqueness. For each of the applications underlying these seven CPE reports, the CPE Provider determined that the applied-for string had no other significant meaning beyond identifying the community described in the application.

Ultimately, FTI observed that the CPE Provider engaged in a consistent evaluation process that strictly adhered to the criteria and requirements set forth in the Applicant Guidebook and CPE Guidelines. FTI observed no instances where the CPE Provider's evaluation process deviated from the applicable guidelines pertaining to the Nexus

¹⁴² SPA CPE Report at Pgs. 4-5 (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>).

¹⁴³ Applicant Guidebook, Module 4.2.3 at Pg. 4-13 (<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>).

¹⁴⁴ See CPE Guidelines at Pgs. 9-10, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>). See also Applicant Guidebook, Module 4.2.3 at Pg. 4-14 (<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>).

¹⁴⁵ HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ART (eFlux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹⁴⁶ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); and SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>).

criterion. Based on FTI's investigation, FTI concludes that the CPE Provider consistently applied the Nexus criterion in all CPEs. While the CPE Provider awarded different scores to different applications, the scoring decisions were based on the same rationale, namely a failure to satisfy the requirements that are set forth in the Applicant Guidebook and CPE Guidelines.

C. The Registration Policies Criterion (Criterion 3) was Applied Consistently in all CPEs.

To assess whether the Registration Policies criterion was applied consistently, FTI evaluated how the CPE Provider applied each sub-criterion, (i) Eligibility, (ii) Name Selection, (iii) Content and Use; and (iv) Enforcement. In doing so, FTI considered whether the CPE Provider approached in a consistent manner the questions that, pursuant to the Applicant Guidebook and CPE Guidelines, must be asked by the CPE Provider when evaluating each sub-criterion. In order to complete this evaluation, FTI reviewed the CPE Provider's scoring and corresponding rationale for each sub-criterion for Registration Policies for each application and compared all CPE reports to each other to determine if the CPE Provider applied each sub-criterion consistently and in accordance with the Applicant Guidebook and CPE Guidelines.

As noted above, the Registration Policies criterion is measured by four sub-criterion: (i) Eligibility; (ii) Name Selection; (iii) Content and Use; and (iv) Enforcement, each of which is worth one point.¹⁴⁷ While some applications received full points for the Registration Policies criterion and others did not, the CPE Provider's findings in this regard were not the result of inconsistent application of the criterion. Rather, based on FTI's investigation, it was observed that all applications were evaluated on a consistent basis by the CPE Provider.

¹⁴⁷ Applicant Guidebook, Module 4.2.3 at Pgs. 4-14-4-15 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

1. Sub-Criterion 3-A: Eligibility

To fulfill the requirements for Eligibility, the registration policies set forth in the application must restrict the eligibility of prospective registrants to community members.¹⁴⁸ All applications received one point for Eligibility. The CPE Provider made this determination on a consistent basis. Specifically, FTI observed that the CPE Provider awarded one point for Eligibility for all applications that underwent CPE because each application restricted eligibility to community members only, as required by the Applicant Guidebook.¹⁴⁹

In particular, the CPE Provider found that each application contained a registration policy that restricted eligibility in one of the following ways: (i) by requiring registrants to be verifiable participants in the relevant community or industry;¹⁵⁰ (ii) by listing the professions that are eligible to apply;¹⁵¹ (iii) by requiring proof of affiliation through licenses, certificates of registration or membership, official statements from

¹⁴⁸ *Id.* at Pg. 4-14.

¹⁴⁹ *Id.*

¹⁵⁰ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC CPE Report (.music LLC) (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); CPA (AICPA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); and MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>).

¹⁵¹ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>).

superordinate authorities, or owners of trademarks;¹⁵² (iv) by requiring registrants to be members of specified organizations linked to or involved in the functions relating to the applied-for community;¹⁵³ (v) by requiring that the registered domain name be "accepted as legitimate; and beneficial to the cause and values of the radio industry; and commensurate with the role and importance of the registered domain name; and in good faith at the time of registration and thereafter."¹⁵⁴

2. Sub-Criterion 3-B: Name Selection

To fulfill the requirements for Name Selection, the application's registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD.¹⁵⁵

In the sub-criterion for Name Selection, five CPE reports recorded zero points.¹⁵⁶ The CPE Provider made this determination on a consistent basis. Specifically, FTI observed that the CPE Provider awarded zero points to these five applications because each failed to satisfy a required element of the CPE Guidelines, including: (i) the name selection rules were too vague to be consistent with the purpose of the community;¹⁵⁷ (ii) there were no comprehensive name selection rules;¹⁵⁸ (iii) there were no restrictions or

¹⁵² TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>);

¹⁵³ MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); and GmbH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>).

¹⁵⁴ RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹⁵⁵ See Applicant Guidebook, Module 4.2.3 at Pg. 4-15 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹⁵⁶ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); and MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>).

¹⁵⁷ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>).

¹⁵⁸ ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>).

guidelines for name selection;¹⁵⁹ (iv) the rules did not refer to the community-based purpose;¹⁶⁰ and (v) the applicant had not finalized name selection criteria.¹⁶¹

Twenty-one CPE reports recorded one point for Name Selection.¹⁶² The CPE Provider made this determination on a consistent basis. Specifically, FTI observed that the CPE Provider awarded one point to the applications underlying these CPE reports because the applications set forth registration policies for name selection that were consistent with the articulated community-based purpose of the applied-for gTLD, as required by the Applicant Guidebook.¹⁶³

The CPE Provider determined that the applications demonstrated adherence to the Name Selection sub-criterion by: (i) outlining a comprehensive list of name selection

¹⁵⁹ MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>).

¹⁶⁰ SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>).

¹⁶¹ MERCK (RH) CPE Report CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>).

¹⁶² TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); and MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>).

¹⁶³ Applicant Guidebook, Module 4.2.3 at Pg. 4-15 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

rules;¹⁶⁴ (ii) outlining the types of names that may be registered, while the name selection rules were consistent with the purpose of the gTLD;¹⁶⁵ (iii) specifying that naming restrictions be specifically tailored to meet the needs of registrants while maintaining the integrity of the registry, and ensuring that domain names meet certain technical requirements;¹⁶⁶ (iv) specifying that the associated boards use their corporate name or an acronym, while foreign affiliates will also have to include geographical modifiers in their second level domains;¹⁶⁷ (v) specifying that the registrant's nexus with the community and use of the domain must be commensurate with the role of the registered domain, and with the role and importance of the domain name based on the meaning an average user would reasonably assume in the context of the domain name;¹⁶⁸ (vi) specifying that eligible registrants are entitled to register any domain name that is not reserved or registered at the time of registration submission while setting aside a list of domain names that will be reserved for major brands;¹⁶⁹ and (vii) outlining

¹⁶⁴ TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); and LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>).

¹⁶⁵ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); and MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>).

¹⁶⁶ TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>).

¹⁶⁷ MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>).

¹⁶⁸ RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹⁶⁹ HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>).

restrictions on reserved names as well as a program providing special provisions for trademarks and other rules.¹⁷⁰

3. Sub-Criterion 3-C: Content and Use

To fulfill the requirements for Content and Use, the registration policies set forth in the application must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD.¹⁷¹

In the sub-criterion for Content and Use, six CPE reports recorded zero points.¹⁷² The CPE Provider made this determination on a consistent basis. Specifically, FTI observed that the CPE Provider awarded zero points to the applications underlying six of the CPE reports for one of three reasons: (i) the rules for content and use for the community-based purpose were too general or vague;¹⁷³ (ii) there was no evidence in the application of requirements, restrictions, or guidelines for content and use that arose out of the community-based purpose of the application;¹⁷⁴ or (iii) the policies for content and use were not finalized.¹⁷⁵

¹⁷⁰ ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>).

¹⁷¹ Applicant Guidebook, Module 4.2.3 at Pg. 4-16 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹⁷² IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); and GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); and SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>).

¹⁷³ IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); ART (eflux) CPE Report CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); and GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>).

¹⁷⁴ MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>).

¹⁷⁵ MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>).

Twenty CPE reports recorded one point for Content and Use. FTI observed that the CPE Provider awarded one point to the applications underlying these CPE reports because the corresponding applications included registration policies for content and use that were consistent with the articulated community-based purpose of the applied-for gTLD. The CPE Provider found this to be the case when the application: (i) set forth specific registration policies for content and use that were tailored to the community-based purpose of the gTLD;¹⁷⁶ (ii) had policies that stated that content or use could not be inconsistent with the mission/purpose of the gTLD;¹⁷⁷ or (iii) had prohibitions on certain types of content and/or abuse.¹⁷⁸

4. Sub-Criterion 3-D: Enforcement

Two conditions must be met to fulfill the requirements for Enforcement: (i) the registration policies set forth in the application must include specific enforcement

¹⁷⁶ CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); and GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>).

¹⁷⁷ TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); and RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>).

¹⁷⁸ OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); and LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>).

measures constituting a coherent set; and (ii) the application must set forth appropriate appeal mechanisms.¹⁷⁹

In the sub-criterion for Enforcement, 14 CPE reports recorded zero points.¹⁸⁰ The CPE Provider made this determination on a consistent basis. Specifically, FTI observed that the CPE Provider awarded zero points to the applications underlying 13 CPE reports because each of the relevant applications lacked appeal mechanisms.¹⁸¹ The remaining CPE report recorded zero points because the corresponding application did not outline specific enforcement measures constituting a coherent set.¹⁸² A coherent set refers to enforcement measures that ensure continued accountability to the named community, and can include investigation practices, penalties, and takedown procedures with

¹⁷⁹ Applicant Guidebook, Module 4.2.3 at Pg. 4-15 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹⁸⁰ INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); and ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>).

¹⁸¹ INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/lc/lc-cpe-1-880-17627-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/lp/lp-cpe-1-880-35508-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); and OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>).

¹⁸² ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>).

appropriate appeal mechanisms. This includes screening procedures for registrants, and provisions to prevent and remedy any breaches of its terms by registrants.¹⁸³

Twelve CPE reports recorded one point.¹⁸⁴ The CPE Provider made this determination on a consistent basis. Specifically, FTI observed that the CPE Provider awarded one point to the applications underlying these CPE reports because the corresponding applications set forth appeal mechanisms and outlined specific enforcement measures constituting a coherent set.

Ultimately, FTI observed that the CPE Provider engaged in a consistent evaluation process that strictly adhered to the criteria and requirements set forth in the Applicant Guidebook and CPE Guidelines. FTI observed no instances where the CPE Provider's evaluation process deviated from the applicable guidelines pertaining to the Registration Policies criterion. Based on FTI's investigation, FTI concludes that the CPE Provider consistently applied the Registration Policies criterion in all CPEs. While the CPE Provider awarded different scores to different applications, the scoring decisions were based on the same rationale, namely a failure to satisfy the requirements that are set forth in the Applicant Guidebook and CPE Guidelines.

¹⁸³ See CPE Guidelines at Pg. 14 (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>).

¹⁸⁴ CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>); and SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>).

D. The Community Endorsement Criterion (Criterion 4) Was Applied Consistently in all CPEs.

To assess whether the Community Endorsement criterion was applied consistently, FTI evaluated how the CPE Provider applied each sub-criterion, (i) Support and (ii) Opposition. In doing so, FTI considered whether the CPE Provider approached in a consistent manner the questions that, pursuant to the Applicant Guidebook and CPE Guidelines, must be asked by the CPE Provider when evaluating each sub-criterion. In order to complete this evaluation, FTI reviewed the CPE Provider's scoring and corresponding rationale for each sub-criterion for Community Endorsement for each application and compared all CPE reports to each other to determine if the CPE Provider applied each sub-criterion consistently and in accordance with the Applicant Guidebook and CPE Guidelines.¹⁸⁵

As noted above, the Community Endorsement criterion is measured by two sub-criterion: (i) Support; and (ii) Opposition, each worth two points. While some applications received full points for the Community Endorsement criterion and others did not, the CPE Provider's findings in this regard were not the result of inconsistent application of the criterion. Rather, based on FTI's investigation, it was observed that all applications were evaluated on a consistent basis by the CPE Provider.

1. Sub-Criterion 4-A: Support

To receive two points for Support: (i) the applicant must be the recognized community institution/member organization; (ii) the application has documented support from the recognized community institution(s)/member organization(s); or (iii) the applicant has

¹⁸⁵ In its investigation, FTI observed that the CPE Provider engaged in the following process to evaluate the Community Endorsement criterion. The CPE Provider sent verification emails to entities that submitted letters of support or opposition in order to attempt to verify their authenticity. The CPE Provider's evaluators then logged the results into a database. Separate correspondence tracker spreadsheets also were maintained by the CPE Provider for each applicant. FTI reviewed all of these materials in the course of its investigation. See <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>; and <https://www.icann.org/en/system/files/correspondence/abruzzo-to-weinstein-14mar16-en.pdf>.

documented authority to represent the community.¹⁸⁶ To receive one point for Support, the application must have documented support from at least one group with relevance.¹⁸⁷ Zero points are awarded if the application has "insufficient proof of support for a score of 1."¹⁸⁸

All 26 CPE reports recorded at least one point for Support. Of those, 17 CPE reports recorded only one point.¹⁸⁹ Specifically, FTI observed that the CPE Provider awarded one point to the applications underlying these CPE reports because the CPE Provider determined that each application had sufficient documented support from at least one group with relevance, but could not receive a full score of two points because the applicant was not the recognized community institution/member organization, the applicant did not have documented support from the recognized community institution/member organization, nor did the applicant have documented authority to represent the community, as required by the Applicant Guidebook.¹⁹⁰ In each instance, the entity(ies) expressing support for the application was not deemed by the CPE Provider to constitute the recognized institutions that represent the community as

¹⁸⁶ See Applicant Guidebook, Module 4.2.3 at Pg. 4-17
(<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>)

¹⁹⁰ See Applicant Guidebook, Module 4.2.3 at Pg. 4-17
(<https://newgtlds.icann.org/en/applicants/agn/string-contention-procedures-04jun12-en.pdf>).

defined in the application.¹⁹¹ In some cases, this meant that, although the supporting entity was dedicated to the community, the supporting entity lacked reciprocal recognition from community members as the entity authorized to represent them.¹⁹² In others, the supporting entity did not "represent" the community because the supporting entity was limited in geographic or thematic scope and, therefore, did not represent the entire community as defined in the application.¹⁹³

Nine CPE reports recorded the full two points for Support. Of the applications underlying these nine CPE reports, FTI observed that four applications received two points because the CPE Provider determined that the applications had documented support from the recognized community institution/member organization.¹⁹⁴ For the other applications that received two points, the CPE Provider determined that the applicant was the recognized community institution/member organization with the authority to represent the community.¹⁹⁵ Whether the applicant or the supporting entity

¹⁹¹ See 204, *supra*.

¹⁹² See, e.g., GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>) (concluding that supporting entity is clearly dedicated to the community and it serves the community and its members in many ways, but is not the "recognized" community institution because it lacked reciprocal recognition by community members of the organization's authority to represent it as required by the Applicant Guidebook).

¹⁹³ See, e.g., IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>) (relevant groups providing support do not constitute the recognized institutions to represent the community because they are limited in geographic and thematic scope); and ART (eFlux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>) (*same*).

