Board Governance Committee 2016 Annual Report on Accountability Mechanisms

Reconsideration Requests
Independent Review Process (IRP) Requests
Documentary Information Disclosure Policy (DIDP) Requests

RECONSIDERATION REQUESTS

A. Bylaws Provisions Regarding Annual Report on Reconsideration Requests

- ICANN's Reconsideration Process is set forth in Article 4, section 4.2 of ICANN's Bylaws.
- This annual report is presented in fulfillment of subsection (u) of that Process, which calls for the BGC to provide information found in this report.

B. Information on Specific Reconsideration Requests

Number, Nature, and Action

- Fifteen Reconsideration Requests were received from 20 October 2015 thru 25 October 2016.
- The BGC acted upon 15 Reconsideration Requests during the period from 20 October 2015 thru 25 October 2016: Requests 15-14 thru 15-17, 15-19 thru 15-22, 16-1 thru 16-4, 16-6, 16-7, 16-9
- The Board acted upon three Requests during the period from 20 October 2015 thru 25 October 2016: Requests 15-18 thru 15-20.
- Zero Requests were withdrawn during the period from 20 October 2015 thru 25 October 2016.

- Request 15-14 (filed by Foggy Sunset, LLC on 6 August 2015) – The Requester sought reconsideration of the CPE panel's report, and ICANN's acceptance of that report, finding that Asia Spa and Wellness Promotion Council Limited's (ASWPC's) application for .SPA prevailed in CPE. Specifically, the requester claimed that the CPE panel evaluating ASWPC's application violated established policy or procedure by considering letters of support for ASWPC's application that were submitted more than 14 days after the application was invited to CPE. The Requester filed an amended Request on 4 November 2015. On 30 November 2015, the BGC determined that the Requester had not stated proper grounds for reconsideration, and therefore denied Request 15-14.

- Request 15-15 (filed by Centre for Internet and Society on 8 September 2015) – The Requester sought reconsideration of ICANN's responses to the requester's requests for documents pursuant to the Documentary Information Disclosure Policy ("DIDP"), which sought disclosure of documents regarding ICANN's "implementation of the NETmundial Principles," and "raw data with respect to granular income/revenue statements of ICANN from 1999-2011." On 30 November 2015, the BGC determined that the

Requester had not stated proper grounds for reconsideration, and therefore denied Request 15-15.

- Request 15-16 (filed by CPA Australia Ltd. on 18 September 2015) – The Requester seeks reconsideration of the CPE panel's report, and ICANN's acceptance of that report, finding that the requester did not prevail in CPE for .CPA. On 26 June 2016, the BGC determined that the Requester had not stated proper grounds for reconsideration, and therefore denied Request 15-16.

- Request 15-17 (filed by American Institute of Certified Public Accountants on 19 September 2015) – The Requester sought reconsideration of the CPE panel's report, and ICANN's acceptance of that report, finding that the requester did not prevail in CPE for the .CPA string. The Requester was granted an opportunity to make presentation to the BGC on 12 April 2016. On 26 June 2016, the BGC determined that the Requester had not stated proper grounds for reconsideration, and therefore denied Request 15-17.

- Request 15-19 (filed on behalf of ICANN's Business Constituency and ICANN's NonCommercial Stakeholders Group) – The Requesters sought reconsideration of the Board's approval of renewal of the .CAT, .TRAVEL and .PRO Registry Agreements. On 13 January 2016, the BGC concluded that the Requesters had not stated proper grounds for reconsideration, and therefore recommended that the Request be denied. On 3 February 2016, the Board adopted the BGC's recommendation.

- Request 15-20 (filed on behalf of the Internet Commerce Association) – The Requester seeks reconsideration of the Board's approval of renewal of the .CAT, .TRAVEL and .PRO Registry Agreements. On 13 January 2016, the BGC concluded that the Requesters had not stated proper grounds for reconsideration, and therefore recommended that the Request be denied. On 3 February 2016, the Board adopted the BGC's recommendation.

- Request 15-21 (filed by dotgay LLC on 22 October 2015, and Amended Request filed on 5 December 2015) – The Requester sought reconsideration of: (1) the second Community Priority Evaluation (CPE) panel's report finding that the Requester did not prevail in CPE for the .GAY string (Second CPE Report), and ICANN's acceptance of that report; and (2) ICANN staff's response to the Requester's request pursuant to ICANN's Documentary Information Disclosure Policy (DIDP) for documents relating to the Second CPE Report. On 1 February 2016, the BGC determined that the Requester had not stated proper grounds for reconsideration and therefore denied Request 15-21.

- Request 15-22 (filed by Centre for Internet and Society on 2 November 2016) – The Requester sought reconsideration of ICANN's responses to the Requester's requests for documents pursuant to the Documentary Information Disclosure Policy (DIDP), which sought disclosure of documents regarding ICANN Contractual Compliance's Audit Program. On 13 January 2016, the BGC determined that the Requester had not stated proper grounds for reconsideration and therefore denied Request 15-22.

- Requests 16-1 and 16-2 (filed by Commercial Connect, LLC on 26 January 2016 and 10

February 2016) – The Requester filed two Reconsideration Requests regarding the same subject matter. In Request 16-1, the Requester sought reconsideration of ICANN's staff's determination that the Requester's time to invoke the Cooperative Engagement Process (CEP) regarding the Board's denial of Reconsideration Request 15-13 (Request 15-13) had passed, and argued that ICANN staff "prevented" it from filing a valid Request for Independent Review Process (IRP). The Requester also renewed the challenges that it raised in Request 15-13 to a Community Priority Evaluation (CPE) panel's report finding that the Requester's application for .SHOP did not achieve priority through CPE (CPE Report), and ICANN's acceptance of that report. In Request 16-2, the Requester sought reconsideration of ICANN staff's determination to proceed with the scheduled 27 January 2016 auction for .SHOP (Auction). On 25 February 2016, the BGC determined that the Requester had not stated proper grounds for reconsideration and therefore denied Requests 16-1 and 16-2.