¹⁹⁴ RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); and OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>).

¹⁹⁵ CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); and MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>).

constituted the recognized community institution was determined based upon consistent application of the Applicant Guidebook's definition of "recognized."¹⁹⁶

2. Sub-Criterion 4-B: Opposition

To receive two points for Opposition, an application must have no opposition of relevance.¹⁹⁷ To receive one point, an application may have relevant opposition from no more than one group of non-negligible size.¹⁹⁸

Nine CPE reports recorded one point for Opposition.¹⁹⁹ In each instance, the CPE Provider determined that the underlying applications received relevant opposition from no more than one group of non-negligible size. Opposition was deemed relevant on several grounds: (i) opposition was from a community not identified in the application but had an association to the applied-for string;²⁰⁰ (ii) the application was subject to a legal rights objection (LRO);²⁰¹ or (iii) opposition was not made for any reason forbidden by the Applicant Guidebook, such as competition or obstruction.²⁰²

¹⁹⁶ Applicant Guidebook, Module 4.2.3 at Pgs. 4-17 and 4-18 (<https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>).

¹⁹⁷ *Id.* at Pg. 4-17.

¹⁹⁸ *Id.*

¹⁹⁹ MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>); GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>); and MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>). No CPE reports recorded zero points for Opposition.

²⁰⁰ LLP CPE Report (<https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>); LLC CPE Report (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>); and INC CPE Report (<https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>).

²⁰¹ MERCK (KGaA) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-980-7217-en.pdf>); and MERCK (RH) CPE Report (<https://www.icann.org/sites/default/files/tlds/merck/merck-cpe-1-1702-73085-en.pdf>).

²⁰² GAY CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf>); GAY 2 CPE Report (<https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf>); SHOP (Commercial Connect) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>).

Seventeen CPE reports recorded the full two points for Opposition.²⁰³ The CPE Provider determined that the applications corresponding to 17 CPE reports did not have any letters of relevant opposition.²⁰⁴

Ultimately, FTI observed that the CPE Provider engaged in a consistent evaluation process that strictly adhered to the criteria and requirements set forth in the Applicant Guidebook and CPE Guidelines. FTI observed no instances where the CPE Provider's evaluation process deviated from the applicable guidelines pertaining to the Community Endorsement criterion. Based on FTI's investigation, FTI concludes that the CPE Provider consistently applied the Community Endorsement criterion in all CPEs. While the CPE Provider awarded different scores to different applications, the scoring decisions were based on the same rationale, namely a failure to satisfy the requirements that are set forth in the Applicant Guidebook and CPE Guidelines.

1830-1672-en.pdf); and MUSIC (.music LLC) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>).

²⁰³ ART (eflux) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1675-51302-en.pdf>); MUSIC (DotMusic Ltd.) CPE Report (<https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>); ECO CPE Report (<https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>); HOTEL CPE Report (<https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>); OSAKA CPE Report (<https://www.icann.org/sites/default/files/tlds/osaka/osaka-cpe-1-901-9391-en.pdf>); SPA CPE Report (<https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>); RADIO CPE Report (<https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>); TENNIS CPE Report (<https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>); MLS CPE Report (<https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>); CPA (USA) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf>); CPA (AU) CPE Report (<https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1744-1971-en.pdf>); GMBH CPE Report (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>); IMMO CPE Report (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>); SHOP (GMO) CPE Report (<https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-890-52063-en.pdf>); KIDS CPE Report (<https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>); TAXI CPE Report (<https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>); and ART (Dadotart) CPE Report (<https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf>).

²⁰⁴ *Id.*

VI. The CPE Provider's Use of Clarifying Questions Did Not Evidence Disparate Treatment.

Throughout the CPE process, the CPE Provider had the option to ask Clarifying Questions of the applicant about the relevant application.²⁰⁵ Clarifying Questions were not intended to permit an applicant to introduce new material or otherwise amend an application, but rather were a means for the applicant to make its application more clear and free from ambiguity.²⁰⁶ The CPE Provider composed the Clarifying Questions and sent them to ICANN organization, which would transmit the Clarifying Questions to the applicants. FTI observed that ICANN organization would review the wording of Clarifying Questions prior to sending them to the applicants. The CPE Provider confirmed that was done to ensure that the wording of the question was appropriate insofar as it did not contravene the Applicant Guidebook's guideline that responses to Clarifying Questions may not be used to introduce new material or amend the application.²⁰⁷ ICANN organization did not comment on the substance of any Clarifying Question.

Based on FTI's investigation, it was observed that the CPE Provider posed Clarifying Questions seven times in the CPE process. Based on a plain reading, five of the seven were framed to clarify information in the applications. For example, the CPE Provider asked a Clarifying Question where it found part of an application to be unclear or internally inconsistent insofar as the community was defined by the applicant differently in two different sections of the application.

Two Clarifying Questions related to letters of support. In one application, letters of support were referenced, but were not submitted with the application materials. Accordingly, the CPE Provider issued a Clarifying Question identifying the

²⁰⁵ See CPE Frequently Asked Questions at Pg. 4 (<https://newgtlds.icann.org/en/applicants/cpe/faqs-13aug14-en.pdf>).

²⁰⁶ *Id.* at Pgs. 4-5. See also Board Determination, at Pgs. 15-16 (<https://www.icann.org/en/system/files/files/reconsideration-15-21-dotgay-bgc-determination-01feb16-en.pdf>).

²⁰⁷ *Id.*

administrative error. In the other, the applicant submitted multiple letters of support, but the CPE Provider was unable to verify the nature and relevance of the support that the applicant received because the CPE Provider's verification attempts were unsuccessful. As a result, the CPE Provider issued a Clarifying Question; this application ultimately received the full two points for the Support sub-criterion.

Based on FTI's investigation, the CPE Provider did not issue Clarifying Questions on an inconsistent basis; nor did the CPE Provider's use of Clarifying Questions reflect disparate treatment of any applicant.

VII. The CPE Provider's Use of Outside Research.

FTI understands that "certain complainants [have] requested access to the documents that the CPE panels used to form their decisions and, in particular, the independent research that the panels conducted."²⁰⁸ This is the subject of Scope 3 of the CPE Process Review, where FTI will compile the reference material relied upon by the CPE Provider to the extent such reference material exists for the evaluations that are the subject of pending Reconsideration Requests.

VIII. Conclusion

Following a careful and comprehensive investigation, which included several interviews and an extensive review of available documentary materials, FTI concludes that the CPE Provider consistently applied the CPE criteria throughout all Community Priority Evaluations.

²⁰⁸ <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

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RESPONDENT'S EXHIBIT

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 14-44**

20 JANUARY 2015

The Requester, Dotgay LLC,¹ seeks reconsideration of the Community Priority Evaluation (“CPE”) Panel’s Report, and ICANN’s acceptance of that Report, finding that the Requester’s application for .GAY did not prevail in CPE. The Requester also seeks reconsideration of ICANN staff’s response to the Requester’s request, pursuant to ICANN’s Document Information Disclosure Policy (“DIDP”), for documents relating to the CPE Panel’s Report.

I. Brief Summary.

The Requester submitted a community application for .GAY (the “Application”). Three other applicants submitted standard (meaning not community-based) applications for .GAY. All four .GAY applications were placed into a contention set. As the Requester’s Application was community-based, the Requester was invited to and did participate in CPE for .GAY. The Requester’s Application did not prevail in CPE. As a result, the Application remained in contention with the other applications for .GAY. The contention can be resolved by auction or some arrangement among the involved applicants.

Following the CPE determination, the Requester filed a request pursuant to ICANN’s DIDP (“DIDP Request”), seeking documents relating to the CPE Panel’s Report. In its response

¹ At many (but not all) points throughout its Reconsideration Request, the Requester refers to itself in the plural, as “Requesters.” Since Section 1 of the Request, seeking “Requester Information,” only indicates one Requester (dotgay LLC), and since the Requester stated it was not “bringing this Reconsideration Request on behalf of multiple persons or entities” (*see* Request, § 11, Pg. 24), this Determination will deem the Request to have been filed by a single Requester, dotgay LLC.

to the DIDP Request (“DIDP Response”), ICANN staff identified and provided links to all publicly available responsive documents, and further noted that many of the requested documents did not exist or were not in ICANN’s possession. With respect to those requested documents that were in ICANN’s possession and not already publicly available, ICANN explained that those documents would not be produced because they were subject to certain of the Defined Conditions of Nondisclosure (“Conditions of Nondisclosure”) set forth in the DIDP. The Requester now seeks reconsideration of the CPE determination and ICANN’s acceptance of it, as well as ICANN’s DIDP Response. As for CPE, the Requester makes three claims: (i) the Economic Intelligence Unit (“EIU”), the entity that administers the CPE process, imposed additional criteria or procedural requirements beyond those set forth in the Applicant Guidebook (“Guidebook”); (ii) the CPE Panel failed to comply with certain established ICANN policies and procedures in rendering the CPE Panel’s Report; and (iii) the CPE Panel’s Report is inconsistent with other CPE panels’ reports. The Requester also seeks reconsideration of ICANN’s DIDP Response on the basis that it violates ICANN’s transparency principles.

The BGC concludes that, upon investigation of Requester’s claims, the CPE Panel inadvertently failed to verify 54 letters of support for the Application and that this failure contradicts an established procedure. The BGC further concludes that the CPE Panel’s failure to comply with this established CPE procedure warrants reconsideration. Accordingly, the BGC determines that the CPE Panel Report shall be set aside, and that the EIU shall identify two different evaluators to perform a new CPE for the Application.² Further, the BGC recommends that the EIU include new members of the core team that assesses the evaluation results.³

² While the new CPE is in process, the resolution of the contention set will be postponed. Therefore, Requester’s request that ICANN stay the processing of the .GAY contention set is rendered moot.

³ See Annex B-3, CPE Panel Process Document, Pg. 4 (summarizing role of core team).

With respect to the Requester's other arguments, the BGC finds that the Requester has not stated a sufficient basis for reconsideration.

II. Facts.

A. Background Facts.

The Requester submitted a community application for .GAY.⁴

Top Level Design, LLC, United TLD Holdco Ltd., and Top Level Domain Holdings Limited each submitted standard applications for .GAY.⁵ Those applications were placed in a contention set with the Requester's community-based application.

On 23 February 2014, the Requester's Application for .GAY was invited to participate in CPE. CPE is a method of resolving string contention, described in section 4.2 of the Guidebook. It will occur only if a community application is in contention and if that applicant elects to pursue CPE. The Requester elected to participate in CPE for .GAY, and its Application was forwarded to the EIU, the CPE provider, for evaluation.⁶

On 6 October 2014, the CPE Panel issued its report on the Requester's Application.⁷ The CPE Panel's Report explained that the Application did not meet the CPE requirements specified in the Guidebook and therefore concluded that the Application had not prevailed in CPE.⁸

On 22 October 2014, the Requester submitted a reconsideration request, requesting reconsideration of the CPE Panel's Report, and ICANN's acceptance of that Report.⁹

⁴ See Application Details, available at <https://gtldresult.icann.org/applicationstatus/applicationdetails/444>.

⁵ See Application Details, available at <https://gtldresult.icann.org/applicationstatus/applicationdetails/1460>; Application Details, available at <https://gtldresult.icann.org/applicationstatus/applicationdetails/1115>; Application Details, available at <https://gtldresult.icann.org/applicationstatus/applicationdetails/1519>.

⁶ See Community Priority Evaluation (CPE), <http://newgtlds.icann.org/en/applicants/cpe#status>.

⁷ *Id.*

⁸ See CPE Report, available at <https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-1-1713-23699-en.pdf> and as Annex A-1.

⁹ In this original Request, the Requester contended that the Panel failed to comply with ICANN policies and procedures because it purportedly misapplied two of the criteria an application must meet to prevail in CPE: (1) the

Also on 22 October 2014, the Requester submitted a request pursuant to ICANN's DIDP, seeking documents related to the CPE Panel's Report.

On 31 October 2014, ICANN responded to the DIDP Request.¹⁰ ICANN identified and provided links to all publicly available documents responsive to the DIDP Request, including comments regarding the Application, which were posted on ICANN's website and considered by the CPE Panel.¹¹ ICANN noted that the documents responsive to the requests were either: (1) already public; (2) not in ICANN's possession; or (3) not appropriate for public disclosure because they were subject to certain Conditions of Nondisclosure and that the public interest in disclosing the information did not outweigh the harm that may be caused by such disclosure.¹²

On 29 November 2014, the Requester submitted a revised reconsideration request ("Request" or "Request 14-44"), which sets forth different arguments than those raised in the 22 October reconsideration request, but still seeks reconsideration of the CPE Panel's Report and ICANN's acceptance of that Report, and also seeks reconsideration of the DIDP Response.¹³

B. Relief Requested.

The Requester asks ICANN to reverse the CPE Panel's decision not to grant the Application community priority status, and requests that ICANN or a newly-appointed third party "perform a new determination" after holding a hearing.¹⁴ In the meantime, the Requester asks ICANN to "suspend the process for string contention resolution in relation to the .GAY

(continued...)

Application's nexus to the community; and (2) the community's endorsement. *See* Annex A-3, Initial Reconsideration Request, § 8.1.1, Pg. 5.

¹⁰ *See* Annex A-4, DIDP Response, Pg. 1.

¹¹ *See id.*, Pgs. 3-4.

¹² *See generally id.*

¹³ ICANN confirmed with the Requester that the Requester is only pursuing the issues raised in the revised Reconsideration Request. Therefore this determination addresses the arguments raised in the revised Request, and not the claims made in the original reconsideration request.

¹⁴ Request, § 9, Pgs. 23-24.

gTLD.”¹⁵ The Requester also seeks disclosure of “the information requested” in its DIDP Request.¹⁶ Further, the Requester asks ICANN to reconsider its “position towards Requester’s allegations regarding spurious activity.”¹⁷

III. Issues.

In view of the claims set forth in Request 14-44 and ICANN’s investigation thereof, the issues are:

- A. Whether reconsideration of the CPE Panel’s determination that the Requester did not prevail in CPE is warranted because:
- (1) The CPE Panel did not adhere to procedures governing the verification of letters in support of the Application;
 - (2) The EIU imposed additional criteria or procedural requirements;
 - (3) The EIU did not follow established policies or procedures insofar as:
 - (a) The CPE Panel declined to ask clarifying questions;
 - (b) The CPE Panel did not identify the objectors to the Application;
 - (c) ICANN did not transmit the Requester’s evidence of false allegations made against the Application to the EIU;
 - (d) The CPE Panel purportedly misread the Application;
 - (e) The CPE Panel awarded the Requester zero points with respect to the nexus element of the CPE criteria; or

¹⁵ *Id.*, Pg. 23.

¹⁶ *Id.*

¹⁷ *Id.*, § 3, Pg. 2.

(f) The CPE Panel did not consider comments made in the determination rendered in a separate community objection proceeding regarding the .LGBT string; or

(4) The CPE Panel's Report is inconsistent with other CPE panel reports in a manner constituting a policy or procedure violation.

B. Whether ICANN staff violated established policy or procedure by determining that certain documents sought in the DIDP Request were subject to DIDP Conditions of Nondisclosure.