- Request 16-3 (filed by dotgay LLC on 17 February 2016) – The Requester seeks reconsideration of the BGC's denial of Request 15-21, wherein the Requester sought reconsideration of the second Community Priority Evaluation (CPE) panel's report finding that the Requester did not prevail in CPE for the .GAY string (Second CPE Report), and ICANN's acceptance of that report. In particular, the Requester asserts that, in conducting the Second CPE, the EIU did not adhere to the procedures set forth in the CPE Panel Process Document regarding the process for verifying letters of support and/or opposition. The Requester asked to make a presentation to the BGC. The BGC granted the Requester's request to make a telephonic presentation to the BGC subject to certain parameters, which the Requester made on 15 May 2016. The Requester submitted a written summary of its presentation on 17 May 2016. On 26 June 2016, the BGC recommended that the Board deny Request 16-3. On 13 September 2016, the Requester submitted a lengthy report for Board consideration. The BGC's recommendation on Request 16-3 is pending Board consideration.

- Request 16-4 (filed by Roman Belichenko on 9 February 2016) – The Requester sought reconsideration of the ICANN Contractual Compliance department's response to the Requester's complaint regarding a dispute between the Requester and the domain name registrar GoDaddy. In particular, the Requester asserted that the "complaint was not considered properly" and that the "Contractual Compliance team has taken the registrar's side without thorough investigation of our explanations and comments." Request 16-4 was considered by the BGC in April and the BGC asked staff for additional information from the relevant registrar. On 26 June 2016, the BGC denied Request 16-4.

- Request 16-5 (filed by DotMusic Limited et al. on 24 February 2016) – The Requesters (DotMusic and ten others) seek reconsideration of the Community Priority Evaluation (CPE) panel's report finding that DotMusic did not prevail in CPE for the .MUSIC string (CPE Report), and ICANN's acceptance of the CPE Report. Specifically, the Requesters "ask that the result of the .MUSIC Report be overturned by ICANN, by awarding DotMusic an additional six (6) points (or a passing grade)." On 1 April 2016, the Requesters submitted a Documentary Information Disclosure Policy (DIDP) request seeking documents relating to the CPE Report (DIDP Request), and asked ICANN to

postpone its review of Request 16-5 pending ICANN's response to the DIDP Request. ICANN agreed. On 29 April 2016, DotMusic submitted an amended DIDP request. ICANN responded to the amended DIDP request on 15 May 2016. The Requesters sought and ICANN granted an extension to 30 May 2016 for the Requesters to file an amended Reconsideration Request. The Requesters submitted Reconsideration Request 16-7 seeking reconsideration of ICANN's response to the DIDP Request, which was denied on 26 June 2016. The Requesters were granted opportunity to make presentation to the BGC, which took place on 17 September 2016. Request 16-5 is pending BGC consideration.

- Request 16-6 (filed by DotKids Foundation on 23 April 2016) – The Requester sought reconsideration of the Community Priority Evaluation (CPE) panel's report, and ICANN's acceptance of that report, finding that the Requester did not prevail in CPE for the .KIDS string. Specifically, the Requester claimed that the CPE panel evaluating the Requester's application (CPE Panel) violated established policy or procedure by an "inadvertent misreading" of the Applicant Guidebook and the DotKids Foundation application, and "omission" of the United Nations Convention on the Rights of the Child and the United Nations Committee on the Rights of the Child relating to the Requester's community definition. On 21 July 2016, the BGC denied Request 16-6.

- Request 16-7 (filed by DotMusic et al. on 30 May 2016) – The Requesters (DotMusic and ten others) sought reconsideration of ICANN staff's response to a request submitted by the Requesters pursuant to ICANN's Document Information Disclosure Policy (DIDP). In particular, the Requesters disagreed with ICANN staff's determination that responsive documents, if any, were subject to several DIDP Conditions for Nondisclosure, and further argue that ICANN should: (i) provide a definition of "public interest" and an explanation of how it was applied in this instance; (ii) produce a privilege log of the documents not produced; and (iii) "follow" the Board Resolution of 10 March 2016, which encourages ICANN staff to "be as specific and detailed as possible in responding to DIDP requests, particularly when not disclosing requested documents." On 26 June 2016, the BGC denied Request 16-7

- Request 16-8 (filed by CPA Australia) – The Requester seeking to have criteria 2 of the CPE conducted on 3 September 2015 re-reviewed in light of the CPE Panel's alleged failure or neglect to considered AICPA's support for CPA Australia's application. This request is pending BGC consideration.

- Request 16-9 (filed by Ruby Glen and Radix FCZ on 17 July 2016 as urgent request) - The Requesters sought reconsideration of: (a) ICANN's determination that it "found no basis to initiate the application change request process" in response to the contradictory statements of Nu DotCo; and (b) what the Requesters assert was ICANN's improper denial of Applicants' (and at least one other .WEB applicant's) request to postpone the .WEB/.WEBS auction, then scheduled for July 27, 2016. The Requesters claim that the requested postponement would have provided ICANN and the .WEB/.WEBS applicants the time necessary to conduct a full and transparent investigation into material discrepancies in NDC's application and its eligibility as a contention set member. At the Requesters' request, the BGC treated this

Reconsideration Request on an urgent basis and, on 21 July 2016, the BGC denied Request 16-9.

- Request 16-10 (filed by the gTLD Registries Stakeholder Group (RySG)) – The Requester essentially seeks reconsideration of: (i) what the Requester suggests is staff's improper expansion of the scope of the Thick Whois Policy to include a requirement for Registry Operators to implement Registration Data Access Protocol (RDAP); and (ii) staff's ignoring objections to the RySG's proposed operational profile for RDAP, and staff's attempt to impose the adoption of the profile on registry operators despite any contractual basis for doing so. The RySG suggest that both Board-approved policy and agreements never referenced a gTLD Profile for RDAP. Upon filing of the Reconsideration Request, the Requester noted that there were planned discussions with appropriate staff members and asked that the processing of Request 16-10 be deferred pending the conclusion of those discussions.

- Request 16-11 (filed by Travel Reservations SRL, Spring McCook, LLC, Minds + Machines Group Limited, Famous Four Media Limited, dot Hotel Limited, Radix FZC, dot Hotel Inc., Fegistry, LLC) – The Requesters challenge Board action in essentially two regards: (i) that the Board's acceptance of the Dot Registry IRP Final Declaration (re: .INC., .LLC, and .LLP) was incompatible with the Board's acceptance of the Despegar *et.al.* IRP Final Declaration (re: .HOTEL); and (ii) that the Board's failure to terminate HTLDs application for .HOTEL, which had previously achieve community priority, was a violation of ICANN's Bylaws and was taken without all material information in front of it. Request 16-11 is pending BGC consideration.

- Request 16-12 (filed by Merck KGaA) – The Requester seeks reconsideration of the Community Priority Evaluation (CPE) panel's report published on 10 August 2016 finding that its application for .MERCK did not satisfy the CPE criteria to achieve community priority (CPE Report). The Requester requests that ICANN reject the CPE Report and asks for another CPE panel to evaluate its application. The Requester has also requested the opportunity to make a presentation to the BGC. Request 16-12 is pending BGC consideration.

- Request 16-13 (filed by Merck KGaA) – The Requester seeks reconsideration of ICANN's decision not to refer its PICDRP complaint to the PICDRP standing panel for consideration. The PICDRP complaint allege that the registry for .PHARMACY was not in compliance with Specification 11. The Requester asks the BGC refer its PICDRP complaint to the standing panel for review and decision. Request 16-13 is pending before BGC consideration.

Number of Reconsideration Requests Pending

- As of 25 October 2016, there were five Reconsideration Requests pending BGC action, two Reconsideration Request on hold, and one Reconsideration Request pending Board action, following action already taken by the BGC.
- As of 25 October 2016, average length of time for which the five pending Reconsideration Requests have been pending was 83 days.

- Of the five pending Reconsideration Requests, two Reconsideration Requests were pending for more than 90 days.

    - Reconsideration Request 16-5 (filed by DotMusic Limited) – The Requester asked for delay pending a response to the Requester's DIDP Request, and also sought and was granted opportunity to make presentation to the BGC, which took place on 17 September 2016.

    - Reconsideration Request 16-8 (filed by CPA Australia Ltd) – Delay due to timing of filing, intervening decision that impacted the analysis, and pre-set BGC meeting schedule.

- Two Reconsideration Requests were placed on hold: Requests 14-42 and 16-10

- One Reconsideration Request was pending Board action, following action already taken by the BGC: Request 16-3

Number of Reconsideration Requests the BGC Declined to Consider

- The BGC has thus far considered (or will consider) all Reconsideration Requests submitted between the Annual General Meeting in 2015 and the Annual General Meeting in 2016 that have not been, or are not later, withdrawn by the requester(s).

Other Accountability Mechanisms Available to Denied Requesters

- ICANN makes available the Ombudsman and the Independent Review Process as additional mechanisms to enhance ICANN accountability to persons materially affected by its decisions. The Ombudsman separately reports on his activities.

INDEPENDENT REVIEW PROCESS (IRP) REQUESTS

A. General Information Regarding IRPs

In accordance with Article 4, section 4.3 of ICANN's Bylaws, ICANN has designated the International Centre for Dispute Resolution as the body to process requests for independent review of Board actions alleged by any affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws. Many parties invoke the voluntary Cooperative Engagement Process (CEP) prior to the filing of an IRP, for the purpose of narrowing the issues that are stated within the request for independent review.

B. Information on Specific IRPs

Number and Nature

- From 20 October 2015 thru 25 October 2016, three IRPs were initiated, and six have been concluded.

Initiated:

- Asia Green IT Systems Ltd. v. ICANN (.HALAL/.ISLAM) – In this IRP AGIT alleges that "the following actions and inaction of the ICANN Board and Staff has [*sic*] violated ICANN's Bylaws and Articles: (1) [c]onsulting in secret with the GAC and with Objectors regarding delay or denial of AGIT's applications[;] (2) [r]efusing to specifically identify the Objectors' concerns, how those concerns might be resolved by AGIT, or any process by which the concerns might be resolved[;] (3) [c]reating new policy, without community input, which allows effective, far-from-consensus government veto of just two applications[;] (4) [d]eciding such policy via NGPC resolution, ignoring unanimous advice from the GNSO Council and resolution of the Board that ICANN, *inter alia*, must provide clear criteria for evaluation of all applications[;] (5) [r]efusing to provide documents reasonably requested by AGIT, which would illuminate and narrow the scope of the IRP, and thus reduce costs and time to decision[; and] (7) [r]efusing to acknowledge that IRP decisions are binding and precedential, causing expensive and unnecessary relitigation of settled issues." Document production is in process. The Final Hearing is currently scheduled for 17 February 2017.