IV. The Relevant Standards For Evaluating Reconsideration Requests, Community Priority Evaluations And DIDP Requests.

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.¹⁸ Dismissal of a request for reconsideration of staff action or inaction is appropriate if the BGC concludes, and the Board or the NGPC¹⁹ agrees to the extent that the BGC deems that further consideration by the Board or NGPC is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws.

A. Community Priority Evaluation.

The reconsideration process can properly be invoked for challenges to expert determinations rendered by panels formed by third party service providers, such as the EIU,

¹⁸ Bylaws, Art. IV, § 2. Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has 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.

¹⁹ New gTLD Program Committee.

where it can be demonstrated that a panel failed to follow the established policies or procedures in reaching its determination, or that staff failed to follow its policies or procedures in accepting that determination.²⁰

In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of CPE reports. Accordingly, the BGC does not evaluate the CPE Panel’s substantive conclusion that the Requester did not prevail in the CPE. Rather, the BGC’s review is limited to whether the CPE Panel violated any established policy or process in making its determination.

ICANN has made public all documents regarding the standards and process governing CPE on the New gTLD microsite. (See <http://newgtlds.icann.org/en/applicants/cpe>.) The specific standards governing CPE are set forth in Section 4.2 of the Guidebook. In addition, the EIU – the firm selected to perform CPE – has published supplementary guidelines (“CPE Guidelines”) that provide more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored.²¹

CPE will occur only if a community-based applicant selects this option and after all applications in the contention set have completed all previous stages of the gTLD evaluation process.²² CPE is performed by an independent community priority panel appointed by the EIU to review such applications.²³ A CPE panel’s role is to determine whether the community-based application satisfies the four community priority criteria set forth in Section 4.2.3 of the Guidebook. The four criteria include: (i) community establishment; (ii) nexus between proposed

²⁰ See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

²¹ The CPE Guidelines may be found here: <http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en>, and as Annex B-4.

²² Guidebook, § 4.2.

²³ Guidebook, § 4.2.2.

string and community; (iii) registration policies; and (iv) community endorsement. To prevail in CPE, an application must receive a minimum of 14 points on the scoring of the foregoing four criteria, each of which is worth a maximum of four points (for a maximum total of 16 points).

B. Document Information Disclosure Policy.

ICANN's DIDP is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, that is not already publicly available is made available to the public unless there is a compelling reason for confidentiality.²⁴ As part of its commitment to transparency, ICANN makes available a comprehensive set of materials on its website as a matter of course.²⁵

In responding to a request submitted pursuant to ICANN's DIDP, ICANN follows the guidelines set forth in the "Process For Responding To ICANN's Documentary Information Disclosure Policy (DIDP) Requests"²⁶ ("DIDP Response Process"). Specifically, the DIDP Response Process provides that "[a] review is conducted as to whether any of the documents identified as responsive to the Request are subject to any of the [Conditions] of Nondisclosure identified [on ICANN's website]."²⁷ ICANN reserves the right to withhold documents if they fall within any of the Conditions of Nondisclosure.²⁸ In addition, ICANN may refuse "[i]nformation requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) [which] are made with an abusive or vexatious purpose or by a vexatious or querulous individual."²⁹

²⁴ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

²⁵ See *id.*

²⁶ See <https://www.icann.org/resources/files/didp-response-process-2013-10-29-en>.

²⁷ *Id.*; see also <https://www.icann.org/en/about/transparency/didp>.

²⁸ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

²⁹ See *id.*

The DIDP Response Process also provides that “[t]o the extent that any responsive documents fall within any [Conditions of Nondisclosure], a review is conducted as to whether, under the particular circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such disclosure.”³⁰ It is within ICANN’s sole discretion to determine whether the public interest in the disclosure of responsive documents that fall within one of the Conditions of Nondisclosure outweighs the harm that may be caused by such disclosure.³¹ Finally, the DIDP does not require ICANN staff to “create or compile summaries of any documented information,” including logs of documents withheld under one of the Conditions of Nondisclosure.³²

V. Analysis And Rationale.

The Requester first objects to the CPE Panel’s Report finding that the Application did not prevail in CPE, asserting three overarching arguments as to why reconsideration is warranted. As discussed below, only one of the Requester’s claims identifies conduct that contradicted an established policy or procedure, as required to support reconsideration. Specifically, in the course of evaluating the Requester’s claims, ICANN discovered that the EIU failed to verify 54 letters of support for the Application, and on that ground (only), the BGC determines that reconsideration is warranted.

The Requester also objects to ICANN staff’s DIDP Response. However, the Requester presents only its substantive disagreement with ICANN staff’s application of the DIDP Response Process, which does not support reconsideration.

³⁰ See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.

³¹ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

³² *Id.*

A. Reconsideration Of The CPE Report Is Warranted Because The EIU Did Not Verify All Relevant Letters Of Support, But The Remainder Of The Requester’s Claims Do Not Support Reconsideration.

1. Reconsideration Is Warranted Because The CPE Panel Did Not Adhere To Procedures Governing The Verification Of Support Letters.

CPE panels “will attempt to validate all letters” submitted in support of or in opposition to an application “to ensure that the individuals who have signed the documents are in fact the sender, have the authority to speak on behalf of their institution, and that the panel clearly understands the intentions of the letter.”³³ Only letters that the EIU deems “relevant” to the CPE are forwarded to the CPE evaluators, and it is only those letters that the evaluators must verify.³⁴ Here, the Requester claims reconsideration is warranted because it contends that the CPE Panel only attempted to verify “less than 20%” of the letters of support received.³⁵

Over the course of investigating the claims made in Request 14-44, ICANN learned that the CPE Panel inadvertently did not verify 54 of the letters of support it reviewed. All 54 letters were sent by the Requester in one correspondence bundle, and they are publicly posted on ICANN’s correspondence page.³⁶ The 54 letters were deemed to be relevant by the EIU, but the EIU inadvertently failed to verify them. Given that established policies and procedures require relevant letters to be verified, reconsideration is warranted.

The BGC’s acceptance of Request 14-44 should in no way reflect poorly upon the EIU. Rather, this determination is a recognition that, in response to the Requester’s claims and ICANN’s investigation of the circumstances surrounding the CPE Panel’s Report, ICANN

³³ See Annex B-5, FAQ Page, Pg. 6

³⁴ Annex B-3, CPE Panel Process Document, Pg. 5.

³⁵ Request, §§ 8.4-8.5, Pgs. 8-10.

³⁶ See <https://www.icann.org/en/system/files/correspondence/baxter-to-icann-2-05may14-en.pdf>.

discovered that the EIU inadvertently did not adhere to established policies and procedures insofar as it did not verify some of the support letters it considered.

2. The EIU Did Not Improperly Impose Any Additional Criteria Or Procedural Requirements.

The Requester claims that the EIU has promulgated documents that impose requirements that are inconsistent with and supplemental to those set forth in the Guidebook.³⁷ Specifically, the Requester claims that the following four documents, all finalized after the Guidebook was published, “contain additional criteria, accents and specifications to the criteria laid down in the Applicant Guidebook”³⁸: (1) the EIU’s “Community Priority Evaluation Panel and Its Processes” document (“CPE Panel Process Document”)³⁹; (2) the CPE Guidelines⁴⁰; (3) ICANN’s CPE Frequently Asked Questions page, dated 10 September 2014 (“FAQ Page”)⁴¹; and (4) an ICANN document summarizing a typical CPE timeline (“CPE Timeline”)⁴² (collectively, “CPE Materials”). However, the Requester cites no example of any contradiction with established procedures set forth in the Guidebook within the CPE Materials.

First, the CPE Panel Process Document is a five-page document explaining that the EIU has been selected to implement the Guidebook’s provisions concerning CPE⁴³ and summarizing those provisions.⁴⁴ The CPE Panel Process Document strictly adheres to the Guidebook’s criteria and requirements. The Requester has identified no specific aspect of the CPE Panel

³⁷ Request, § 8.3, Pg. 6.

³⁸ *Id.*

³⁹ Annex B-3.

⁴⁰ Annex B-4.

⁴¹ Annex B-5.

⁴² Annex B-6.

⁴³ The internationally renowned EIU, a leading provider of impartial intelligence on international political, business, and economic issues was selected as the CPE panel firm through ICANN’s public Request for Proposals process in a 2009 call for Expressions of Interest. *See* Annex B-3, CPE Panel Process Document; *see also*, ICANN CALL FOR EXPRESSIONS OF INTEREST (EOIs) for a New gTLD Comparative Evaluation Panel, 25 February 2009, *available at* <https://archive.icann.org/en/topics/new-gtlds/eoi-comparative-evaluation-25feb09-en.pdf>.

⁴⁴ Annex B-3, CPE Panel Process Document.

Process Document that imposes obligations greater or different than those set forth in the Guidebook. Indeed, none exists.

Second, the CPE Guidelines expressly state that they do “not modify the [Guidebook] framework [or] change the intent or standards laid out in the [Guidebook].”⁴⁵ Rather, the Guidelines are “an accompanying document to the [Guidebook] and are meant to provide additional clarity around the scoring principles outlined in the [Guidebook] . . . [and to] increase transparency, fairness, and predictability around the assessment process.”⁴⁶ Moreover, the CPE Guidelines were published after extensive input from the Internet community,⁴⁷ and are “intended to increase transparency, fairness and predictability around the assessment process.”⁴⁸ Indeed, the final version of the CPE Guidelines “takes into account all feedback from the community.”⁴⁹ The Requester does not provide any examples of a requirement set forth in the CPE Guidelines that contravenes the Guidebook.

Third, the FAQ Page does not impose any CPE requirements whatsoever. Rather, the FAQ Page summarizes requirements in the Guidebook and accompanying CPE Materials, and provides information such as the estimated duration of a CPE and applicable fees. The FAQ Page makes clear that all CPE procedures must be consistent with the Guidebook: “The CPE guidelines are an accompanying document to the [Guidebook] and are intended to provide additional clarity around process and scoring principles as defined in the [Guidebook]. The CPE

⁴⁵ CPE Guidelines, Pg. 2.

⁴⁶ *Id.*

⁴⁷ See <http://newgtlds.icann.org/en/applicants/cpe>.

⁴⁸ CPE Guidelines, Pg. 2.

⁴⁹ See newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en.

guidelines do not change the [Guidebook] framework or change the intent or standards established in the [Guidebook].”⁵⁰

Fourth, the CPE Timeline does not impose any requirements, but instead summarizes the timeframes typical for the CPE process. The Guidebook does not impose any deadlines upon either CPE participants or the EIU, thus there is no conflict between the CPE Timeline and any applicable policy or procedure.

The Requester claims ICANN should have permitted applicants to amend their applications after the promulgation of the CPE Materials.⁵¹ However, as set forth above, the CPE Materials did not effectuate any amendment to the Guidebook, or render more stringent any requirement set forth therein. Furthermore, the CPE Materials the Requester now challenges were promulgated quite some time ago; the CPE Guidelines, for instance, were made final on 27 September 2013, and the CPE Panel Process Document was published on 7 August 2014.⁵² Any challenge to ICANN action or inaction concerning the publication or implementation of these documents would be time-barred in all events.⁵³

For these reasons, no reconsideration is warranted on the grounds that any of the CPE Materials improperly impose obligations upon community applicants in a manner inconsistent with the Guidebook.

3. The Remainder Of Requester’s Claims Regarding Policies And Procedures Applicable to CPE Do Not Support Reconsideration.

(a) No Policy Or Process Requires The EIU To Ask Clarifying Questions.

⁵⁰ Annex B-5, FAQ Pg. 4.

⁵¹ Request, § 8.3, Pg. 7.

⁵² See <http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en>; <http://newgtlds.icann.org/en/announcements-and-media/announcement-07aug14-en>.

⁵³ Bylaws, Art. IV, § 2.5 (setting forth fifteen day deadline for reconsideration requests).

The Requester claims reconsideration is warranted because the EIU “deliberately decided” not to ask the Requester any clarifying questions during the course of CPE.⁵⁴ The Requester, however, acknowledges that there is no established policy or procedure *requiring* the CPE panels to pose clarifying questions to applicants and that the decision to ask clarifying questions is optional.⁵⁵ Indeed, the CPE Panel Process Document provides: “*If the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant*”⁵⁶ Because there is no established policy or procedure requiring any CPE panel to ask clarifying questions, no reconsideration is warranted based on the fact that the CPE Panel here did not.

(b) No Policy Or Process Requires The CPE Panel To Identify Objectors To The Application.

The fourth CPE criterion, community endorsement, evaluates community support for and/or opposition to an application through the scoring of two elements—4-A, “support” (worth two points), and 4-B, “opposition” (worth two points).⁵⁷ Pursuant to the Guidebook, to receive a maximum score for the opposition element, there must be “no opposition of relevance” to the application, and a score of one point is appropriate where there is “[r]elevant opposition from one group of non-negligible size.”⁵⁸ Here, the CPE Panel awarded the Requester one out of two points, because it:

determined that there is opposition to the application from a group of non-negligible size, coming from an organization within the communities explicitly addressed by the application, making it relevant. The organization is a chartered 501(c)(3) nonprofit organization with fulltime staff members, as well as ongoing events and activities with a substantial following. The grounds of the objection do not fall under any of those excluded by the

⁵⁴ Request, § 8.4, Pg. 9.

⁵⁵ *Id.*

⁵⁶ Annex B-3, CPE Panel Process Document, Pg. 3 (emphasis added).

⁵⁷ Guidebook, § 4.2.3.

⁵⁸ *Id.*

[Guidebook] (such as spurious or unsubstantiated claims), but rather relate to the establishment of the community and registration policies. Therefore, the Panel has determined that the applicant partially satisfied the requirements for Opposition.⁵⁹

The Requester contends that reconsideration is warranted because the CPE Panel did not identify *which* opponent to the Application the CPE Panel refers to in the above-quoted analysis.⁶⁰ While the Requester objects that it is “impossible to verify” whether the opposing entity is relevant and of non-negligible size, the Requester points to no Guidebook or CPE Guideline requiring the CPE Panel to provide the Requester with the name of the opposing entity, and none exists. Notably, the CPE Guidelines explicitly set forth the evaluation process with respect to the “opposition” element, and do not include any disclosure requirements regarding the identity of the opposition.⁶¹ The Requester contends that the Guidebook should have included such a procedural requirement and, on that basis, argues that reconsideration is warranted. However, the Guidebook was extensively vetted by the community over a course of years and included a total of ten versions with multiple notice and public comment periods, and it does not impose such a requirement. No reconsideration is warranted by virtue of the CPE Panel’s decision not to identify the opposition.

(c) No Policy Or Procedure Requires ICANN To Directly Transmit The Requester’s Evidence Of False Allegations Made Against The Application To The EIU.

The Requester claims reconsideration is warranted because the evidence of alleged “spurious activity” that the Requester submitted to ICANN prior to the issuance of the CPE Panel’s Report was not provided to the EIU.⁶² For example, the Requester brought to ICANN’s

⁵⁹ Annex A-1, CPE Report, Pg. 8.

⁶⁰ Request, § 8.6, Pg. 11.

⁶¹ CPE Guidelines, Pgs. 19-20.