- Commercial Connect, LLC v. ICANN (.SHOP) – Commercial Connect (CC) challenges ICANN's actions with respect to .SHOP, and seeks review of ICANN's decision to accept the findings contained in the CPE results for CC's application for .SHOP and, resulting therefrom, ICANN's decision not to award community-based status to CC's .SHOP application. An administrative hearing took place on 5 September 2016. ICANN filed an amended IRP Response on 12 October 2016. The Final Hearing scheduled for 20 October 2016 was canceled and the matter has been suspended due to CC's failure to pay the required fees for the IRP.

- Amazon EU S.à.r.l. v. ICANN (.AMAZON and related IDNs) – Amazon EU S.à.r.l. (Amazon) filed its IRP Request on 2 March 2016. Amazon alleges that, in accepting the GAC advice, the Board: (a) did not act transparently and in accord with Amazon's expectations; (b) did not apply documented policies neutrally and objectively, and with integrity, fairness and due diligence; (c) discriminated in its treatment of the Amazon Applications; an (d) acted with a conflict of interest. ICANN responded to the IRP Request on 13 April 2016. Some document requests have been sent. A hearing tentatively scheduled for 6 – 7 March 2017.

Withdrawn

- Afilias Limited, BRS Media, Inc. & Tin Dale, LLC v. ICANN (.RADIO) - Afilias Limited, BRS Media, Inc., and Tin Dale, LLC (Claimants) each submitted a standard application for .RADIO. The European Broadcasting Union (EBU) submitted a community application for .RADIO, which prevailed in Community Priority Evaluation (CPE). As a result, the contention set for .RADIO was resolved and only EBU's application will proceed. The Claimants submitted Reconsideration Request 14-41 challenging the CPE Panel's report. On 20 January 2015, the BGC denied Request 14-41. On 30 September 2015,

the Claimants filed a Notice of Independent Review. The Claimants filed their IRP Request on 2 October 2015. Claimants seek review of: "(i) ICANN's decision to accept the findings contained in the EIU Determination; (ii) the BGC's Determination to reject Claimants' Request for Information submitted in accordance with ICANN's Documentary Information Disclosure Policy and their Request for Reconsideration; and (iii) ICANN's decision to award community-based status to the EBU Application, which may ultimately lead to resolving the .RADIO contention set and the EBU entering into a Registry Agreement for operating the .RADIO gTLD." ICANN responded to the IRP Request on 10 November 2015. On 18 May 2016, the Claimants withdrew this IRP.

Concluded

- Merck KGaA v. ICANN IRP: Merck kGaA's (Merck)'s IRP Request arose out of its legal rights objections (LROs) to new gTLD applications submitted by its former affiliate, U.S.-based Merck Sharp & Dohme Corporation, for strings incorporating the "Merck" mark. Merck's LROs were overruled (Expert Determinations). Merck filed a Reconsideration Request challenging the Expert Determinations, which was denied. Merck's IRP Request challenged the denial of its Reconsideration Request and, among other things, also argued that the Board should have taken further action with respect to the Expert Determinations. Without a hearing, the Panel took the matter under submission and, on 11 December 2015, the Panel unanimously concluded that: "Merck has not succeeded in this Independent Review Process. ICANN was the prevailing party. As per paragraph 69, Merck must pay ICANN costs in the amount of USD $48,588.54." On 3 February 2016, ICANN Board considered the Panel's Final Declaration and took the following decision**:**

    - Resolved (2016.02.03.10), the Board accepts the findings of the Panel's Final Declaration: (1) ICANN is the prevailing party in the *Merck KGaA v. ICANN* IRP; (2) the Board acted without conflict of interest in taking its decision; (3) the Board exercised due diligence and care in having a reasonable amount of facts in front of them; (4) the Board exercised independent judgment in taking the decision, believed to be in the best interests of the company; (5) the Board (including the Board Governance Committee) did not violate the Articles, Bylaws, or Guidebook; and (6) Merck shall reimburse ICANN costs in the amount of US$48,588.54.

- Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry, LLC, and Radix FZC v. ICANN (.HOTEL) and Little Birch, LLC and Minds + Machines Group Limited v. ICANN (.ECO) IRPs – Despegar Online et al. (collectively, ".HOTEL Claimants") filed an IRP challenging the Community Priority Evaluation (CPE) Panel Determination finding that HOTEL Top-Level-Domain S.a.r.l.'s ("HOTEL TLD's") community application for .HOTEL prevailed in CPE (the ".HOTEL IRP"). Little Birch, LLC and Minds + Machines Group Limited (collectively, ".ECO Claimants") filed an IRP challenging the Community Priority Evaluation (CPE) Panel Determination finding that Big Room Inc.'s community application for .ECO prevailed in CPE (the ".ECO IRP"). On 12 February 2016, the Panel issued its Final Declaration. On 10 March 2016, ICANN Board considered the IRP Panel's Final Declaration and took the following decisions:

    - Resolved (2016.03.10.10), the Board accepts the following findings of the Panel's Final Declaration: (1) ICANN is the prevailing party in the Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC v. ICANN IRP; (2) ICANN is the prevailing party in the Little Birch, LLC and Minds + Machines Group Limited v. ICANN IRP; (3) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN'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) 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 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 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 will continue to ensure that its activities are conducted through open and transparent processes in conformance with Article IV of ICANN'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.

- Donuts Inc. v ICANN (.SPORTS/.RUGBY) IRP – Donuts Inc. challenged the Expert Determinations upholding the community objections to Donuts Inc.'s applications for .SPORTS, .SKI, and .RUGBY. On 14 November 2014, ICANN filed a consolidated response to Donuts Inc.'s IRP Request and Donuts Inc.'s Request for Emergency Relief to stay the processing of other applications for .SPORTS, .SKI, and .RUGBY (issues related to .SKI were later resolved and withdrawn from the IRP). On 21 November 2014, ICANN agreed to stay the processing of the gTLDs at issue pending conclusion of the IRP. The Final Hearing was held on 8 October 2015 and on 12 May 2016, ICANN received the Final

Declaration, declaring ICANN to be the prevailing party in the IRP proceedings involving .SPORTS and .RUGBY. The final decision was made on two strings, and was unanimous as to .RUGBY and a 2-1 decision on .SPORTS, with the Donuts-selected panelist dissenting. The Panel also ordered Donuts to reimburse ICANN for costs in the amount of just over US$83,000. On 25 June 2016, ICANN Board considered the IRP Panel's Final Declaration and took the following decisions:

- Resolved (2016.06.25.06), the Board accepts the following findings of the Panel's Final Declaration: (i) ICANN is the prevailing party in the Donuts Inc. v. ICANN IRP; (ii) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN's Articles and Bylaws; (iii) the Board acted consistently with the Articles and Bylaws; (iv) an IRP panel is not allowed to substitute its own judgment for that of the Board; (v) the time for challenging the Guidebook's standard for community objections has passed; (vi) the Board need not react merely because it has been petitioned to do so; (vii) the Board is not required to, and has not represented that it would, train dispute resolution experts; (viii) the lack of an appeal mechanism to contest the merits of the Expert Determinations is not a violation of ICANN's Articles or Bylaws; (ix) the actions of the experts appointed by the ICCdo not equate to Board action or inaction, and are therefore not reviewable by an IRP panel; (x) the Board has no affirmative duty to individually consider each and every new gTLDapplication; (xi) ICANN did not discriminate against Donuts by not implementing a review mechanism of community objections in general or of the community objections at issue here; (xii) Donuts shall bear all the fees and expenses, and shall reimburse ICANN the sum of US$83,067.66; and (xiii) the parties shall each bear their own legal fees.

- Resolved (2016.06.25.07), the Board notes the Panel's observations with respect to the community objection process referenced in the Whereas clauses above, and directs the President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration such issues raised by the Panel as they relate to the community objection process.

- Resolved (2016.06.25.08), the Board concludes that nothing in the Final Declaration supports re-review of the .SPORTS Expert Determination, nor is it sufficiently "inconsistent" or "unreasonable" such that it warrants re-evaluation.

- Resolved (2016.06.25.09), the Board authorizes the President and CEO, or his designee(s), to proceed with processing the New gTLD Program applications at issue in the IRP consistent with the standard New gTLD Program processes.

- Dot Registry, LLC v. ICANN (.INC/.LLC/.LLP) IRP – Dot Registry, LLC challenged: (i) the CPE results on its applications for .INC, .LLC and .LLP, (ii) the BGC's denial of Reconsideration Requests 14-30, 14-32, and 14-33; and (iii) the decision to place the contention sets for .INC, .LLC and .LLP into active contention. In response to Dot Registry's Request for Interim Measures of Protection, on 23 December 2014, an Emergency Panelist recommended that ICANN refrain from scheduling an auction of .INC, .LLC and .LLP until the conclusion of the IRP. ICANN voluntarily decided to comply with the recommendation for the time being. On

29 July 2016, the Panel issued its Final Declaration. On 9 August 2016, 15 September 2016 and 17 September 2016, the ICANN Board considered the IRP Panel's Final Declaration and took the following decisions:

- Resolved (2016.08.09.11), the Board accepts the findings of the Final Declaration that: (i) Dot Registry is the prevailing party in the Dot Registry, LLC v. ICANN IRP; and (ii) ICANN shall pay to Dot Registry US$235,294.37 upon demonstration that these incurred costs have been paid in full.

- Resolved (2016.08.09.12), the Board has noted the other findings in the Declaration and the findings regarding the Panel majority's statements with respect to the standard of review for Reconsideration Requests referenced above, and will consider next steps in relation to Dot Registry's Reconsideration Requests or the relevant new gTLDs before the Board takes any further action.

- Resolved (2016.08.09.13), in light of the recent letter received from Dot Registry and the factual inaccuracies that have been reported in online blogged reports, the Board directs the Secretary, or his designee(s), to post the Board briefing materials on this matter simultaneously with the resolutions.

- Resolved (2016.09.15.15), the Board directs the Board Governance Committee to re-evaluate Dot Registry's Reconsideration Requests 14-30, 14-32 and 14-33 in light of the Panel majority's Final Declaration in the Dot Registry IRP and the issues it identified with respect to the BGC's actions in evaluating these Reconsideration Requests.

- 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 staff interacted with the CPE provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider.