⁶² Request, § 8.7, Pgs 12-13.

attention its views regarding the motivations and financing sources of certain objectors to the Application, derogatory statements about the Requester made in the press by other applicants for the .GAY string, and similar allegations of untoward conduct.⁶³ However, there is no established policy or procedure requiring ICANN to provide the EIU with supplemental information at an applicant's request.

Further, there is no suggestion that any of the alleged spurious activities that the Requester references (such as Requester's allegation that "a community center from Portland, Oregon (USA) – the city where one of the other applicants for the .GAY gTLD is based" provided false information to ICANN⁶⁴) had any effect upon the CPE Panel's Report. Moreover, the Requester had the opportunity to refute these negative claims. Specifically, as ICANN reminded the Requester in a 14 November 2014 letter,⁶⁵ the public comment forum provides applicants with the ability to refute any negative remarks or allegations, and evaluators, including CPE panels, are instructed to review those comments and responses.⁶⁶ In the 14 November letter, ICANN also noted that it had "not identified anything that indicates the evaluation processes of the New gTLD Program were compromised by the activities cited, and [] determined that all of these processes have been followed in all respects" concerning the Application.⁶⁷ In other words, the Requester had ample opportunity to be heard as to the alleged "spurious activities" and to bring its concerns to the attention of the CPE Panel.

⁶³ Annexes C-2-C-12.

⁶⁴ Request, § 8.7, Pg. 12.

⁶⁵ See Annex C-3, Pgs. 2-3.

⁶⁶ *Id.*, citing Guidebook §§ 1.1.2.3, 4.2.3.

⁶⁷ Annex C-3, Pg. 5.

In sum, the Requester has identified no policy or procedure requiring ICANN to directly send to the EIU information concerning the alleged “spurious activities,” and no reconsideration is warranted based on any decision ICANN may have reached not to do so.

(d) The Requester’s Claim That The CPE Panel Misread The Application Does Not Support Reconsideration.

The Requester claims reconsideration is warranted because the CPE Panel awarded the Requester’s Application zero out of four points on the second criterion, which assesses the nexus between the proposed string and the community.⁶⁸ This criterion evaluates “the relevance of the string to the specific community that it claims to represent” through the scoring of two elements—2-A, “nexus” (worth three points), and 2-B, “uniqueness” (worth one point).⁶⁹ The Requester contends that the CPE Panel misinterpreted the Application and therefore erred in awarding no points in the nexus category. Specifically, the CPE Panel’s Report construed the Application as providing that membership with an “Authenticating Partner” is a prerequisite for becoming a member of the community the Application defines.⁷⁰ The Requester contends that the CPE Panel wrongly interpreted the Application because the Requester intended only that Authenticating Partners would merely screen potential registrants to ensure they match the community definition.⁷¹

While this interpretation may have been the Requester’s intended meaning in drafting the Application, the CPE Panel’s interpretation does not evince any policy or procedure violation. The Application states that the Requester is “*requiring* community members to have *registered*

⁶⁸ Guidebook, § 4.2.3; Request, § 8.9.3, Pgs. 16-17.

⁶⁹ Guidebook, § 4.2.3.

⁷⁰ Annex A-1, CPE Report, Pg. 5.

⁷¹ Request, § 8.9.3B, Pg. 19.

with one of our Authenticating Partners.”⁷² The CPE Panel applied the Guidebook provisions and found this assertion signaled a mismatch between the string and the community as defined in the Application. While the Requester states that “[t]his is, in the Requester’s opinion, an obvious misreading of the Application,”⁷³ the Requester’s substantive disagreement with the CPE Panel’s conclusions does not form a basis for reconsideration.

(e) The CPE Panel Properly Applied Element 2-A (Nexus).

The Requester contends that the CPE Panel also erred in its analysis of the nexus element because it did not take into account the specific arguments raised in the Application relating to the parameters of the gay community.⁷⁴ The Requester, however, does not identify any policy or procedure violation, but instead only offers substantive disagreement with the CPE Panel’s determination that zero points were warranted with respect to the nexus element.⁷⁵

In awarding zero points for element 2-A (nexus), the CPE Panel accurately described and applied the Guidebook scoring guidelines.⁷⁶ Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the nexus element, the applied-for string must “match[] the name of the community or [be] a well-known short-form or abbreviation of the community name.”⁷⁷

The Application describes the gay community as including:

individuals who identify themselves as male or female homosexuals, bisexual, **transgender**, queer, **intersex**, **ally** and many other terminology - in a variety of languages - that has been used at various points to refer most simply to those individuals who do not participate in mainstream

⁷² See .GAY Application Details, available at <https://gtldresult.icann.org/applicationstatus/applicationdetails/444> (“... dotgay LLC has established a conservative plan with [Authenticating Partners] representing over 1,000 organizations and 7 million members. This constitutes our base line estimate for projecting the size of the Gay Community and the minimum pool from which potential registrants will stem.”).

⁷³ Request, § 8.9.3B, Pg. 19.

⁷⁴ Request, § 8.9.3, Pgs. 16-17.

⁷⁵ The Requester also claims that the CPE Panel’s analysis of the nexus element was inconsistent with other CPE reports (Request, § 8.9.3.A, Pg. 18), which argument is addressed in section V.A.2(b) *infra*.

⁷⁶ See Annex A-1, CPE Report, Pgs. 5-6.

⁷⁷ Guidebook, § 4.2.3.

cultural practices pertaining to gender identity, expression and adult consensual sexual relationships. . . .

The membership criterion to join the Gay Community is the process of “coming out”. This process is unique for every individual, organization and ally involving a level of risk in simply becoming visible. While this is sufficient for the world at large in order to delineate more clearly, ***dotgay LLC is also requiring community members to have registered with one of our Authenticating Partners (process described in 20E).***⁷⁸

The CPE Panel determined that the Application did not merit a score on the nexus criteria because the string does not “identify” the community. As the CPE Panel noted, according to the Guidebook, “identify” in this context “means that the applied for string closely describes the community or the community members, *without over-reaching substantially beyond the community.*”⁷⁹ The CPE Panel provided two independent reasons why “the applied-for string substantially over-reaches beyond the community defined by the application” and therefore does not merit any points in this category.⁸⁰

First, the Application stated that the community will include only those who have registered with one of the Requester’s “Authenticating Partners,” and the CPE Panel held that this subset of the “gay community” is not commensurate with the “large group of individuals – all gay people worldwide” to which the string corresponds.⁸¹ In fact, the CPE Panel noted that the Application itself estimates the self-identified gay community as 1.2% of the world population, or about 70 million people, whereas “the size of the community it has defined, based on membership with [Authenticating Partners], is 7 million.”⁸² As discussed in section V.A.2(d), *supra*, while the Requester contends that the CPE Panel misinterpreted the Application in this

⁷⁸ See Response to Question 20(a), .GAY Application Details, *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/444>.

⁷⁹ *Id.* § 4.2.3 (emphasis added).

⁸⁰ Annex A-1, CPE Report, Pg. 5.

⁸¹ *Id.*

⁸² *Id.*

regard, the CPE Panel’s reasonable interpretation does not evince any policy or procedure violation.

Second, the CPE Panel found that the Application defines the community as those who have *publicly* “come out” as homosexual, whereas the word “gay” encompasses also “those who are privately aware of their non-heterosexual sexual orientation.”⁸³ The CPE Panel concluded that the string did not match the Application’s definition of the community because there are people who are members of the gay community who have not come out, and also, there are “significant subsets of the [Application’s] defined community that are not identified by the string .GAY,” such as transgender or intersex persons, or allies of what is commonly considered the gay community.⁸⁴ In other words, the CPE Panel held that the definition of community proposed in the Application was both over- and under-inclusive in comparison to the string. As to this rationale for the CPE Panel’s award of zero points, the Requester claims that the EIU “has not taken into account Requester’s specific arguments for including ‘allies’ in its community definition.”⁸⁵ Yet the Requester offers no evidence that the CPE Panel improperly excluded any document or information from its consideration in rendering the CPE Panel’s Report.

In sum, the Requester does not identify any policy or procedure that the CPE Panel misapplied in scoring element 2-A, and the Requester’s substantive disagreement with the CPE Panel’s conclusion does not support reconsideration.

(f) No Policy Or Procedure Requires The CPE Panel To Consider Determinations Rendered In Community Objection Proceedings.

⁸³ *Id.*

⁸⁴ Annex A-1, CPE Report, Pg. 6.

⁸⁵ Request, § 8.9.3, Pg. 17.

The Requester claims reconsideration is warranted because the CPE Panel’s Report did not take into account statements made in a determination overruling a community objection to an application for a different string, namely .LGBT.⁸⁶ The New gTLD Program’s dispute resolution processes, such as the community objection process, provide parties with the opportunity to object to an application and have their concerns considered by an independent panel of experts. In contrast, CPE is a method of resolving string contention and is intended to resolve cases where two or more applicants for an identical or confusingly similar string *successfully complete* all previous stages of the evaluation and dispute resolution processes. The dispute resolution and string contention procedures were developed independently of each other with their distinct purposes in mind, as is made clear by the fact that the Guidebook addresses each in separate provisions. There is no instruction or even suggestion that CPE panels should consider statements made in objection determinations, especially those made in objection determinations regarding a different gTLD. Given that no established policy or procedure requires CPE panels to consider expert determinations issued to resolve community objections, no reconsideration is warranted on the ground that the CPE Panel here did not do so.

- 4. The CPE Panel’s Report Is Not Inconsistent With Other CPE Panels’ Reports In A Manner Constituting A Policy Or Procedure Violation.**
 - (a) The CPE Panel’s Reference To The Oxford English Dictionary Presents No Ground For Reconsideration.**

The Requester suggests that reconsideration is warranted because the CPE Panel consulted the Oxford English Dictionary (“OED”) in seeking to define the string name, whereas the Requester claims that other CPE panels, in considering other applied-for strings, did not.⁸⁷ However, the Guidebook expressly authorizes CPE panels to “perform independent research, if

⁸⁶ Request, § 8.8, Pg. 13.

⁸⁷ Request, § 8.9.1, Pg. 14.

deemed necessary to reach informed scoring decisions.”⁸⁸ The Requester cites no established policy or procedure (because there is none) requiring every CPE panel to use the same sources of independent research in their analyses. As such, the fact that the CPE Panel consulted the OED does not support reconsideration.⁸⁹

(b) The CPE Panel’s Analysis Of Element 2-A (Nexus) Is Not Inconsistent With Other CPE Panels’ Reports In A Manner Constituting A Policy Or Procedure Violation.

With respect to the nexus element, the Requester contends that the EIU has “used double standards in preparing the various CPE panel reports, and is discriminating between the various community-based applicants[.]”⁹⁰ Specifically, the Requester notes that the CPE Panel found that the Application lacked a nexus to the gay community because the Application’s community definition was over-inclusive insofar as it included “allies”—specifically, the CPE Panel determined that because the proposed community included allies, “there are significant subsets of the defined community that are not identified by the string ‘.GAY’.”⁹¹

The Requester cites two CPE panel reports that purportedly show that “the EIU does not seem to have issues with similar concepts” with respect to other applications.⁹² First, it cites the CPE panel evaluating an application for the string .OSAKA, which awarded full points in the nexus category even though the community definition included not just those living in Osaka but also “those who self identify as having a tie to Osaka.”⁹³ Second, the Requester cites the CPE panel evaluating an application for the string .HOTEL, which awarded partial points in the nexus

⁸⁸ Guidebook, § 4.2.3.

⁸⁹ Furthermore, the Requester states that the OED comprised the “sole basis” for evaluating the definition of the community (Request, § 8.9.1, Pg. 14); to the contrary, the Report cites the OED only in a footnote, and includes a detailed discussion of the community definition separate and apart from the OED definition. Annex A-1, Pgs. 5-6.

⁹⁰ Request, § 8.9.3.A, Pg. 18.

⁹¹ Annex A-1, CPE Report, Pg. 6.

⁹² Request, § 8.9.3A, Pg. 18.

⁹³ Annex C-13, Pgs. 1, 4.

category even though it noted there was an insubstantial amount of overreach inherent to the community definition, which includes some entities that are merely “related to hotels.”⁹⁴

However, comparing these reports to the CPE Panel’s Report here discloses no inconsistency that could comprise a policy or procedure violation.

Different outcomes by different independent experts related to different gTLD applications is to be expected, and is hardly evidence of any policy or procedure violation. For instance, the .OSAKA string has been designated a geographic name string, unlike .GAY.⁹⁵ As such, a host of distinct considerations come into play with respect to each step of the evaluation and, in addressing the nexus component, the CPE Panel evaluating .OSAKA specifically referred to the governmental support the applicant had demonstrated.⁹⁶ As for .HOTEL, the CPE panel awarded partial credit to the applicant, finding the “string nexus closely describes the community,” and noted only one potential deficiency, namely the possibility that a “small part of the community” identified in the application might not match the string name.⁹⁷ Here, in contrast, the CPE Panel’s Report found that the proposed community was both over- and under-inclusive.⁹⁸ There is no policy or procedure violation because there is simply no inconsistency: the .HOTEL report found only mild problems with the proposed community definition and awarded a partial nexus score, whereas the CPE Panel’s Report here identified multiple mismatches between the proposed community and the string name, and awarded no points for the nexus element.

In essence, the Requester complains that it lost whereas other applicants prevailed in

⁹⁴ Annex C-14, Pg. 4.

⁹⁵ See Initial Evaluation for Interlink Co., Ltd.’s Application for .OSAKA, *available at* <http://newgtlds.icann.org/sites/default/files/ier/viun4exoaqie2hl0qojm7uvi/ie-1-901-9391-en.pdf>.

⁹⁶ Annex C-13, Pg. 4.

⁹⁷ Annex C-14, Pg. 4.

⁹⁸ Annex A-1, CPE Report, Pgs. 5-6.

scoring nexus points, but no reconsideration is warranted on this ground given that the Requester has failed to show any policy or procedure violation that led to the award of zero points.

(c) The CPE Panel’s Analysis of Element 4-A (Support) Is Not Inconsistent With Other CPE Panels’ Reports In A Manner Constituting A Policy Or Procedure Violation.

The Requester contends that reconsideration is warranted because it claims two other CPE panels have awarded the applicants the full two points with respect to the support criterion (element 4-A) even while finding there was no single organization representative of the entire community, whereas the CPE Panel here awarded the Requester only one point because no such organization exists.⁹⁹ Once again, it is to be expected that different panels will come to different conclusions with respect to different applications. Moreover, there is no inconsistency in the first instance.

The CPE Guidelines provide that an Application will be awarded one point for element 4-A if it demonstrates “[d]ocumented support from at least one group with relevance.”¹⁰⁰ The CPE Panel found that the Application met this one-point standard because at least one relevant group supported the Application.¹⁰¹ To warrant an award of *two* points, though, it must be the case that the “Applicant is, or has documented support from, *the* recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community[.]”¹⁰² Here, the CPE Panel concluded that the Requester was ineligible for a two-point award given that it is “not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from

⁹⁹ Request, § 8.9.4, Pg. 20.

¹⁰⁰ CPE Guidelines, *available at* <http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en>, Pg. 16.

¹⁰¹ Annex A-1, CPE Report, Pgs. 7-8.