- Corn Lake, LLC v. ICANN (.CHARITY) IRP – Corn Lake challenged the Expert Determination granting the Independent Objector's objection against Corn Lake's application for .CHARITY and, more specifically, the differing outcomes of the two Expert Determinations related to .CHARITY. Corn Lake argues that ICANN's Board violated its Bylaws and Articles of Incorporation, and requests that the IRP Panel: "(i) direct the Board to reverse the .CHARITY objection ruling against Corn Lake; (ii) subject that ruling to the same review as provided in the Resolution for the similarly situated .COM and .CAM decisional conflicts; or (iii) reinstate Corn Lake's application conditioned upon its acceptance of the PIC agreed to by [Sprint Registry Limited]." The Final Hearing was held on 8 February 2016 and the IRP Panel issued its Final Declaration on 17 October 2016, finding the Claimant the prevailing party, but not awarding to cost to either party. This IRP Declaration is pending Board consideration.

- Gulf Cooperation Counsel (GCC) v. ICANN (.PERSIANGULF) – The GCC challenged the Expert Determination, issued on 30 October 2013, denying the GCC's community objection to the .PERSIANGULF application submitted by Asia Green IT System Ltd. In response to

the GCC's Request to stay the processing of the .PERSIANGULF application pending the IRP, on 12 February 2015, the Emergency Panelist issued an interim declaration granting the GCC's Request for Emergency Relief, with which ICANN voluntarily agreed to comply. The Final Hearing was held on 7 July 2016 and Final Declaration was received by ICANN on 24 October 2016. The Final Declaration found GCC to be the prevailing party and ordered the parties to provide further briefing by 18 November re: awarding of costs. This IRP Declaration is pending Board consideration.

DOCUMENTARY INFORMATION DISCLOSURE POLICY (DIDP) REQUESTS

A. General Information Regarding DIDP

- The DIDP was developed as a part of the Accountability and Transparency Frameworks and Principles to help enhance ICANN's accountability and transparency.
- The DIDP provides that "information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control" at the time the DIDP request is made, will be made available to the public unless there is a compelling reason for confidentiality, such as the Defined Conditions of Nondisclosure.
- All DIDP requests and responses are posted at: https://www.icann.org/resources/pages/governance/transparency-en.

B. Information on Specific DIDP Requests

Number and Nature

- From 20 October 2015 thru 25 October 2016, 31 DIDP Requests have been submitted and 20 were responded to, with 11 to be responded.

- Request 20151022-1: Bart Lieben (22 October 2015) The DIDP Request sought documentary information relating to the second Community Priority Evaluation (CPE) of dotgay LLC's application for the .GAY gTLD, which was completed and for which a CPE Report was issued on 8 October 2015. In the DIDP Response, ICANN explained that many of the items in the Request do not specify whether the Request relates to the first CPE of the Application that was performed in 2014 or the re-evaluation that was performed in 2015. Because the Requester have previously filed a similar DIDP Request on 22 October 2014 seeking documents related to the first CPE, for the purposes of the Response, ICANN interpreted and provided extensive information that relate to the second CPE. ICANN produced three documents, identified certain conditions for non-disclosure, and provided the Requester with links to the various responsive documents.

- Request 20151117-1: Jeffrey Smith (17 November 2015) The DIDP Request sought documentary information regarding: 1) Documentation that approved any new Policies and Procedures at ICANN that contradict the Summary – Principles, Recommendations & Implementation Guidelines in the Final Report from ICANN Generic Names Supporting Organization dated August 8, 2007 - http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm; 2) Documentation that led to the decision of only allowing three strings to be reconsidered at ICDR along with documents approving this decision and method of informing all of the entities that complained of inconsistent results and biased treatment; 3) Documentation that led to the appeals policy for the ICDR Name Similarity issues and the method of informing all of the entities that complained of inconsistent results and biased treatment; 4) Documentation on what led to the decision that applications are subject to name similarity instead of the actual string along with the documents approving this new policy along with the method of informing contention set owners and objectors; 5) Documentation on decisions made on how contention sets will be

considered and performed at auction along with documents approving this new policy along with the method of informing contention set owners; 6) All letters and correspondence and communications pertaining to the instructions given to the Name Similarity panel as well as letters and objections to the determination of the Name similarity panel along with responses along with discussions and communication related to dealing the issue; 7) Policies and communications that led to the decision to reduce the allowable time allowed to submit a motion for reconsideration along with documents approving this new policy; and 8) Audio Recording of Public Forum meeting on November 15th or 16th, 2000 in Marina del Ray, California which is missing from posted archives - http://wilkins.law.harvard.edu/misc/Static/icann/icann-111400&start=0-30-06&end=3-46-12.rm along with the board statements for that group of meetings. In the DIDP Response, ICANN produced two documents, identified certain conditions for non-disclosure, explained that the documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents.

- Request 20151130-1: The Centre for Internet & Society (30 November 2015) The DIDP Request sought the disclosure of all transition documents submitted by ICANN, from March 14, 2014 through August 17, 2015, relating to the IANA transition including those that were requested in May 2015 according to NTIA's blog dated August 17, 2015. In the DIDP Response, ICANN explained that the documents sought are already publicly available on ICANN's and NTIA's websites, and provided the Requester with links to the various responsive documents.

- Request 20151130-2: The Centre for Internet & Society (30 November 2015) The DIDP Request sought the disclosure of: 1) Document that reflect discussions explaining rationale behind introducing such a presumptive renewal clause at the outset; and 2) Documents that show the renewal of contracts between ICANN and VeriSign relating to the presumptive renewal of the .com and .net domain names, and PIR relating to the .org domain name. In the DIDP Response, ICANN identified certain conditions for non-disclosure, explained that the documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents.