¹⁰² CPE Guidelines, *available at* <http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en>, Pg. 16 (emphasis added).

the recognized community institution(s)/member organization(s)” in part because “[t]here is no single such organization recognized by the defined community as representative of the community.”¹⁰³

The Requester cites two CPE panel reports where the CPE panel awarded the full two points as to the support element, namely one CPE panel report evaluating an application for .RADIO, and the other for .HOTEL. Nevertheless, there is no inconsistency between those reports and the CPE Panel’s Report giving rise to the instant Reconsideration Request: neither of the previous reports *expressly* found that *no* single organization represents the community.¹⁰⁴ The Requester recognizes as much, arguing merely that it “does not appear to Requester that there is one single organization recognized by the ‘radio’ community or the ‘hotel’ community[.]”¹⁰⁵ In other words, the purported inconsistency between the CPE Panel’s Report here and others simply does not exist; the .RADIO and .HOTEL CPE reports did *not* include an express finding that the community is *not* represented by any single organization. Here, in contrast, the CPE Panel explicitly found that no such organization exists with respect to the gay community. The CPE Panel thereafter followed the Guidebook, which does not permit a two-point award in the absence of support from a “recognized” organization, defined as one that is “clearly recognized by the community members as representative of the community.”¹⁰⁶

Far from identifying any procedural irregularity with respect to the “support” prong of the community endorsement element, the Requester appears to fault the CPE Panel for adhering to the applicable rules and policies. As such, no reconsideration is warranted on this ground.

¹⁰³ Annex A-1, CPE Report, Pg. 8.

¹⁰⁴ See .RADIO CPE Report, *available at* <https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>; .HOTEL CPE Report, *available at* <https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>.

¹⁰⁵ Request, § 8.9.4, Pg. 20.

¹⁰⁶ See Guidebook § 4.2.3.

B. ICANN’s DIDP Response Did Not Contravene Any Established Policy Or Procedure.

1. ICANN Staff Adhered To Applicable Policies And Procedures In Responding To The DIDP Request.

The Requester disagrees with the ICANN staff’s determination that certain requested documents were subject to DIDP Conditions of Nondisclosure, as well as ICANN’s determination that, on balance, the potential harm from the release of the documents subject to the Conditions of Nondisclosure outweighs the public interest in disclosure.¹⁰⁷ The Requester claims that in declining to produce documents, ICANN’s violated its core commitment to transparency.¹⁰⁸ The Requester, however, does not identify any policy or procedure that ICANN staff violated in responding to the DIDP Request. As such, reconsideration is not appropriate.

The DIDP identifies a number of “conditions for the nondisclosure of information,” such as documents containing “[c]onfidential business information and/or internal policies and procedures” and/or containing “[i]nternal information that, if disclosed, would or would be likely to compromise the integrity of ICANN’s deliberative and decision-making process by inhibiting the candid exchange of ideas and communications.”¹⁰⁹ It is ICANN’s responsibility to determine whether requested documents fall within those Conditions for Nondisclosure. Pursuant to the DIDP process, “a review is conducted as to whether the documents identified as responsive to the Request are subject to any of the [Conditions for Nondisclosure] identified [on ICANN’s website].”¹¹⁰

¹⁰⁷ Request, § 8.10, Pgs. 20-22.

¹⁰⁸ *Id.*

¹⁰⁹ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

¹¹⁰ See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf> (Process For Responding To ICANN’s Documentary Information Disclosure Policy (DIDP) Requests); *see also*, <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

The Requester states that it does not find ICANN's position in the DIDP Response "convincing" that three categories of documents are not suitable for public disclosure because they fall into one of the enumerated Conditions of Nondisclosure: (1) agreements between ICANN and the organizations or individuals involved in the CPE; (2) "communications with persons from EIU who are not involved in the scoring of a CPE, but otherwise assist in a particular CPE [...]"; and (3) work papers of CPE Panel members.¹¹¹ The Requester, however, fails to demonstrate that ICANN contravened the DIDP Response Process in determining that these categories of documents fall under one or more of the Conditions of Nondisclosure.

Indeed, in finding that each of these three categories of requested documents were subject to Conditions of Nondisclosure, ICANN adhered to the DIDP Response Process. First, ICANN has made public all documents regarding the standards and process governing CPE, as well as its instructions to the EIU on how the CPE process should be conducted, on its new gTLD microsite. (See <http://newgtlds.icann.org/en/applicants/cpe>.) In particular, Section 4.2 of the Guidebook, the CPE Panel Process Document, and the CPE Guidelines, set forth the guidelines and criteria by which the CPE panels are to evaluate applications undergoing CPE. These documents also encompass the instructions from ICANN to the EIU on how the CPE process should be conducted. There are no CPE process documents, guidelines, or instructions from ICANN to the EIU on how the CPE process should be conducted that have not been publicly posted. As to the contract between ICANN and the EIU for the coordination of the independent panels to perform CPEs, ICANN analyzed the Requester's request in view of the DIDP Conditions of Nondisclosure. ICANN determined that the contract was subject to several Conditions of Nondisclosure, including those covering "information . . . provided to ICANN pursuant to a

¹¹¹ Request, § 8.10, Pgs. 20-21.

nondisclosure agreement or nondisclosure condition within an agreement” and “confidential business information and/or internal policies and procedures.”¹¹²

Second, as to ICANN’s determination that it will not publicly disclose “communications with persons from EIU who are not involved in the scoring of a CPE,” ICANN analyzed the Requester’s requests in view of the DIDP Conditions of Nondisclosure. ICANN noted that it had already determined in response to a previous request (No. 20140804-1) that this category of documents is subject to several Conditions of Nondisclosure.¹¹³ The DIDP response to which ICANN referred discloses that the requested category of documents falls under Conditions of Nondisclosure including those covering information that “if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of . . . [a third] party[,]” “information exchanged, prepared for, or derived from the deliberative and decision-making processes,” and “confidential business information and/or internal policies and procedures.”

Third, as to the work papers of CPE evaluators or other documents internal to the EIU, ICANN indicated that it is not involved with the EIU’s deliberative process in order to “help assure independence of the process,” and therefore ICANN does not possess any such documents that might be responsive to this requested category.¹¹⁴

As ICANN noted in the DIDP Response, notwithstanding the fact that the Requester’s “analysis in [the DIDP] Request concluded that no Conditions for Nondisclosure should apply, ICANN must independently undertake the analysis of each Condition as it applies to the documentation at issue, and make the final determination as to whether any [Conditions of

¹¹² Annex A-4, DIDP Response, Pg. 2.

¹¹³ *Id.*, Pg. 3 (citing Response to DIDP Request No. 20140804, *available at* <https://www.icann.org/en/system/files/files/response-donuts-et-al-03sep14-en.pdf>).

¹¹⁴ Annex A-4, DIDP Response, Pgs. 2, 4.

Nondisclosure].”¹¹⁵ In conformance with the publicly posted DIDP process,¹¹⁶ ICANN undertook such analysis, as noted above, and articulated its conclusions in the DIDP Response. ICANN also noted that at least some of these documents were draft documents and explained that drafts not only fall within a Condition of Nondisclosure but also are “not reliable sources of information regarding what actually occurred or standards that were actually applied.”¹¹⁷ While the Requester may not agree with ICANN’s determination that certain Conditions of Nondisclosure apply here, the Requester identified no policy or procedure that ICANN staff violated in making its determination, and the Requester’s substantive disagreement with that determination is not a basis for reconsideration.

2. ICANN Staff Adhered To The DIDP Response Process In Determining That The Potential Harm Caused By Disclosure Outweighed The Public Interest In Disclosure.

The DIDP states that if documents have been identified within the Conditions of Nondisclosure, they “may still be made public if ICANN determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure.”¹¹⁸ The Requester’s substantive disagreement with the determination made by ICANN staff in this regard in responding to the DIDP Request does not serve as a basis for reconsideration.

The Requester argues that ICANN’s determination not to make public the documents it requested through the DIDP “restricts [its] fundamental rights to challenge” the CPE Panel’s evaluation, and “ultimately, to use the transparency and accountability mechanisms embedded

¹¹⁵ *Id.*, Pg. 5.

¹¹⁶ See <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>.

¹¹⁷ Annex A-4, DIDP Response, Pg. 5.

¹¹⁸ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

into ICANN’s By-laws.”¹¹⁹ Yet, the fact that the Requester believes that in this case the public interest in disclosing information outweighs any harm that might be caused by such disclosure does not bind ICANN to accept the Requester’s analysis. In accordance with the DIDP Response Process, ICANN conducted a review of all responsive documents that fell within the Conditions of Nondisclosure, and determined that the potential harm did outweigh the public interest in the disclosure of certain documents.¹²⁰ The Requester identifies no policy or procedure that ICANN staff violated in reaching this decision.

Finally, the Requester states that “[i]n Requester’s opinion, the EIU . . . is subject to the same policies—especially those relating to transparency and accountability—as ICANN.”¹²¹ However, as stated in the DIDP Response, “DIDP is limited to requests for information already in existence *within ICANN* that is not publicly available,”¹²² as the DIDP is “intended to ensure that information contained in documents concerning ICANN’s operational activities, *and within ICANN’s possession, custody, or control*, is made available to the public unless there is a compelling reason for confidentiality.”¹²³ The documents are not within ICANN’s possession, custody or control.¹²⁴ Even though the Requester wishes it otherwise, there is no established policy or procedure that requires ICANN to gather documents from third party service providers such as the EIU.

In sum, ICANN staff properly followed all policies and procedures with respect to the Requester’s DIDP Request—ICANN staff assessed the request in accordance with the guidelines set forth in the DIDP and determined, pursuant to those guidelines, that certain categories of

¹¹⁹ Request, § 8.10, Pg. 21.

¹²⁰ Annex A-4, DIDP Response, Pgs. 2-5.

¹²¹ Request, § 8.10, Pg. 22.

¹²² Annex A-4, DIDP Response, Pg. 5 (emphasis added).

¹²³ See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.

¹²⁴ Annex A-4, DIDP Response, Pg. 2.

requested documents were subject to Conditions of Nondisclosure, and that the potential harm from the disclosure of certain documents outweighed the benefits. The Requester's substantive disagreement with that determination is not a basis for reconsideration.

VI. Accepting The Reconsideration Request.

Based on the foregoing, the BGC concludes that reconsideration is warranted. Specifically, ICANN discovered in the course of investigating the claims presented in this Request that the CPE Panel inadvertently neglected to verify some of the letters submitted in support of the Application. This conduct is in contradiction of an established process. Accordingly, the BGC has determined that the CPE Panel's Report will be set aside and that new evaluators will be appointed to conduct a new CPE for the Application. The BGC also recommends that the EIU include new members of the core team to assess the evaluation results.

The Bylaws provide that the BGC is authorized to make a final determination for all Reconsideration Requests brought regarding staff action or inaction and that the BGC's determination on such matters is final.¹²⁵ As discussed above, Request 14-44 seeks reconsideration of a staff action or inaction. After consideration of this Request, the BGC concludes that this determination is final and that no further consideration by the Board (or the New gTLD Program Committee) is warranted.

The BGC's decision to accept this reconsideration request and convene a new CPE Panel to evaluate the Requester's Application does not mean that a newly constituted CPE panel necessarily will overturn, reverse, or otherwise alter the decision that ultimately serves as the basis of this Request, namely that the Requester's application for .GAY did not meet the CPE criteria. Accepting the Request merely allows the appointment of new CPE evaluators (and

¹²⁵ Bylaws, Art. IV, § 2.15.

potentially new core team members) to conduct a new evaluation and issue a new report that will supersede the existing CPE Panel's Report.

In terms of the timing of the BGC's Determination, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical.¹²⁶ To satisfy the thirty-day deadline, the BGC would have to have acted by 29 December 2014. Due to the intervening holidays, it was impractical for the BGC to render a determination on revised Request 14-44 prior to 20 January 2015.

¹²⁶ Bylaws, Article IV, § 2.16.

RLA-1

RESPONDENT'S EXHIBIT

▲ Caution
As of: May 19, 2023 2:51 PM Z

Comm. for Idaho's High Desert, Inc. v. Yost

United States Court of Appeals for the Ninth Circuit

March 6, 1996, Argued, Submitted, Seattle, Washington ; August 6, 1996, Filed

No. 95-35439, No. 95-35472

Reporter

92 F.3d 814 *; 1996 U.S. App. LEXIS 19488 **; 39 U.S.P.Q.2D (BNA) 1705 ***; 96 Cal. Daily Op. Service 5814; 35 Fed. R. Serv. 3d (Callaghan) 897

THE COMMITTEE FOR IDAHO'S HIGH DESERT, INC., Plaintiff-Appellee, v. JIM YOST, individually and dba Committee for Idaho's High Desert, Inc.; TED HOFFMAN, individually and dba Committee for Idaho's High Desert, Inc.; QUEY JOHNS, individually and dba Committee for Idaho's High Desert, Inc., Defendants-Appellants. THE COMMITTEE FOR IDAHO'S HIGH DESERT, INC., Plaintiff-Appellant, v. JIM YOST, individually and dba Committee for Idaho's High Desert, Inc.; TED HOFFMAN, individually and dba Committee for Idaho's High Desert, Inc.; QUEY JOHNS, individually and dba Committee for Idaho's High Desert, Inc., Defendants-Appellees.

Prior History: **[**1]** Appeals from the United States District Court for the District of Idaho. D.C. No. CV-94-00089-LMB. D.C. No. CV-94-00089-LMB. Larry M. Boyle, Magistrate Judge, Presiding.

Disposition: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Core Terms

district court, high desert, trademark, attorney's fees, environmental, infringement, tradename, secondary meaning, appellants', clearly erroneous, summary judgment, damages, unincorporated association, excusable neglect, claim for damages, membership, non-profit,

goods and services, unfair competition, extension of time, environmentalist, advertising, de-listing, forfeiture, charter, generic, cases, snail, user, incorporation

Case Summary

Procedural Posture

Defendants appealed the decision of United States District Court for the District of Idaho, which found that they violated § 43(a) of the Lanham Act, [15 U.S.C.S. §§ 1051-1128](#), by infringing on plaintiff's trade name, and enjoining them from using the name. Plaintiffs appealed the dismissal of damage claims and claims against individual corporate members.

Overview

Plaintiff, an environmental education and advocacy organization, operated under its corporate name until it forfeited its corporate charter for failure to file an annual report. Plaintiff was unaware of the forfeiture and continued to use name. Plaintiff attempted to intervene in a lawsuit seeking to have a snail removed from the endangered species list, and defendants discovered the forfeiture of plaintiff's corporate charter. Defendants then incorporated under that name and opposed plaintiff's intervention. Plaintiff sued defendants, alleging trade name infringement violating the Lanham Act. The district court refused to dismiss the claims and granted an

injunction, ruling corporate disability under state law did not remove standing under the Lanham Act. The court dismissed plaintiff's damage claims since it failed to produce evidence of monetary damages and dismissed individual defendants since they were bound by the injunction against defendant corporation. The court affirmed the injunction and the dismissal of the damages claims, but reversed the dismissal of the individuals since they could be liable for costs and attorney's fees.

Outcome

The court affirmed the decision with respect to trade name infringement, because the court's findings were not clearly erroneous, and the dismissal of plaintiff's damages claims, because plaintiff failed to produce evidence of any monetary damage. The court reversed the dismissal of defendant individuals because they could be liable for costs and attorney's fees.

LexisNexis® Headnotes

Business & Corporate Law > Nonprofit Corporations & Organizations > Management Duties & Liabilities

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Business & Corporate Law > Nonprofit Corporations & Organizations > General Overview

Business & Corporate Law > Unincorporated Associations

[HN1](#) [↓] **Nonprofit Corporations & Organizations, Management Duties &**

Liabilities

Factual findings are reviewed for clear error, so a reviewing court must accept a finding unless it is left with the definite and firm conviction that a mistake has been committed.

Business & Corporate Law > Unincorporated Associations

Civil Procedure > Parties > Capacity of Parties > General Overview

Civil Procedure > ... > Federal & State Interrelationships > Federal Common Law > General Overview

[HN2](#) [↓] **Business & Corporate Law, Unincorporated Associations**

[Fed. R. Civ. P. 17\(b\)\(1\)](#) allows an "unincorporated association" to sue in federal court, regardless of its capacity to sue under the law of the state in which the court sits, when the association is suing for the purpose of enforcing a substantive right existing under the laws of the United States. For purposes of [Rule 17\(b\)\(1\)](#), the determination of what constitutes an "unincorporated association" is a question of federal law. Courts have generally defined an "unincorporated association" as a voluntary group of persons, without a charter, formed by mutual consent for the purpose of promoting a common objective.

Business & Corporate Compliance > ... > Abandonment > Intentional Abandonment > Intentional Nonuse

Trademark Law > ... > Unfair Competition > Federal Unfair Competition Law > General Overview

Trademark Law > ... > Infringement

Actions > Defenses > General Overview

[HN6](#) [↓] **Names, Generic Names**

Trademark Law > Trademark Cancellation & Establishment > General Overview

A mark is a composite term, its validity is not judged by an examination of its parts. Rather, the validity of a trademark is to be determined by viewing the trademark as a whole.

Trademark Law > Abandonment > General Overview

[HN3](#) [↓] **Intentional Abandonment, Intentional Nonuse**

A mark shall be deemed to be "abandoned" when its use has been discontinued with intent not to resume such use. Nonuse for three consecutive years shall be prima facie evidence of abandonment.

Trademark Law > ... > Names > Generic Names > Tests for Genericness

Trademark Law > ... > Names > Generic Names > General Overview

Trademark Law > ... > Infringement
Actions > Defenses > General Overview

[HN4](#) [↓] **Infringement Actions, Defenses**

A third party's prior use of a trademark is not a defense in an infringement action.

[HN7](#) [↓] **Generic Names, Tests for Genericness**

A generic term is one that refers to the genus of which the particular product is a species. The Lanham Act, [15 U.S.C.S. § 1064\(3\)](#), sets out the test for genericness. The primary significance of the mark to the relevant public shall be the test for determining whether the mark has become the generic name of goods or services on or in connection with which it has been used. The Federal Circuit has interpreted this statement as codifying the time-honored test for genericness articulated by Judge Learned Hand. What do the buyers understand by the word for whose use the parties are contending?

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Trademark Law > ... > Names > Generic Names > General Overview

Trademark Law > ... > Infringement
Actions > Standards of Review > General Overview

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

[HN5](#) [↓] **Standards of Review, Clearly Erroneous Review**

Genericness is a question of fact, and therefore subject to clear-error review.

Trademark Law > ... > Eligibility for Trademark Protection > Evidence of Secondary Meaning > General Overview

Trademark Law > ... > Infringement
Actions > Standards of Review > General Overview

Trademark Law > ... > Names > Generic Names > General Overview

[HN8](#) [↓] **Standards of Review, Clearly Erroneous Review**

A trial court's finding of secondary meaning may be reversed only upon a showing of clear error. Factors considered in determining whether a secondary meaning has been achieved include: (1) whether actual purchasers of the product bearing the claimed trademark associate the trademark with the producer, (2) the degree and manner of advertising under the claimed trademark, (3) the length and manner of use of the claimed trademark, and (4) whether use of the claimed trademark has been exclusive.

Trademark Law > ... > Eligibility for Trademark Protection > Evidence of Secondary Meaning > General Overview

[HN9](#) [↓] **Eligibility for Trademark Protection, Evidence of Secondary Meaning**

An expert survey of purchasers can provide the most persuasive evidence of secondary meaning. It is clear from this statement, however, that survey evidence is only one of the most persuasive ways to prove secondary meaning, and not a requirement for such proof.

Trademark Law > ... > Eligibility for Trademark Protection > Evidence of Secondary Meaning > General Overview

[HN10](#) [↓] **Eligibility for Trademark Protection, Evidence of Secondary Meaning**

Proof of exact copying, without any opposing proof, can be sufficient to establish a secondary meaning.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

Civil Procedure > Judgments > Summary Judgment > Partial Summary Judgment

Trademark Law > ... > Infringement Actions > Standards of Review > General Overview

Trademark Law > ... > Infringement Actions > Summary Judgment > General Overview

[HN11](#) [↓] **Standards of Review, De Novo Review**

The grant of summary judgment is reviewed de novo.

Trademark Law > ... > Remedies > Damages > General Overview

Trademark Law > ... > Federal Unfair Competition Law > Lanham Act > General Overview

[HN12](#) [↓] **Remedies, Damages**

The Lanham Act allows a plaintiff who establishes a violation of § 43(a) of that act, [15 U.S.C.S. § 1117\(a\)](#), to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.

Business & Corporate Compliance > ... > Federal Unfair Competition Law > False Designation of Origin > Elements of False Designation of Origin

Trademark Law > ... > Federal Unfair Competition Law > Trade Dress

Protection > General Overview

Trademark Law > ... > Federal Unfair
Competition Law > False
Advertising > General Overview

Trademark Law > ... > Federal Unfair
Competition Law > Lanham Act > General
Overview

[HN13](#) **False Designation of Origin, Elements of False Designation of Origin**

Section 43(a) of the Lanham Act, [15 U.S.C.S. § 1125\(a\)](#), imposes liability on any person who, on or in connection with any goods or services, uses in commerce any name which is likely to cause confusion.

Business & Corporate
Compliance > ... > Federal Unfair
Competition Law > False Designation of
Origin > Palming Off

Business & Corporate
Law > ... > Management Duties &
Liabilities > Causes of Action > Negligent
Acts of Directors & Officers

Trademark Law > Causes of Action
Involving Trademarks > Infringement
Actions > General Overview

Business & Corporate Law > ... > Directors
& Officers > Management Duties &
Liabilities > General Overview

Torts > Vicarious Liability > Agency
Relationships > General Overview

Trademark Law > ... > Unfair
Competition > Federal Unfair Competition
Law > General Overview

Trademark Law > ... > Federal Unfair
Competition Law > False Designation of

Origin > General Overview

[HN14](#) **False Designation of Origin, Palming Off**

A corporate officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf.

Civil Procedure > ... > Pleadings > Time
Limitations > Extension of Time

Civil Procedure > ... > Pleadings > Time
Limitations > General Overview

Civil Procedure > Remedies > Costs &
Attorney Fees > General Overview

[HN15](#) **Time Limitations, Extension of Time**

[Fed. R. Civ. P. 54\(d\)\(2\)\(A\)](#) and [\(B\)](#), as amended effective December 1, 1993, require a claim for attorney's fees to be made by motion filed and served no later than 14 days after entry of judgment. A court can by order provide a different deadline.

Civil Procedure > Appeals > Standards of
Review > Abuse of Discretion

Civil Procedure > ... > Pleadings > Time
Limitations > General Overview

Civil Procedure > ... > Grounds for Relief
from Final Judgment, Order or
Proceeding > Excusable Mistakes &
Neglect > General Overview

Civil Procedure > Remedies > Costs &
Attorney Fees > General Overview

[HN16](#) [↓] Standards of Review, Abuse of Discretion

[Fed. R. Civ. P. 6\(b\)](#) allows filing a motion for attorney's fees after the expiration of the deadline where the failure to timely file was the result of excusable neglect. Because [Rule 6\(b\)](#) commits the question to the court's discretion, appellate courts review a decision under [Rule 6\(b\)](#) for abuse of discretion.

Civil Procedure > ... > Grounds for Relief from Final Judgment, Order or Proceeding > Excusable Mistakes & Neglect > General Overview

[HN17](#) [↓] Grounds for Relief from Final Judgment, Order or Proceeding, Excusable Mistakes & Neglect

Relief based solely on counsel's unfamiliarity with the amended Local and Federal Rules does not constitute excusable neglect. Inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect.

Antitrust & Trade Law > ... > Private Actions > Costs & Attorney Fees > Clayton Act

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Trademark Law > ... > Remedies > Damages > General Overview

Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > General Overview

Trademark Law > ... > Infringement Actions > Remedies > General Overview

Trademark Law > ... > Damages > Types of Damages > Costs & Attorney Fees

[HN18](#) [↓] Costs & Attorney Fees, Clayton Act

Section 35(a) of the Lanham Act, [15 U.S.C. § 1117\(a\)](#), provides that a court in exceptional cases may award reasonable attorney fees to the prevailing party when a violation of § 43(a) has been established. While the term "exceptional" is not defined in the statute, generally a trademark case is exceptional for purposes of an award of attorneys' fees when the infringement is malicious, fraudulent, deliberate or willful.

Counsel: Laird J. Lucas, Land & Water Fund of the Rockies, Boise, Idaho, for the plaintiff-appellee-appellant.

Gary D. Babbitt, Hawley, Troxell, Ennis & Hawley, Boise, Idaho, for the defendants-appellants-appellees.

Judges: Before: Betty B. Fletcher, John T. Noonan, Jr., and Pamela Ann Rymer, Circuit Judges. Opinion by Judge Fletcher.

Opinion by: FLETCHER

Opinion

[***1706] [*816] OPINION

FLETCHER, Circuit Judge:

James Yost, Ted Hoffman, Quey Johns, and their corporation Committee for Idaho's High Desert, Inc. (hereinafter "appellants") appeal from the district court's decision, published at [881 F. Supp. 1457](#), finding that they violated § 43(a) of the Lanham Act, [15 U.S.C. §§ 1051-1128](#), by infringing appellee's protected

tradename "Committee for Idaho's High Desert" and enjoining them from using that name.¹ The Committee for Idaho's High Desert, Inc. (CIHD, pronounced "kid") cross-appeals from the district court's grant of summary judgment dismissing its damages claim and its claims against the individual appellants, as well as from the court's order denying an extension of time in which to file a motion for attorney's fees. We have jurisdiction over this timely appeal under [28 U.S.C. § 1291](#).

FACTUAL BACKGROUND

2

CIHD is a non-profit environmental education and advocacy organization, concerned with issues of grazing, range-land reform, water use, recreation, endangered species, and resource use affecting the desert of southwest Idaho and parts of Nevada, Oregon, and Utah. CIHD's position on these issues is "to encourage limited use of public lands with an emphasis on conservation and preservation of the natural state of the desert ecosystem". [881 F. Supp. at 1463](#).

CIHD was organized in the late 1970s by a number of individuals. In 1981, the organization incorporated under Idaho law. Throughout its history, the organization has operated very informally, "due to the voluntary, changing, and diverse nature of its membership". [Id. at 1464](#). In 1985, CIHD

failed to file a required annual report with the Idaho secretary of state and forfeited its corporate charter. The organization's leaders and members were unaware of this forfeiture and continued to operate as if CIHD were a corporation in good standing.

In 1992, CIHD and the Idaho Conservation League sued the federal government to have the Bruneau snail, which lives in the Idaho desert, listed as an endangered species; as a result of the suit, the snail was listed in January 1993. A coalition of agriculture and cattle organizations called the Bruneau Valley Coalition then sued to have the snail de-listed. See [Idaho Farm Bureau Federation v. Babbitt, 839 F. Supp. 739 \(D. Idaho 1993\)](#), *vacated and remanded*, [58 F.3d 1392 \(9th Cir. 1995\)](#). James Yost was, at the time, the director of public affairs at the Idaho Farm Bureau; Ted Hoffman was president of the Owyhee Cattlemen's Association; and Quey Johns was president of the Owyhee Farm Bureau. All three organizations, which were members of the Bruneau Valley Coalition, had opposed CIHD's positions on the use of public lands. The individual appellants' viewpoints on these issues are "virtually antithetical" to those of CIHD. [881 F. Supp. at 1466](#). In 1993, Hoffman, in a letter to the editor, accused CIHD's long-time chairman, Randy Morris, of using "enviro-nazi tactics" and "environmentalist flim-flam". *Id.*

After CIHD and others moved in September 1993 to intervene in the de-listing suit in order to defend the listing, Yost had a colleague check with the Idaho secretary of state to determine whether the prospective intervenors were corporations in good standing. Within 24 hours of learning that CIHD had forfeited its charter in 1985, the individual appellants formed a new Idaho corporation under the name "Committee for Idaho's High Desert, Inc." (hereinafter "appellant

¹This case appears to involve an instance of "greenscamming", a "practice of giving environmentally friendly names to groups whose agendas have little to do with the welfare of the environment". Jane Fritsch, "Friend or Foe? Nature Groups Say Names Lie", *New York Times* at 1 (Mar. 25, 1996).

²This recitation of the facts is drawn primarily from the district court's findings of fact, virtually all of which go unchallenged by the appellants.

corporation"). The individual appellants had been considering forming an organization to advance their views on environmental issues for several years and had discussed possible names, but took no action until they learned of CIHD's corporate forfeiture and did not seriously consider using the name "Committee for Idaho's High Desert" until they learned of the forfeited charter. The appellant corporation's articles of incorporation were modeled after CIHD's, and the statement of purposes was copied virtually verbatim from CIHD's, with "a few minor, subtle changes where necessary to represent what are distinct differences between [the appellants'] and [CIHD's] environmental philosophies". *Id. at 1467*. The appellant corporation was capitalized with only \$ 120. Yost, Hoffman, and Johns are the appellant corporation's officers, directors, and only members, and the appellant corporation's articles listed its principal place of business as the Boise office of the Idaho Farm Bureau.

[*818] CIHD learned of its earlier inadvertent forfeiture when the Bruneau Valley Coalition opposed CIHD's intervention in the de-listing suit on the basis of incapacity. **[**6]** When CIHD promptly sought to be reinstated, however, the secretary of state denied reinstatement because the appellant corporation was already registered under the name "Committee for Idaho's High Desert".

In January 1994, Hoffman testified at a public hearing held by the U.S. Air Force on a proposal for a training range on public land in Idaho. "Hoffman stated that he was president of the Committee for Idaho's High Desert which was supportive of the proposal, a position he knew to be diametrically and publicly opposed by [CIHD]." *881 F. Supp. at 1467*. At trial, Hoffman "acknowledged that he made this statement to add to his credibility as an environmentalist to support the training range proposal". *Id.*

PROCEEDINGS BELOW

On March 1, 1994, CIHD filed a complaint against Yost, Hoffman, Johns, and their corporation, alleging inter alia violations of federal and state trademark and unfair competition law. After the filing of an amended complaint, the parties consented to have the case assigned to a magistrate judge under [28 U.S.C. § 636\(c\)](#).