- Request 20151130-3: The Centre for Internet & Society (30 November 2015) The DIDP Request sought the disclosure of: 1) Documents that reflect the creation of a relationship between ICANN and the RIRs (by way of MoUs, contracts, etc.); and 2) Documents that show the payment of such a fee to ICANN by the RIRs, and the receipt of such a sum as well. In the DIDP Response, ICANN identified certain conditions for non-disclosure, explained that the documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents.

- Request 20151202-1: Asia Green IT System Ltd (2 December 2015) The DIDP request sought the disclosure of: 1) All correspondence between ICANN, GCC, ICDR and/or anyone else, and all other documents, concerning the subject IRP and/or the .PersianGulf TLD; and 2) All correspondence, meeting notes, memoranda or other documents concerning the June 2014 meeting between ICANN executives and GCC, referenced in the 'emergency" declaration from February, 2015 decision. In the DIDP Response, ICANN provided one document, identified certain conditions for non-disclosure, explained that the documents

sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents.

- Request 20160211-1: Registrar Stakeholder Group Executive Committee (11 February 2016) The DIDP sought the disclosure of travel data for the Intersessional Meetings of the Generic Names Supporting Organizational's Non-Contracted Parties House that occurred in Washington, D.C. in 2015 and Los Angeles, CA in February 2016. In the DIDP Response, ICANN provided two documents, explained that the documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents.

- Request 20160423-1: The Centre for Internet & Society (23 April 2016) The DIDP Request sought the disclosure of the reports submitted by the Board Governance Committee (BGC) to the ICANN Board on an annual basis as specified in Article IV, Section 2.20 of the ICANN Bylaws. In the DIDP Response, ICANN explained that the documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents.

- Request 20160423-2: The Centre for Internet & Society (23 April 2016) The DIDP Request sought disclosure of documentary information relating to "diversity analysis of public comments" submitted in 2015 and 2016, similar to the diversity analysis set forth in the ICG's Summary Report on Comments Received during the Public Comment Period on the Combined Transition Proposal. In response, ICANN explained that ICANN does not generally conduct a diversity analysis of the public comments received. As such, ICANN has no responsive documents.

- Request 20160423-3: The Centre for Internet & Society (23 April 2016) The DIDP Request sought the disclosure of documentary information relating to the audits of compliance of registrars and registry operators conducted by ICANN Contractual Compliance as referenced by ICANN's former CEO and President during his speech at the Welcome Ceremony of ICANN51. In response, ICANN noted that the Requester previously requested the same documents, and noted that responsive documents are set forth in ICANN's Responses to those earlier Requests. For completeness, ICANN reiterated its response in this DIDP Response.

- Request 20160423-4: The Centre for Internet & Society (23 April 2016) The DIDP Request sought the disclosure of documentary information relating to ICANN's internal sexual harassment and training policy. In response, ICANN explained that the internal training on harassment prevention program for staff and Board members is an interactive online program designed by a third party and that the materials are proprietary such that ICANN does not have rights to share. ICANN also produced its internal Prohibition of Harassment Policy in response to the DIDP Request.

- Request 20160423-5: The Centre for Internet & Society (23 April 2016) The DIDP Request sought the disclosure of statistics relating to ICANN's DIDP responses. In response, ICANN provided information and links regarding the background and purpose of the DIDP process, and explained that a threshold consideration in responding to a DIDP request is

whether the documents requested exist and are in ICANN's possession, custody or control. Under the DIDP, where the responsive document does not exist, ICANN shall not be required to create or compile summaries of any documented information. ICANN further explained that it is in the process of conducting a statistical analysis of its DIDP responses, and will be finalizing and posting its summary of that analysis in the coming weeks, and will notify the Requester when that information is publicly posted. ICANN also explained that to the extent there are other documents that may be responsive to the Request, they are subject to certain conditions for non-disclosure. ICANN further noted that, with respect to the research summary that the Requester provided in the DIDP Request and presented at the Non Commercial Users Constituency (NCUC) Session, there were several discrepancies with the information and/or characterizations provided in the Requester's summary (specific examples were provided).

- Request 20160426-1: The Centre for Internet & Society (26 April 2016) The DIDP Request sought the disclosure of documentary information relating to the financial support portion of the New gTLD Applicant Support Program. In response, ICANN provided extensive information and links regarding the New gTLD Applicant Support Program (Program). ICANN further noted that documentary information responsive to Item Nos. 1-3 of the DIDP Request was already publicly available (links were provided); and that there was no responsive information to Item Nos. 4-5 because there were no "donors" to the Program Fund (as explained on ICANN's website at the links provided).

- Request 20160429-1: DotMusic Limited (29 April 2016) The DIDP Request sought the disclosure of documentary information relating to the Community Priority Evaluation (CPE) of the Requester's application for the .MUSIC gTLD (Application ID: 1-1115-14110). In response, ICANN provided extensive information regarding the CPE process and provided numerous links to publicly available information regarding, among other things, the CPE process, CPE Guidelines, and CPE results. In response to Item Nos. 1-6 (with several subparts) in the DIDP Request, ICANN explained that either no responsive documents existed or such documents, if any, were subject to various DIDP Defined Conditions for Nondisclosure. ICANN produced one document in response to the DIDP Request, which was a communication to the EIU to commence the CPE proceeding regarding the Requester's application.