After appellants moved for summary judgment, the district court dismissed CIHD's state-law claims, finding that as a forfeited corporation **[**7]** it could bring those claims only through its statutory trustees. The court refused to dismiss CIHD's federal claims, ruling that any corporate disability under state law did not preclude CIHD from suing in federal court to vindicate rights under federal trademark and unfair competition laws. The court also found that CIHD had not created a genuine issue of material fact as to the dollar amount of any damages sustained, so it dismissed CIHD's damage claims and struck CIHD's request for a jury trial. The court then ruled that since it had dismissed all damage claims, and since the individual appellants, as officers of the appellant corporation, would be bound under [Federal Rule of Civil Procedure 65\(b\)](#) by an injunction against the corporation, the individual appellants were entitled to summary judgment and to dismissal of the action as against them.

In January 1995, a four-day bench trial was held. The district court made findings as to the nature of CIHD's goods and services, its continuous and exclusive use of its tradename in connection with those goods and services from at least 1980 until the appellant corporation's incorporation in 1993, and the association by relevant "consumers" **[**8]** of the name with appellee CIHD. The court found that the relevant "consumers" of the services

of CIHD and appellant corporation were similar, that some of those consumers [***1708] had actually been confused by appellants' use of the name, and that the appellants "knowingly, intentionally and deliberately adopted and used [the CIHD name] in order to cause confusion, obstruct [CIHD's] pursuit of its environmental agenda, and thereby to obtain an advantage in the snail de-listing litigation by preventing [CIHD's] intervention". [881 F. Supp. at 1468](#).

The district court then concluded that CIHD had capacity to bring its suit as an unincorporated association under [Rule 17\(b\)\(1\) of the Federal Rules of Civil Procedure](#) and that § 43(a) of the Lanham Act allowed suits for infringement of an unregistered trademark or tradename. After setting forth the relevant standards for trademark and tradename protection, the court ruled that the tradename "Committee for Idaho's High Desert" was neither merely geographically descriptive nor arbitrary. It concluded instead that the name was suggestive, and therefore inherently distinctive and entitled to protection without a showing of secondary meaning. Recognizing, [**9] however, the difficulty in drawing the line between suggestive and descriptive marks, the court went on to conclude that, even if the name was only descriptive, CIHD had demonstrated that the name had acquired secondary meaning. Finally, the court concluded that the evidence clearly established a likelihood of confusion as a result of appellants' use of CIHD's name and that appellants had thus infringed CIHD's tradename. Therefore, the court enjoined appellant corporation, and "its officers, directors, agents, attorneys, employees", [*819] from using the name "Committee for Idaho High Desert" or any name confusingly similar to it and from maintaining a corporate registration using that name.

DISCUSSION

No. 95-35439

I. Legal Nature of CIHD

Appellants argue that the district court erred in finding that CIHD was an "unincorporated and non-profit association". [HN1](#) [↑] Factual findings are reviewed for clear error, so a reviewing court must accept a finding unless it "is left with the definite and firm conviction that a mistake has been committed." [United States v. United States Gypsum Co., 333 U.S. 364, 395, 92 L. Ed. 746, 68 S. Ct. 525 \(1948\)](#). The district court did not make the finding appellants seek to [**10] challenge. It found only that CIHD "is a non-profit environmentalist membership organization" and that it has operated "as a non-profit environmental membership organization under the name 'Committee for Idaho's High Desert'" since its organization in the late 1970s. [881 F. Supp. at 1463](#). It also found that CIHD incorporated in 1981, forfeited its corporate charter in 1985 for failure to file an annual report, and thereafter "operated under the mistaken assumption that it was a corporation in good standing" until it first learned of its forfeiture when the appellants attempted to prevent CIHD's intervention in the de-listing lawsuit. [Id. at 1464](#). Those findings are not clearly erroneous.

Appellants also challenge the finding that CIHD "organized and began conducting business as a non-profit environmental membership organization under the name 'Committee for Idaho's High Desert' as early as the late 1970s . . . and has conducted such activity and business continuously until the time of trial." [Id. at 1463](#). This finding is also not clearly erroneous. The record contains a

copy of CIHD's Articles of Incorporation dated July 1981, as well as a certificate of incorporation dated [**11] July 15, 1981. The record also contains copies of minutes of meetings of CIHD's board of directors from September 1981 to June 1994, and these minutes contain extensive detail as to the organization's activities during those years. Copies of CIHD newsletters published between 1982 and 1994 were admitted into evidence. In addition, Randy Morris, long-time chairman of CIHD, and Pamela Marcum, a past officer and active member of CIHD, both testified about the nature of the organization, its operations, purposes, activities, and membership.

In challenging this finding, the appellants repeatedly attack the lack of evidentiary support for the founding or operation of an "unincorporated association". The district court, however, made no factual finding that CIHD was an "unincorporated association". It *found* only that CIHD was, at all times since its founding, "a non-profit environmentalist membership organization". As noted, this finding was not clearly erroneous. The court did then *conclude* as a matter of law that CIHD was an "unincorporated association" with the capacity to sue in its common name under [Federal Rule of Civil Procedure 17\(b\)](#). [881 F. Supp. at 1469](#). If appellants' [**12] brief can be read to challenge this conclusion of law,³ the challenge fails. [***1709] [Rule 17\(b\)\(1\) HN2](#)^[↑] allows an "unincorporated association" to sue in federal court, regardless of its

³ Appellants appear to attempt to challenge this conclusion in their reply brief. An issue raised for the first time in a reply brief, however, is waived. [Thompson v. Commissioner](#), [631 F.2d 642, 649 \(9th Cir. 1980\)](#), *cert. denied*, [452 U.S. 961, 69 L. Ed. 2d 972, 101 S. Ct. 3110 \(1981\)](#). Appellants' challenge to the district court's nonexistent "finding" that CIHD was an "unincorporated and non-profit association" might, however, be read to state a challenge to the district court's conclusion that CIHD could sue under [Rule 17\(b\)](#) as an unincorporated association.

capacity to sue under the law of the state in which the court sits, when the association is suing "for the purpose of enforcing . . . a substantive right existing under the . . . laws of the United States". [Fed. R. Civ. P. 17\(b\)\(1\)](#). See, e.g., [Sierra Association for Environment v. Federal Energy Regulatory Commission](#), [744 F.2d 661, 662 \(9th Cir. 1984\)](#) ("Because this action arises under federal law, [plaintiff] had capacity to sue as an unincorporated association, [Fed. R. Civ. P. 17\(b\)\(1\)](#), and any incapacity under California law is accordingly irrelevant."). [**820] For purposes of [Rule 17\(b\)\(1\)](#), the determination of what constitutes an "unincorporated association" is a question of federal law. [Associated Students of the University of California at Riverside v. Kleindienst](#), [60 F.R.D. 65, 67 \(C.D. Cal. 1973\)](#) (citing cases). Courts have generally defined an "unincorporated association" as "a voluntary group of persons, without a charter, formed by mutual consent for the purpose of promoting a common objective". [**13] [Local 4076, United Steelworkers v. United Steelworkers](#), [327 F. Supp. 1400, 1403 \(W.D. Pa. 1971\)](#). CIHD, in the period after the forfeiture of its corporate charter, clearly meets this definition.

Appellants' contention that the district court somehow erred in allowing Morris and Marcum to testify "as if they were officers of an association" is unavailing. Those witnesses testified that they *believed* at all times, until appellants moved to bar CIHD's intervention in the snail [**14] litigation, that CIHD was a corporation. After learning of the forfeiture and being unable to reinstate the corporation, the organization continued to act as what can only be described as an unincorporated association under the definition noted above. The district court did not err in allowing Morris and Marcum to testify.

II. First Use and Ownership

Appellants next argue that CIHD never established that it was the first user of the name "Committee for Idaho's High Desert", pointing to Randy Morris' testimony at trial that some people used the name as early as 1978, three years before CIHD was incorporated; the testimony suggests that Bruce Boccard, one of CIHD's incorporators and initial directors, was using the name in the pre-incorporation period. Appellants argue that CIHD produced no evidence of CIHD's acquisition of the tradename from the first user.

The lack of evidence as to CIHD's acquisition of tradename rights from the first user is irrelevant. Appellants do not challenge the district court's finding that CIHD's "continuous use" of the name in connection with its business "has been *exclusive* since at least 1980, until [appellants] incorporated under that **[**15]** name on September 14, 1993". [881 F. Supp. at 1466](#) (emphasis added). As a practical matter, CIHD appears to be the direct and immediate successor of any individuals who used the name between 1978 and 1981. It also seems likely that anyone who used the name before CIHD did has long since legally abandoned the name, since CIHD's use was exclusive between 1980 and 1993. See [15 U.S.C. § 1127 HN3](#) ("A mark shall be deemed to be 'abandoned' . . . when its use has been discontinued with intent not to resume such use. . . . Nonuse for 3 consecutive years shall be prima facie evidence of abandonment."); J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 17.03 (3d ed.) (hereinafter *McCarthy*).

Most importantly, however, [HN4](#) a third party's prior use of a trademark is not a defense in an infringement action. A number of cases from the 1920s so hold, including *Ward Baking Co. v. Potter-Wrightington, Inc.*, in which the court wrote that "even if, for some purposes and in some territory, [a third party]

may have a right in the trade-mark superior to that of the plaintiff, the defendant is not thereby exonerated from responsibility for an attempt to appropriate to itself **[**16]** a good will created by the plaintiff during a long course of business." [298 F. 398, 402 \(1st Cir. 1924\)](#). See also [Del Monte Special Food Co. v. California Packing Corp., 34 F.2d 774, 777 \(9th Cir. 1929\)](#) (holding in unfair competition case that "whatever may be the respective rights of the appellee and . . . other users of the name 'Del Monte,' such use does not justify the appellant in its more recent use of appellee's well-known mark upon a new and different product recently produced by it"). This rule is nothing more than the application to the field of trademarks of the familiar real-property doctrine that "possession is title against all the world but the true owner". *McCarthy*, § 31.39[2]. Modern trial courts have adhered **[***1710]** to this rule - see [Specialty Measurements, Inc. v. Measurement Systems, Inc., 763 F. Supp. 91, 95 \(D.N.J. 1991\)](#); [Bambu Sales, Inc. v. Sultana Crackers, Inc., 683 F. Supp. 899, 909-10 \(E.D.N.Y. 1988\)](#); [Marshak v. Sheppard, 666 F. Supp. 590, 599 \(S.D.N.Y. 1987\)](#); [Eagle Snacks, Inc. v. Nabisco **\[*821\]** Brands, Inc., 625 F. Supp. 571, 578-79 \(D.N.J. 1985\)](#) - and a prominent commentator in the field supports it. *McCarthy*, § 31.39[4] ("[A third-party's **[**17]** rights] should not be allowed as a defense in any trademark case. So long as plaintiff proves rights superior to defendant, that is enough. Defendant is no less an infringer because it is brought to account by a plaintiff whose rights may or may not be superior to the whole world. The plaintiff's speculative dispute with a third party does not concern the defendant."). In accordance with this rule, the question of whether some individuals used the name "Committee for Idaho's High Desert" prior to CIHD is no defense for appellants given CIHD's continuous and exclusive use of the name for at least 12 years before appellants'

use, and the trial court did not err in failing to find that CIHD either was the first user of the name or had acquired ownership from some other first user.

III. Genericness

[HN5](#) [↑] Genericness is a question of fact, [In re Northland Aluminum Products, Inc., 777 F.2d 1556, 1559 \(Fed. Cir. 1985\)](#), and therefore subject to clear-error review, [In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567, 1569 \(Fed. Cir. 1987\)](#). See also [A.J. Canfield Co. v. Honickman, 808 F.2d 291, 307 n.24 \(3d Cir. 1986\)](#).

The district court made no express findings **[**18]** of fact or conclusions of law as to the genericness of the tradename CIHD. Its finding that the name is not generic is instead implicit in its finding that the phrase "Idaho high desert" is geographically descriptive, in its finding that relevant consumers associate the name "Committee for Idaho's High Desert" with the appellee and not merely with its goods and services, in its conclusion that the name taken as a whole is not primarily geographically descriptive, and in its conclusions that the name is a suggestive one or, in the alternative, a descriptive one that has acquired secondary meaning.

Appellants argue that the phrase "Idaho's high desert" and the word "committee" are both generic. The district court was clearly correct in evaluating the genericness of the name as a whole, rather than looking to its constituent parts individually. See, e.g., [California Cooler, Inc. v. Loretto Winery, Ltd., 774 F.2d 1451, 1455 \(9th Cir. 1985\)](#) [HN6](#) [↑] ("[Plaintiff's] mark is a composite term, and its validity is not judged by an examination of its parts. Rather, the validity of a trademark is to be determined by viewing the trademark as a whole."); [Bank of Texas v. Commerce Southwest, Inc., \[**19\]](#)

[741 F.2d 785, 787 \(5th Cir. 1984\)](#) (finding name "Bank of Texas", which "combines the generic term 'bank' with the geographical term 'Texas'", to be descriptive rather than generic). The relevant question therefore is whether the entire name "Committee for Idaho's High Desert" is generic.

[HN7](#) [↑] "A generic term is one that refers to the genus of which the particular product is a species." [Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194, 83 L. Ed. 2d 582, 105 S. Ct. 658 \(1985\)](#). The Lanham Act sets out the test for genericness: "The primary significance of the . . . mark to the relevant public . . . shall be the test for determining whether the . . . mark has become the generic name of goods or services on or in connection with which it has been used." [15 U.S.C. § 1064\(3\)](#). The Federal Circuit has interpreted this statement as codifying "the time-honored test for genericness articulated by Judge Learned Hand . . .: 'What do the buyers understand by the word for whose use the parties are contending?'" [Magic Wand, Inc. v. RDB, Inc., 940 F.2d 638, 640 \(Fed. Cir. 1991\)](#).

By these standards, the district court's determination that the name "Committee for Idaho's High Desert" is not generic is not clearly **[**20]** erroneous. The district court identified the relevant public: CIHD's "members and potential members, public officials and agencies involved in making policy decisions on [public] lands, conservationist groups and individuals, and other members of the interested public". [881 F. Supp. at 1465](#). It also identified the services and goods provided by CIHD, in connection with which it has used its tradename. These services include primarily dissemination of information on environmental issues through a variety of channels, advocacy of a conservationist **[*822]** agenda on its members' behalf, and education of the public about the desert, *id.*; the goods include

primarily newsletters, bandanas, t-shirts, and bumper stickers, *id.* The district court's implicit finding that the name "Committee for Idaho's High Desert" is not the generic name for these goods and services, or for their producer, is not clearly erroneous. It is not at all "difficult to imagine another term [***1711] of reasonable conciseness and clarity by which the public [could] refer[]" to these goods and services and their producer. [Blinded Veterans Association v. Blinded American Veterans Foundation, 277 U.S. App. D.C. 65, 872 F.2d 1035, 1041 \(D.C. \[**21\] Cir. 1989\)](#). The name for the genus to which these particular services belong would probably be "environmental education and advocacy", and the generic names for the goods are those actually used by the court to describe them ("newsletter", "bandana", "t-shirt", "bumper sticker"). The name for a supplier of these services and goods might well be "environmental advocacy organization". The district court's implicit finding that the tradename "Committee for Idaho's High Desert" is not generic is not clearly erroneous.