- Request 20160502-1: The Centre for Internet & Society (2 May 2016) The DIDP Request sought the disclosure of "information relating to the recent renewal of [ICANN's] Root Zone Maintainer Agreement with VeriSign." In response, ICANN explained that there is no such agreement (previous, current, or renewed) in force between ICANN and Verisign regarding the root zone management functions performed by Verisign. Verisign currently serves as the Root Zone Maintainer and performs the root zone management functions pursuant to a Cooperative Agreement between Verisign and the NTIA. ICANN provided information and links regarding the current efforts, at the NTIA's request, for ICANN and Verisign to develop and enter into a Root Zone Maintainer Agreement (RZMA).

- Request 20160509-1: GCCIX, WLL (9 May 2016) The DIDP Request sought the disclosure of documentary information relating to the Requester's .GCC application (specifically documents regarding the GAC advice regarding the .GCC gTLD, and the Legal Rights

Objection (LRO) against the .GCC application) and IGO protections at the top level. In response, ICANN identified certain conditions for non-disclosure, and provided links to the already public information regarding the GAC's advice, ICANN's acceptance of that advice, as well as the LRO proceedings regarding the .GCC application. ICANN further explained, in detail, and provided links to information regarding the history of GAC advice regarding protection of IGO names and acronyms at the top and second level, the GNSO policy recommendations regarding protection of IGO names and acronyms, as well as the efforts conducted thus far to reconcile the two, including information regarding the IGO "small group," which serves as a forum for discussions regarding the protection of IGO identifiers in an effort to resolve the conflicts between the GNSO policy recommendations and the GAC advice.

- Request 20160805-1: Donuts Inc. (5 August 2016) The DIDP Request sought the disclosure of "the agreement(s) between ICANN and Stiftelsen for Internetinfrastruktur for pre-delegation testing services." In the DIDP Response, ICANN identified certain conditions for non-disclosure, explained that some documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents.

- Request 20160829-1: Michael Palage (29 August 2016) The DIDP Request sought the disclosure of documents addressing the topics of malware, spam, bots, cybersquatting, malicious/illegal activity etc. in connection with the DNS over the last three years. In the DIDP Response, ICANN explained that the documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents. ICANN also explained that to the extent there are other documents that may be responsive to the Request, they are subject to certain conditions for non-disclosure.

- Request 20160922-1: Shaul Jolles on Behalf of Dot Registry, LLC (22 September 2016) The DIDP Request sought the disclosure of documents regarding certain Board Meetings in August and September 2016, Board briefing materials related to the Board deliberations on the Dot Registry, LLC v. ICANN IRP determination, the 17 September 2016 ICANN board meeting agenda item "President and CEO Review of New gTLD CPE Report Procedures," ICANN's scope, purpose, timing, methodology, and/or intentions about or related to the ICANN "President and CEO Review of New gTLD CPE Report Procedures," and any and all documents or communications regarding how the ICANN President and CEO, or his designee(s), intends to perform an independent evaluation of the CPE Provider's CEP reports when they are employees of ICANN and not independent. In the DIDP Response, ICANN explained that the documents sought are already publicly available on ICANN's website, and provided the Requester with links to the various responsive documents. ICANN also explained that to the extent there are other documents that may be responsive to the Request, they are subject to certain conditions for non-disclosure.

- Request 20160925-1: Michael Palage (25 September 2016) The DIDP Request sought the disclosure of documents related to the 8 February 2005 Special Meeting of the Board. In the DIDP Response, ICANN provided the Requester with links to various responsive documents.

- Request 20161017-1: Shaul Jolles on Behalf of Dot Registry, LLC (17 October 2016) The DIDP seeks the disclosure of information relating to a working group, which is scheduled to meet on 4 November 2016 at ICANN 57 in Hyderabad, India.

- Request 20161024-1: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding ICANN's compliance with U.S. Lobbying Law.

- Request 20161024-2: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding ICANN's FY2015 Report on IANA Stewardship Transition Costs.

- Request 20161024-3: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding "all speeches and statements by Goran Marby since his appointment as ICANN President & CEO in February 2016".

- Request 20161024-4: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding "… which staff or board members travel in economy, business and first class when sponsored by ICANN", and "… any and all documents based on which this decision about who travels in which class is made".

- Request 20161024-5: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding registrars separated according to the year of accreditation.

- Request 20161024-6: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding correspondence between World Economic Forum and ICANN related to NETMundial and the NETMundial Initiative, and correspondence between CGI.br and ICANN related to NETMundial and the NetMundial Initiative.

- Request 20161024-7: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding "[c]orrespondence between Namibian Network Information Centre (NNIC)", "[a]greements signed by NNIC and ICANN that give administrative control over .na to NNIC", and "[o]utputs and presentations to Board by ccNSO technology working group under the chairmanship of Dr. Eberhard Lisse".

- Request 20161024-8: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding documents showing the reasons why ICANN possesses the breakdown of the FY2003 – FY2005 contributions, but not for other years, and the discrepancy between FY2013 breakdown of Number Resources Organization (NRO) contributions and contributions reported in ICANN's FY2013 financial report.

- Request 20161024-9: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding "[d]ocuments showing the process followed by ICANN to verify the identity of all gTLD bidders", "[a]ffidavits filed by ICANN regarding the identity of Nu Dot Co.", and "[a]ny other documentation showing that ICANN was able to verify the identity of Nu Dot Co."

- Request 20161024-10: The Centre for Internet & Society (24 October 2016) The DIDP seeks the disclosure of information regarding "[d]ocuments showing the Board's decisions on the plans for the expenditures of proceeds form the gTLD auctions", and "[a]ll presentations and proposals from any working group at ICANN to the ICANN board regarding the expenditure of the gTLD auction proceeds."