IV. Secondary Meaning

[HN8](#) [↑] A trial court's finding of secondary meaning may be reversed only upon a showing of clear error. [Levi Strauss & Co. v. Blue Bell, Inc., 778 F.2d 1352, 1355 \(9th Cir. 1985\)](#) (en banc). "Factors considered in determining whether a secondary meaning has been achieved include: (1) whether actual purchasers of the product bearing the claimed trademark associate the trademark with the producer, (2) the degree and manner of advertising under the claimed trademark, (3) the length and manner of use of the claimed trademark, and (4) whether use of the claimed trademark has been exclusive." [Id. at 1358](#) (quoting [Transgo, Inc. v. Ajac Transmission \[**22\] Parts Corp., 768 F.2d 1001, 1015](#) (9th Cir.), *cert. denied*, 474 U.S. 1059, 88 L. Ed. 2d

778, 106 S. Ct. 802 (1985)).

The district court clearly identified "the relevant 'consumer' group" as CIHD's "members and potential members, public officials and agencies involved in making policy decisions on [the] lands [in question], conservationist groups and individuals, and other members of the interested public". [881 F. Supp. at 1465](#). The court's finding that this group associates the name "Committee for Idaho's High Desert" with appellee CIHD, and not merely with its goods and services, is not clearly erroneous. A reporter on environmental issues, a former state senator and environmentalist, a political science professor specializing in environmental politics, and a fifteen-year Bureau of Land Management employee all testified as to their association of the name "Committee for Idaho's High Desert" with appellee CIHD.

The district court found that CIHD "has conducted a significant amount of advertising of its name and business activities through public television, radio, newsletters, public hearings, and various meetings, lectures, hikes, school presentations and slide shows". [881 F. Supp. at 1465-66](#). While appellants [**23] appear to be correct in stating that the district court had no evidence of advertising budgets or expenses, appellants' assertion that "evidence of advertising was limited to one conference in 1985 and one public to contract [sic]" is incorrect. While the type of "advertising" identified by the district court would be unusual in a trademark dispute involving competing for-profit businesses, it is not inappropriate in a dispute between two non-profit advocacy groups, and the evidence in the record amply demonstrates that the finding of "significant" advertising is not clearly erroneous.

The trial court's findings on the length, manner, and exclusivity of CIHD's use of the trademark

are also not clearly erroneous.

Appellants are correct that no survey evidence was before the district court and that this court has noted that [HN9](#) "an expert survey of purchasers can provide the most persuasive evidence of secondary meaning". [Vision Sports, Inc. v. Melville Corp., 888 F.2d 609, 615 \(9th Cir. 1989\)](#). It is clear from this very statement, however, that survey evidence is only one of the most persuasive ways to prove secondary meaning, and not a requirement for such proof.

Finally, the **[**24]** lower court's finding that the appellants "knowingly, intentionally and deliberately adopted and used" the CIHD name offers strong support for the finding of secondary **[*823]** meaning. [HN10](#) "Proof of exact copying, without any opposing proof, can be sufficient to establish a secondary meaning." [Transgo, 768 F.2d at 1016](#).

The district court's finding that the name "Committee for Idaho's High Desert" had acquired secondary meaning is thus not clearly erroneous.

No. 95-35472 (CIHD's Cross Appeal)

I. Summary Judgment

CIHD cross-appeals from the district court's partial summary judgment dismissing its claim for damages and dismissing its federal claims against the individual appellants. [HN11](#) The grant of summary judgment is reviewed de novo. [Warren v. City of Carlsbad, 58 F.3d 439, 441 \(9th Cir. 1995\)](#), cert. denied, U.S. , 116 S. Ct. 1261, 134 L. Ed. 2d 209 (1996).

A. Damages **[***1712]**

The court granted summary judgment to appellants on CIHD's claims for monetary recovery, ruling that CIHD had not established


any genuine issue of material fact as to monetary damage.

[HN12](#) The Lanham Act allows a plaintiff who establishes a violation of § 43(a) of that act "to recover (1) defendant's profits, (2) **[**25]** any damages sustained by the plaintiff, and (3) the costs of the action". [15 U.S.C. § 1117\(a\)](#). In opposing appellants' motion for summary judgment, CIHD offered no evidence to dispute appellants' claim that they had earned no profits. As to damages, CIHD conceded that it was not seeking "lost revenues from declining membership or contributions that [might] have been made to CIHD". The only evidence of damages pointed to by CIHD in opposition to summary judgment was evidence of "the amount of hours that representatives of [CIHD] have had to spend on this lawsuit, valued at some reasonable hourly rate". CIHD's attorney explained that to prove damages, his intention was "to put on each of these guys to say I spent 20, 50, or whatever hours *on this case*, here's what I did, I met with the lawyers, I had to locate documents, I had to do this, that, and the other" (emphasis added). It is therefore clear that the amounts CIHD was alleging as damages were simply costs of litigation. No authority suggests that a plaintiff's time spent in litigation over trademark infringement is compensable as damages for the infringement. The district court was therefore correct in granting summary **[**26]** judgment to the appellants' on CIHD's claim for damages.

B. Dismissal of Individual Appellants

Section 43(a) [HN13](#) of the Lanham Act imposes liability on "any person who, on or in connection with any goods or services . . . uses in commerce any . . . name . . . which . . . is likely to cause confusion". [15 U.S.C. § 1125\(a\)](#). The district court found after trial that Yost, Hoffman and Johns "knowingly,


intentionally and deliberately adopted and used [appellee's] name . . . in order to cause confusion, obstruct [appellee's] pursuit of its environmental agenda, and thereby to obtain an advantage in the snail de-listing litigation by preventing [appellee's] intervention therein". [881 F. Supp. at 1468](#). The acts that the individual appellants performed included the formation of the appellant corporation under the name "Committee for Idaho's High Desert, Inc.", [id. at 1464, 1466](#), and Hoffman's testimony - under the title of president of CIHD, with the intent "to add to his credibility as an environmentalist" - at a U.S. Air Force hearing in favor of an air force training range in southern Idaho, [id. at 1467](#). Sufficient evidence of these acts was available at the summary judgment **[**27]** stage to create genuine issues of fact, and these acts would be sufficient to render the individual appellants liable under § 43(a) for using in commerce, in connection with services, a name which is likely to confuse.

Moreover, [HN14](#)  "[a] corporate officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf". [Transgo, Inc., 768 F.2d at 1021](#) (internal quotation marks and citation omitted). While the particular act of unfair competition involved in that stage of *Transgo* was a conspiracy to pass off goods, the Fourth Circuit has recognized the applicability of the principle to trademark infringement generally. [Polo Fashions, Inc. v. Craftex, Inc., 816 F.2d 145, 149 \(4th Cir. 1987\)](#) ("A corporate official may be held personally **[*824]** liable for tortious conduct committed by him, though committed primarily for the benefit of the corporation. This is true in trademark infringement and unfair trade practices cases.") (citing *Transgo*). See also [Donsco, Inc. v. Casper Corp., 587 F.2d 602, 606 \(3d Cir. 1978\)](#) (corporate president **[**28]** who

authorized and approved corporation's act of unfair competition liable under § 43(a); a corporate officer who knowingly and substantially participates in corporation's act of infringement is personally liable); [Electronic Laboratory Supply Co. v. Cullen, 977 F.2d 798, 807-808 \(3d Cir. 1992\)](#).

The district court was correct that an injunction against appellant corporation would, under [Rule 65](#), bind the individual appellants as corporate officers. It nonetheless erred in dismissing the individual appellants even though it correctly dismissed CIHD's damages claims. If the individual appellants were to be found liable for their acts under § 43(a), CIHD would be entitled, under [15 U.S.C. § 1117\(a\)](#), to recover "(1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action", and, "in exceptional cases. . . reasonable attorney fees". Even though CIHD failed to create a genuine issue of material fact as to the individual appellant's profits or CIHD's actual damages, the individuals could still be liable for the costs of the action and any attorney's fees that might be awarded. Therefore, the district court should not have dismissed CIHD's claims **[**29]** against the individual appellants. **[***1713]**

II. Time For Filing Motion for Attorney's Fees

CIHD challenges the district court's denial of its motion to extend the time for the filing of a motion for attorney's fees. [Federal Rules of Civil Procedure 54\(d\)\(2\)\(A\)](#) and [\(B\)](#), [HN15](#)  as amended effective December 1, 1993, require a claim for attorney's fees to be made by motion "filed and served no later than 14 days after entry of judgment"; a court can by order provide a different deadline. Although CIHD moved the court for an extension of time pursuant to [Rule 54\(d\)](#) itself, the district court noted that CIHD appeared to be seeking a

retroactive extension of time, since the 14-day deadline had already expired. The court properly treated the motion as one under [Federal Rule of Civil Procedure 6\(b\)](#) [HN16](#)^[↑] to allow filing after the expiration of the deadline because the failure to timely file was the result of excusable neglect. Because [Rule 6\(b\)](#) commits the question to the court's discretion, we review a decision under [Rule 6\(b\)](#) for abuse of discretion. [Kyle v. Campbell Soup Co.](#), [28 F.3d 928, 930](#) (9th Cir.), cert. denied, [__ U.S. __, 115 S. Ct. 185, 130 L. Ed. 2d 119](#) (1994).

Judgment below was rendered on April **[**30]** 7, 1995 and entered on April 10, 1995. CIHD's counsel filed a petition seeking an award of attorney's fees on April 28, 1995. On May 9, 1995, CIHD filed a motion to extend the time for the filing of its petition. In the affidavit in support of that motion, Laird Lucas, one of CIHD's attorneys, stated that the motion was filed late because he and his co-counsel had been unaware of the relevant changes in the federal and local rules.

The district court denied appellee's motion. The court ruled that appellee was "requesting [HN17](#)^[↑] relief based solely on counsel's unfamiliarity with the amended Local and Federal Rules" and held that this did not constitute excusable neglect. The court quoted from the Supreme Court opinion in [Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership](#), [507 U.S. 380, 123 L. Ed. 2d 74, 113 S. Ct. 1489](#) (1993), which stated that "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect". [Id. at 392](#). The district court noted that "if compelling circumstances had been presented such as illness, injury or death of counsel, or members of his family, or fire, flood, vandalism or destruction of counsel's law office or word **[**31]** processing equipment, the Court would be more inclined to seriously consider

the motion for an extension of time".

On May 23, 1995, CIHD filed a motion to reconsider with an accompanying affidavit by Lucas. Lucas declared that he had undergone outpatient surgery on April 20, 1995 and was confined to bed rest through April 22, 1995. He also declared that he was unable to devote any substantial time to preparing the fee application from April 13, 1995 to April 16, 1995 because his wife's illness with flu and strep throat required him to care for his two children during that period. **[*825]** The court denied the motion, finding that "the sole reason for Plaintiff's failure to timely file the Petition was unfamiliarity with the Local Rules in effect at that time". The court also noted that CIHD "was also represented by another capable and competent attorney who was lead trial counsel and presumably available to assist during the time in question".

CIHD argues, essentially, that the court abused its discretion by not applying the proper legal standard for "excusable neglect", which it argues is set forth in *Pioneer*,⁴ where the Court concluded that the question "is at bottom an equitable **[**32]** one, taking account of all relevant circumstances surrounding the party's omission. These include . . . the danger of prejudice to the [other party], the length of delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith."

⁴ While *Pioneer* involved [Bankruptcy Rule 9006\(b\)](#), the Court's analysis was based on the plain meaning of the phrase "excusable neglect" and drew on its use in other procedural contexts, including [Fed. R. Civ. P. 6\(b\)](#) and [Fed. R. Crim. P. 45\(b\)](#). This court has held that the Court's analysis of "excusable neglect" in *Pioneer* applies to the use of that phrase in [Fed. R. App. P. 4\(a\)\(5\)](#). [Reynolds v. Wagner](#), [55 F.3d 1426, 1429](#) (9th Cir.), cert. denied, [__ U.S. __, 116 S. Ct. 339, 133 L. Ed. 2d 237](#) (1995). The same decision suggests that the analysis applies to [Fed. R. Civ. P. 6\(b\)](#) as well.

[507 U.S. at 395.](#)

The district court did not abuse its discretion in holding **[**33]** that CIHD's counsel's ignorance of the amended procedural requirements for the filing of a request for attorney's fees was not excusable neglect. Although the court did not discuss the factors set forth in *Pioneer*, it did follow this court's decision in *Kyle*. In that case, the court interpreted *Pioneer* as not changing "the general rule that a mistake of law does not constitute excusable neglect". [28 F.3d at 932](#). The court held that in the absence of "a persuasive justification for . . . misconstruction of nonambiguous rules" there was "no **[***1714]** basis for deviating from the general rule". [Id. at 931-32](#). The court in *Kyle* therefore reversed, as an abuse of discretion, a district court's decision to enlarge time for filing a petition for attorney's fees on the basis that such a misconstruction was excusable neglect. If misconstruction of a nonambiguous rule cannot, under Ninth Circuit precedent, constitute excusable neglect to justify an extension of time, it clearly would have been abuse of discretion for the district court in this case to hold that ignorance of an amendment to a rule could constitute excusable neglect. As a result, under this court's interpretation of **[**34]** *Pioneer* in *Kyle*, there was no need for the court to consider expressly the equitable factors listed in *Pioneer*.⁵

III. Attorney Fees on Appeal

CIHD seeks an award of attorney's fees on appeal. Section 35(a) of the Lanham Act

⁵The Advisory Committee Notes to the 1993 Amendments to [Rule 54](#), which instituted the 14-day filing deadline, explain that "[a] new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court . . .". Because we today reverse the district court's dismissal of the individual appellants, further proceedings below may lead to the entry of a new judgment that will begin a new period for filing.

provides [HN18](#)^[↑] that a court "in exceptional cases may award reasonable attorney fees to the prevailing party" when a violation of § 43(a) has been established. [15 U.S.C. § 1117\(a\)](#). "While the term 'exceptional' is not defined in the statute, generally a trademark case is exceptional for purposes of an award of attorneys' **[**35]** fees when the infringement is malicious, fraudulent, deliberate or willful." [Lindy Pen Co. v. Bic Pen Corp., 982 F.2d 1400, 1408](#) (9th Cir.), *cert. denied*, 510 U.S. 815, 114 S. Ct. 64, 126 L. Ed. 2d 34 (1993). Because the district court found that appellants "knowingly, intentionally and deliberately adopted and used [the CIHD name] in order to cause confusion [and] obstruct [CIHD's] pursuit of its environmental agenda", this case falls within that class of exceptional cases in which courts may award attorney's fees pursuant to [§ 1117\(a\)](#). CIHD is therefore entitled to reasonable attorney's fees on appeal.

CONCLUSION

We affirm the district court's findings and conclusions with respect to appellants' infringement **[*826]** of CIHD's tradename, as well as its dismissal of CIHD's damages claims and its denial of CIHD's motion for an extension of time in which to file a motion for attorney's fees. However, we reverse the district court's dismissal of CIHD's complaint as against the individual appellants and remand the case for further proceedings.

Plaintiff-Appellee, The Committee for Idaho's High Desert, Inc., in No. 95-35439, and Plaintiff-Appellant, The Committee for Idaho's High Desert, Inc., **[**36]** in No. 95-35472 are entitled to costs.

AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED