

EXHIBIT A

From: sara@bnslawgroup.com
Sent: March 01, 2016 11:12 PM
To: jlevee@JonesDay.com
Cc: 'Ethan Brown'; kete@bnslawgroup.com; rzernik@jonesday.com; kwallace@jonesday.com
Subject: DCA v. ICANN

Importance: High

Counsel,

Please be advised that tomorrow (March 2, 2016) DCA will file an *ex parte* application for a temporary restraining order if you do not confirm in writing to us by tomorrow at 10.30 a.m. that ICANN will refrain from doing anything with respect to delegating the rights to .Africa until the Court has ruled on DCA's preliminary injunction motion.

Best,

Sara Colón
Partner



11766 Wilshire Blvd., Suite 1670
Los Angeles, CA 90025

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sara@bnslawgroup.com

EXHIBIT B

1 Ethan J. Brown (SBN 218814)
ethan@bnsllawgroup.com
2 Sara C. Colón (SBN 281514)
sara@bnsllawgroup.com
3 **BROWN NERI & SMITH LLP**
11766 Wilshire Boulevard, Suite 1670
4 Los Angeles, California 90025
Telephone: (310) 593-9890
5 Facsimile: (310) 593-9980

6 *Attorneys for Plaintiff*
7 DOT CONNECT AFRICA TRUST
8
9

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

12 DOTCONNECT AFRICA TRUST

13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR
16 ASSIGNED NAMES AND NUMBERS
and DOES 1 through 50, inclusive,

17 Defendants.
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Case No. 2:16-cv-00862-RGK (JCx)

**DECLARATION OF ETHAN J.
BROWN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: April 4, 2016
Hearing: 9:00 a.m.
Courtroom: 850

[Filed concurrently: Declaration of
Sophia Bekele; Motion for Preliminary
Injunction; [Proposed] Order]

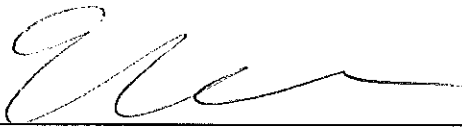
DECLARATION OF ETHAN J. BROWN

I Ethan J. Brown hereby declare as follows:

1. I am an attorney at law licensed to practice in California and a partner at the law firm of Brown, Neri & Smith LLP, counsel of record for Plaintiff DotConnectAfrica Trust (“DCA”). The matters referred to in this declaration are based upon my personal knowledge, and/or when reference documents, such documents were reviewed by me, and if called as a witness, I could and would testify competently thereto.

2. On February 23, 2016 I spoke to Jeffrey Levee, counsel of record for Defendant Internet Corporation for Assigned Names and Numbers (“ICANN”). I asked Mr. Levee for the status of ICANN’s granting of the .Africa gTLD and informed Mr. Levee that DCA would be forced to move for injunctive relief absent assurance that .Africa would not be granted to another party during the pendency of the litigation. Mr. Levee failed to give any such assurance and instead reminded me that ICANN had denied DCA’s application and stated that the board of ICANN could take action on .Africa at any time and that ICANN had a scheduled board meeting in Marrakesh, Morocco that would begin on March 5, 2016.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 29, 2016 at Los Angeles, California.



Ethan J. Brown

4828-4144-0046, v. 1

EXHIBIT C

1 Ethan J. Brown (SBN 218814)
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2 Sara C. Colón (SBN 281514)
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6 *Attorneys for Plaintiff*
7 DOTCONNECTAFRICA TRUST
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9

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

12 DOTCONNECTAFRICA TRUST

13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR
16 ASSIGNED NAMES AND NUMBERS
17 and DOES 1 through 50, inclusive,

18 Defendants.
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Case No. 2:16-cv-00862-RGK (JCx)

**DECLARATION OF SOPHIA
BEKELE ESHETE**

Date: April 4, 2016
Hearing: 9:00 a.m.
Courtroom: 850

[Filed concurrently: Declarations of
Ethan J. Brown & Sara C. Colón;
Notice of Motion and Motion for
Preliminary Injunction; Memorandum
of Points and Authorities; [Proposed]
Order]; Application for Leave to File
Under Seal; and [Proposed] Order re
Application for Leave to File Under
Seal]

1 **DECLARATION OF SOPHIA BEKELE ESHETE**

2 I, Sophia Bekele Eshete, hereby declare as follows:

3 1. I am the founder and executive director of DotConnectAfrica Trust
4 (“DCA”) and I coordinated DCA’s application for the .Africa generic Top-level
5 Domain (“gTLD”). The matters referred to in this declaration are based upon my
6 personal knowledge, and if called as a witness, I could and would testify
7 competently thereto.

8 2. I believe that DCA submitted a well-qualified and compelling
9 application for .Africa, which was undermined at each stage of the application
10 process by Defendant the Internet Corporation for Assigned Names and Numbers’
11 (“ICANN”) through breaches of its Bylaws, Articles of Incorporation, and the New
12 gTLD Guidebook due to its improper cooperation with the African Union
13 Commission (“AUC”). The AUC is the backer of the competing application for
14 the .Africa gTLD submitted by UniForum S.A., now known as Defendant ZA
15 Central Registry (“ZACR”).
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17 3. The .Africa gTLD and the operating rights to the .Africa gTLD are
18 unique assets. The .Africa gTLD is the regional identifier for the African continent,
19 similar to the .LAT and .Asia domains. It is a valuable attribute for entities,
20 professionals, and corporations seeking a regional online identity. Only one entity
21 can serve as the operator of .Africa and the rights to operate .Africa can only be
22 delegated by ICANN. Once the gTLD is awarded and the party controlling it
23 begins selling or offering its use to users of the Internet including businesses,
24 organizations, persons and governments, it would be difficult if not impossible to
25 unwind that control and provide it to another party.

26 4. DCA paid \$185,000, the fee required to all applicants, to ICANN for
27 processing of its application.
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1 5. Attached hereto as **Exhibit 1** is a true and correct copy of the Internet
2 Corporation for Assigned Names and Numbers (“ICANN”) Internal Review
3 Process (“IRP”) Final Declaration dated July 9, 2015.

4 6. Attached hereto as **Exhibit 2** is a true and correct copy, as posted at
5 [https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-](https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-en.pdf)
6 [en.pdf](https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-en.pdf), of the ICANN IRP Declaration on the IRP Procedure dated August 14,
7 2014.

8 7. Attached hereto as **Exhibit 3** is a true and correct copy, as I obtained
9 it from ICANN, of the ICANN Applicant Guidebook (the “Guidebook”) DCA
10 referred to when preparing and filing its application for .Africa.

11 8. ICANN required DCA to agree to the terms and conditions in the
12 Guidebook upon submitting its application for the .Africa gTLD.

13 9. ICANN did not afford DCA the opportunity to negotiate any terms in
14 the Guidebook, including the covenant not to sue. Nor did DCA contribute to any
15 of the language of the terms in the Guidebook.

16 10. In fact, Module 6 of the Guidebook states that the applicant must
17 agree to the terms and conditions “without modification.”

18 11. DCA did not consult with an attorney regarding the provisions of the
19 Guidebook before it signed, nor did ICANN encourage it to do so.

20 12. Attached hereto as **Exhibit 4** is a true and correct copy, as posted at
21 <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>, of ICANN’s
22 bylaws.

23 13. Attached hereto as **Exhibit 5** is a true and correct copy of the
24 description of ICANN’s Internal Review Process, as posted at ICANN’s website at
25 [https://www.icann.org/resources/pages/reconsideration-and-independent-review-](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review)
26 [icann-bylaws-article-iv-accountability-and-review](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review).
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1 14. Attached hereto as **Exhibit 6** is a true and correct copy of the August
2 27, 2009 DCA endorsement letter from the AUC to me.

3 15. Attached hereto as **Exhibit 7** is a true and correct copy of the April
4 16, 2010 letter from the AUC to me.

5 16. Attached hereto as **Exhibit 8** is a true and correct copy of the August
6 8, 2008 DCA endorsement letter from the United Nations Economic Commission
7 on Africa (“UNECA”) to me.

8 17. Attached hereto as **Exhibit 9** is a true and correct copy of the March
9 23, 2014 email I received as part of a group list email, from Alice Munyua. This
10 email was also forwarded to me.

11 18. Attached hereto as **Exhibit 10** is a true and correct copy of the
12 September 21, 2015 letter from UNECA to Dr. Ibrahim, a representative of the
13 AUC, on which I was copied.

14 19. Attached hereto as **Exhibit 11** is a true and correct copy of the
15 December 5, 2010 DCA endorsement letter from the Internationalized Domain
16 Resolution Union (“IDRU”) to me.

17 20. Attached hereto as **Exhibit 12** is a true and correct copy of the
18 November 17, 2010 DCA endorsement letter from the Corporate Council on Africa
19 to me.

20 21. Attached hereto as **Exhibit 13** is a true and correct copy of the August
21 7, 2012 endorsement letter from Kenya to me.

22 22. Attached hereto as **Exhibit 14** is a true and correct copy, as posted on
23 ICANN’s website at
24 [https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf)
25 [08mar12-en.pdf](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf), of the March 8, 2012 letter from ICANN to AUC.
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1 23. Instead of allowing DCA's application to proceed through the
2 remainder of the application process after the IRP, ICANN restarted DCA's
3 application and re-reviewed its endorsements.

4 24. Attached hereto as **Exhibit 15** is a true and correct copy of the first set
5 of clarifying questions ICANN issued to DCA on September 2, 2015.

6 25. Attached hereto as **Exhibit 16** is a true and correct copy of ICANN's
7 response to DCA regarding the clarifying questions in the Initial Evaluation
8 Results Report issued on October 13, 2015.

9 26. Attached hereto as **Exhibit 17** is a true and correct copy of the second
10 set of clarifying questions ICANN issued to DCA on October 30, 2015 during the
11 Extended Evaluation.

12 27. The second set of clarifying questions from ICANN provided no
13 further guidance or clarification to DCA on its application.

14 28. Attached hereto as **Exhibit 18** is a true and correct copy of the
15 Extended Evaluation Report dated February 17, 2016 that DCA received from
16 ICANN.

17 29. DCA agreed to participate in an Extended Evaluation because it was
18 hoping to gain insight into what more it needed for its application, but ICANN
19 gave no further guidance or clarification.

20 30. Attached hereto as **Exhibit 19** is a true and correct copy of a March
21 15, 2013 email from Mark McFadden of the ICC to ICANN employees, as
22 produced to DCA during the IRP discovery process.

23 31. The members of the AUC committee formed to choose who to
24 endorse for the .Africa gTLD were individuals who were also members of other
25 organizations affiliated with ZACR.

26 32. Attached hereto as **Exhibit 20** is a true and correct copy of ZACR's
27 public application for the .Africa gTLD as posted on ICANN's website.
28

1 33. Attached hereto as **Exhibit 21** is a true and correct copy, as posted on
2 the AUC's website at [http://www.au.int/en/sites/default/files/AUC-dotAfrica-](http://www.au.int/en/sites/default/files/AUC-dotAfrica-Communicue-.pdf)
3 [Communicue-.pdf](http://www.au.int/en/sites/default/files/AUC-dotAfrica-Communicue-.pdf), of the AUC Communique on the AUC selecting ZACR.

4 34. After reviewing the ZACR endorsements produced to DCA, I noted
5 that only five specifically reference ZACR by name and that many of the letters
6 were actually endorsing AUC's own initiative to make .Africa a "reserved" gTLD.

7 35. Attached hereto as **Exhibit 22** is a true and correct copy of the
8 ICANN news article regarding InterConnect Communications ("ICC") published
9 at <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>
10

11 36. Attached hereto as **Exhibit 23** is a true and correct copy, as produced
12 to DCA from ICANN, of the October 15, 2012 email from the ICC to ICANN with
13 attachment.

14 37. Attached hereto as **Exhibit 24** is a true and correct copy, as produced
15 to DCA by ICANN, of the April 9, 2013 email from Samuel Buruchara to Heather
16 Dryden.

17 38. Attached hereto as **Exhibit 25** is a true and correct copy, as produced
18 to DCA by ICANN, of the April 10, 2013 email from Michael Kutundu to Heather
19 Dryden.

20 39. Attached hereto as **Exhibit 26** is a true and correct copy, as posted at
21 [https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-](https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf)
22 [en.pdf](https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf), of the April 11, 2013 GAC Communique.

23 40. Attached hereto as **Exhibit 27** is a true and correct copy, as produced
24 to DCA by ICANN, of the New GTLD Program Initial Evaluation Report for
25 ZACR's application.

26 41. Attached hereto as **Exhibit 28** is a true and correct copy, as posted on
27 ICANN's website at
28 <https://gacweb.icann.org/display/gacweb/Upcoming+Meeting%3A+Marrakech,+5->

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10+March+2016, of the meeting scheduled for the ICANN meeting from March 5, 2016 through March 10, 2016. I believe that ICANN will assign the rights to Africa at this meeting.

42. Attached hereto as Exhibit 29 is a true and correct copy, as posted at ICANN's website at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>, of the GAC Operating Principles.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 1, 2016 at Walnut Creek, California.



Sophia Bekele Eshete

4833-2797-1630, v. 2

EXHIBIT 1

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Independent Review Panel**

CASE #50 2013 001083

FINAL DECLARATION

In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation For Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* (ICDR Rules) and the *Supplementary Procedures for ICANN Independent Review Process* of the International Centre for Dispute Resolution (ICDR),

Between: DotConnectAfrica Trust;
("Claimant" or "DCA Trust")

Represented by Mr. Arif H. Ali, Ms. Meredith Craven, Ms. Erin Yates and Mr. Ricardo Ampudia of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 20005, U.S.A.

And

Internet Corporation for Assigned Names and Numbers (ICANN);
("Respondent" or "ICANN")

Represented by Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

IRP Panel

**Prof. Catherine Kessedjian
Hon. William J. Cahill (Ret.)
Babak Barin, *President***

I. BACKGROUND

1. DCA Trust is non-profit organization established under the laws of the Republic of Mauritius on 15 July 2010 with its registry operation – DCA Registry Services (Kenya) Limited – as its principal place of business in Nairobi, Kenya.
2. DCA Trust was formed with the charitable purpose of, among other things, advancing information technology education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa and not for the public good.
3. In March 2012, DCA Trust applied to ICANN for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains (“gTLD”) Internet Expansion Program (the “New gTLD Program”), an internet resource available for delegation under that program.
4. ICANN is a non-profit corporation established on 30 September 1998 under the laws of the State of California, and headquartered in Marina del Rey, California, U.S.A. According to its Articles of Incorporation, ICANN was established for the benefit of the Internet community as a whole and is tasked with carrying out its activities in conformity with relevant principles of international law, international conventions and local law.
5. On 4 June 2013, the ICANN Board New gTLD Program Committee (“NGPC”) posted a notice that it had decided not to accept DCA Trust’s application.
6. On 19 June 2013, DCA Trust filed a request for reconsideration by the ICANN Board Governance Committee (“BGC”), which denied the request on 1 August 2013.
7. On 19 August 2013, DCA Trust informed ICANN of its intention to seek relief before an Independent Review Panel under ICANN’s Bylaws. Between August and October 2013, DCA Trust and ICANN participated in a Cooperative Engagement Process (“CEP”) to try and resolve the issues relating to DCA Trust’s application. Despite several meetings, no resolution was reached.
8. On 24 October 2013, DCA Trust filed a Notice of Independent Review Process with the ICDR in accordance with Article IV, Section 3 of ICANN’s Bylaws.

9. In an effort to safeguard its rights pending the ongoing constitution of the IRP Panel, on 22 January 2014, DCA Trust wrote to ICANN requesting that it immediately cease any further processing of all applications for the delegation of the .AFRICA gTLD, failing which DCA Trust would seek emergency relief under Article 37 of the ICDR Rules.
10. DCA Trust also indicated that it believed it had the right to seek such relief because there was no standing panel as anticipated in the Supplementary Procedures for ICANN Independent Review Process (“Supplementary Procedures”), which could otherwise hear requests for emergency relief.
11. In response, on 5 February 2014, ICANN wrote:

Although ICANN typically is refraining from further processing activities in conjunction with pending gTLD applications where a competing applicant has a pending reconsideration request, ICANN does not intend to refrain from further processing of applications that relate in some way to pending independent review proceedings. In this particular instance, ICANN believes that the grounds for DCA’s IRP are exceedingly weak, and that the decision to refrain from the further processing of other applications on the basis of the pending IRP would be unfair to others.

12. In its Request for Emergency Arbitrator and Interim Measures of Protection subsequently submitted on 28 March 2014, DCA Trust pleaded, *inter alia*, that, in an effort to preserve its rights, in January 2014, DCA requested that ICANN suspend its processing of applications for .AFRICA during the pendency of this proceeding. ICANN, however, summarily refused to do so.
13. DCA Trust also submitted that “on 23 March 2014, DCA became aware that ICANN intended to sign an agreement with DCA’s competitor (a South African company called ZACR) on 26 March 2014 in Beijing [...] Immediately upon receiving this information, DCA contacted ICANN and asked it to refrain from signing the agreement with ZACR in light of the fact that this proceeding was still pending. Instead, according to ICANN’s website, ICANN *signed its agreement with ZACR the very next day, two days ahead of plan, on 24 March instead of 26 March.*”
14. According to DCA Trust, that same day, “ICANN then responded to DCA’s request by presenting the execution of the contract as a *fait accompli*, arguing that DCA should have sought to stop ICANN from proceeding with ZACR’s application, as ICANN had already informed DCA of its intention [to] ignore its obligations to participate in this proceeding in good faith.”

15. DCA Trust also submitted that on 25 March 2014, as per ICANN's email to the ICDR, "ICANN for the first time informed DCA that it would accept the application of Article 37 of the ICDR Rules to this proceeding contrary to the express provisions of the Supplementary Procedures of ICANN has put in place for the IRP Process."
16. In its Request, DCA Trust argued that it "is entitled to an accountability proceeding with legitimacy and integrity, with the capacity to provide a meaningful remedy. [...] DCA has requested the opportunity to compete for rights to .AFRICA pursuant to the rules that ICANN put into place. Allowing ICANN to delegate .AFRICA to DCA's only competitor – which took actions that were instrumental in the process leading to ICANN's decision to reject DCA's application – would eviscerate the very purpose of this proceeding and deprive DCA of its rights under ICANN's own constitutive instruments and international law."
17. Finally, among other things, DCA Trust requested the following interim relief:
 - a. An order compelling *ICANN to refrain from any further steps toward delegation of the .AFRICA gTLD*, including but not limited to execution or assessment of pre-delegation testing, negotiations or discussions relating to delegation with the entity ZACR or any of its officers or agents; [...]
18. On 24 April and 12 May 2014, the Panel issued Procedural Order No. 1, a Decision on Interim Measures of Protection, and a list of questions for the Parties to answer.
19. In its 12 May 2014 Decision on Interim Measures of Protection, the Panel required ICANN to "immediately refrain from any further processing of any application for .AFRICA until [the Panel] heard the merits of DCA Trust's Notice of Independent Review Process and issued its conclusions regarding the same".
20. In the Panel's unanimous view, among other reasons, it would have been "unfair and unjust to deny DCA Trust's request for interim relief when the need for such a relief...[arose] out of ICANN's failure to follow its own Bylaws and procedures." The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.
21. On 27 May and 4 June 2015, the Panel issued Procedural Order No. 2 and a Decision on ICANN's request for Partial Reconsideration of certain portions of its Decision on Interim Measures of Protection.

22. In its 4 June 2014 Decision on ICANN's request for Partial Reconsideration, the Panel unanimously concluded that ICANN's request must be denied. In that Decision, the Panel observed:

9. After careful consideration of the Parties' respective submissions, the Panel is of the unanimous view that ICANN's Request must be denied for two reasons.

10. First, there is nothing in ICANN's Bylaws, the International Dispute Resolution Procedures of the ICDR effective as at 1 June 2009 or the Supplementary Procedures for ICANN Independent Review Process that in any way address the Panel's ability to address ICANN's Request. The Panel has not been able to find any relevant guidance in this regard in any of the above instruments and ICANN has not pointed to any relevant provision or rule that would support its argument that the Panel has the authority to reconsider its Decision of 12 May 2014.

11. Moreover, ICANN has not pointed to any clerical, typographical or computation error or shortcoming in the Panel's Decision and it has not requested an interpretation of the Panel's Decision based on any ambiguity or vagueness. To the contrary, ICANN has asked the Panel to reconsider its prior findings with respect to certain references in its Decision that ICANN disagrees with, on the basis that those references are in ICANN's view, inaccurate.

12. Second, even if the Panel were to reconsider based on any provision or rule available, its findings with respect to those passages complained of by ICANN as being inaccurate in its Decision – namely paragraphs 29 to 33 – after deliberation, the Panel would still conclude that ICANN has failed to follow its own Bylaws as more specifically explained in the above paragraphs, in the context of addressing which of the Parties should be viewed as responsible for the delays associated with DCA Trust's Request for Interim Measures of Protection. It is not reasonable to construe the By-law proviso for consideration by a provider-appointed *ad hoc* panel when a standing panel is not in place as relieving ICANN indefinitely of forming the required standing panel. Instead, the provider appointed panel is properly viewed as an interim procedure to be used before ICANN has a chance to form a standing panel. Here, more than a year has elapsed, and ICANN has offered no explanation why the standing panel has not been formed, nor indeed any indication that formation of that panel is in process, or has begun, or indeed even is planned to begin at some point.

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

23. On 14 August 2014, the Panel issued a Declaration on the IRP Procedure ("2014 Declaration") pursuant to which it (1) ordered a reasonable documentary exchange, (2) permitted the Parties to benefit from additional filings and supplementary briefing, (3) allowed a video hearing, and (4) permitted both Parties at the hearing to

challenge and test the veracity of any written statements made by witnesses.

The Panel also concluded that its Declaration on the IRP and its future Declaration on the Merits of the case were binding on the Parties. In particular, the Panel decided:

98. Various provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the Panel's decisions, opinions and declarations are binding. There is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the Panel either advisory or non-binding.

[...]

100. Section 10 of the Supplementary Procedures resembles Article 27 of the ICDR Rules. Whereas Article 27 refers to "Awards", section 10 refers to "Declarations". Section 10 of the Supplementary Procedures, however, is silent on whether Declarations made by the IRP Panel are "final and binding" on the parties.

101. As explained earlier, as per Article IV, Section 3, paragraph 8 of the Bylaws, the Board of Directors of ICANN has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP set out in section 3. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures. These Rules have been supplemented with the Supplementary Procedures.

102. This is clear from two different parts of the Supplementary Procedures. First, in the preamble, where the Supplementary Procedures state that: "These procedures supplement the International Centre for Dispute Resolution's International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws".

103. And second, under section 2 entitled (Scope), that states that the "ICDR will apply these Supplementary Procedures, in addition to the INTERNATIONAL DISPUTE RESOLUTION PROCEDURES, in all cases submitted to the ICDR in connection with the Article IV, Section 3(4) of the ICANN Bylaws". It is therefore clear that ICANN intended the operating rules and procedures for the independent review to be an international set of arbitration rules supplemented by a particular set of additional rules.

104. There is also nothing inconsistent between section 10 of the Supplementary Procedures and Article 27 of the ICDR Rules.

105. One of the hallmarks of international arbitration is the binding and final nature of the decisions made by the adjudicators. Binding arbitration is the essence of what the ICDR Rules, the ICDR itself and its parent, the American Arbitration Association, offer. The selection of the ICDR Rules as the baseline set of procedures for IRP's, therefore, points to a binding adjudicative process.

106. Furthermore, the process adopted in the Supplementary Procedures is an adversarial one where counsel for the parties present competing evidence and arguments, and a panel decides who prevails, when and in what circumstances. The panellists who adjudicate the parties' claims are also selected from among experienced arbitrators, whose usual charter is to make binding decisions.

107. The above is further supported by the language and spirit of section 11 of ICANN's Bylaws. Pursuant to that section, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the Panel would not be considered advisory.

[...]

110. ICANN points to the extensive public and expert input that preceded the formulation of the Supplementary Procedures. The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel's view, this could have easily been done.

111. The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor; and, 2) the special, unique, and publicly important function of ICANN. As explained before, ICANN is not an ordinary private non-profit entity deciding for its own sake who it wishes to conduct business with, and who it does not. ICANN rather, is the steward of a highly valuable and important international resource.

[...]

115. Moreover, assuming for the sake of argument that it is acceptable for ICANN to adopt a remedial scheme with no teeth, the Panel is of the opinion that, at a minimum, the IRP should forthrightly explain and acknowledge that the process is merely advisory. This would at least let parties know before embarking on a potentially expensive process that a victory before the IRP panel may be ignored by ICANN. And, a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process. The Panel seriously doubts that the Senators questioning former ICANN President Stuart Lynn in 2002 would have been satisfied had they understood that a) ICANN had imposed on all applicants a waiver of all judicial remedies, *and* b) the IRP process touted by ICANN as the "ultimate guarantor" of ICANN accountability was only an advisory process, the benefit of which accrued only to ICANN. [Underlining is from the original decision.]

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

24. On 5 September and 25 September 2014, the Panel issued Procedural Orders No. 3 and No. 4. In Procedural Order No. 3, the Panel notably required the Parties to complete their respective filing of briefs in accordance with the IRP Procedure Guidelines by 3 November 2014 for DCA Trust and 3 December 2014 for ICANN.
25. In Procedural Order No. 4 dated 25 September 2014, the Panel reached a decision regarding document production issues.
26. On 3 November 2014 and 3 December 2014, the Parties filed their Memorial and Response Memorial on the Merits in accordance with the timetable set out in Procedural Order No. 3.
27. On 26 February 2015, following the passing away of the Hon. Richard C. Neal (Ret.) and confirmation by the ICDR of his replacement arbitrator, the Hon. William J. Cahill (Ret.), ICANN requested that this Panel consider revisiting the part of this IRP relating to the issue of hearing witnesses addressed in the Panel's 2014 Declaration.
28. In particular, ICANN submitted that given the replacement of Justice Neal, Article 15.2 of the ICDR Rules together with the Supplementary Procedures permitted this IRP to in its sole discretion, determine "whether all or part" of this IRP should be repeated.
29. According to ICANN, while it was not necessary to repeat all of this IRP, since the Panel here had exceeded its authority under the Supplementary Procedures when it held in its 2014 Declaration that it could order live testimony of witnesses, the Panel should then at a minimum consider revisiting that issue.
30. According to ICANN, panelists derived "their powers and authority from the relevant applicable rules, the parties' requests, and the contractual provisions agreed to by the Parties (in this instance, ICANN's Bylaws, which establish the process of independent review). The authority of panelists is limited by such rules, submissions and agreements."
31. ICANN emphasized that "compliance with the Supplementary Procedures [was] critical to ensure predictability for ICANN, applicants for and objectors to gTLD applications, and the entire ICANN community...", and while "ICANN [was] committed to fairness and accessibility...ICANN [was] also committed to predictability and the like treatment of all applicants. For this Panel to change the rules

for this single applicant [did] not encourage any of these commitments.”

32. ICANN also pleaded that, DCA specifically agreed to be bound by the Supplementary Procedures when it initially submitted its application, the Supplementary Procedures apply to both ICANN and DCA alike, ICANN is now in the same position when it comes to testing witness declarations and finally, in alternative dispute resolution proceedings where cross examination of witnesses is allowed, parties often waive cross-examination.

33. Finally, ICANN advanced that:

[T]he Independent Review process is an alternative dispute resolution procedure adapted to the specific issues to be addressed pursuant to ICANN’s Bylaws. The process cannot be transformed into a full-fledged trial without amending ICANN’s Bylaws and the Supplementary Procedures, which specifically provide for a hearing that includes counsel argument only. Accordingly, ICANN strongly urges the Panel to follow the rules for this proceeding and to declare that the hearing in May will be limited to argument of counsel.

34. On 24 March 2015, the Panel issued its Declaration on ICANN’s Request for Revisiting of the 14 August Declaration on the IRP Procedure following the Replacement of Panel Member. In that Declaration, the newly constituted Panel unanimously concluded that it was not necessary for it to reconsider or revisit its 2014 Declaration.

35. In passing and not at all as a result of any intended or inadvertent reconsideration or revisiting of its 2014 Declaration, the Panel referred to Articles III and IV of ICANN’s Bylaws and concluded:

Under the general heading, Transparency, and title “Purpose”, Section 1 of Article III states: “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 the general heading, Accountability and Review, and title “Purpose”, Section 1 of Article IV reads: “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.” In light of the above, and again in passing only, it is the Panel’s unanimous view, that the filing of fact witness statements (as ICANN has done in this IRP) and limiting telephonic or in-person hearings to argument only is inconsistent with the objectives setout in Articles III and IV setout above.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

36. On 24 March and 1 April 2015, the Panel rendered Procedural Orders No. 5 and 6, in which, among other things, the Panel recorded the Parties' "agreement that there will no cross-examination of any of the witnesses" at the hearing of the merits.
37. On 20 April 2015, the Panel rendered its Third Declaration on the IRP Procedure. In that Declaration, the Panel decided that the hearing of this IRP should be an in-person one in Washington, D.C. and required all three witnesses who had filed witness statements to be present at the hearing.
38. The Panel in particular noted that:

13. [...] Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, an accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.

14. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board [...], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.

15. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

"Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM."

Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.

16. Accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

[...]

21. In order to keep the costs and burdens of independent review as low as possible, ICANN's Bylaws, in Article IV, Section 3 and Paragraph 12, suggests that the IRP Panel conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible, and where necessary the IRP Panel may hold meetings by telephone. Use of the words "should" and "may" versus "shall" are demonstrative of this point. In the same paragraph, however, ICANN's Bylaws state that, "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."

22. The Panel finds that this last sentence in Paragraph 12 of ICANN's Bylaws, unduly and improperly restricts the Panel's ability to conduct the "independent review" it has been explicitly mandated to carryout in Paragraph 4 of Section 3 in the manner it considers appropriate.

23. How can a Panel compare contested actions of the Board and declare whether or not they are consistent with the provisions of the Articles of Incorporation and Bylaws, without the ability to fact find and make enquiries concerning those actions in the manner it considers appropriate?

24. How can the Panel for example, determine, if the Board acted without conflict of interest, exercised due diligence and care in having a reasonable amount of facts in front of it, or exercised independent judgment in taking decisions, if the Panel cannot ask the questions it needs to, in the manner it needs to or considers fair, just and appropriate in the circumstances?

25. How can the Panel ensure that the parties to this IRP are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case with respect to the mandate the Panel has been given, if as ICANN submits, "ICANN's Bylaws do not permit any examination of witnesses by the parties or the Panel during the hearing"?

26. The Panel is unanimously of the view that it cannot. The Panel is also of the view that any attempt by ICANN in this case to prevent it from carrying out its independent review of ICANN Board's actions in the manner that the Panel considers appropriate under the circumstances deprives the accountability and review process set out in the Bylaws of any meaning.

27. ICANN has filed two 'Declarations' in this IRP, one signed by Ms. Heather Dryden, a Senior Policy Advisor at the International Telecommunications Policy and Coordination Directorate at Industry Canada, and Chair of ICANN Government Advisory Committee from 2010 to 2013, and the other by Mr. Cherine Chalaby, a member of the Board of Directors of ICANN since 2010. Mr. Chalaby is also, since its inception, one of three members of the Subcommittee on Ethics and Conflicts of ICANN's Board of Governance Committee.

28. In their respective statements, both individuals have confirmed that they "have personal knowledge of the matters set forth in [their] declaration and [are] competent to testify to these matters *if called as a witness*."

[...]

29. In his Declaration, Mr. Chalaby states that “all members of the NGPC were asked to and did specifically affirm that they did not have a conflict of interest related to DCA’s application for .AFRICA when they voted on the GAC advice. In addition, the NGPC asked the BGC to look into the issue further, and the BGC referred the matter to the Subcommittee. After investigating the matter, the Subcommittee concluded that Chris Disspain and Mike Silber did not have conflicts of interest with respect to DCA’s application for .AFRICA.”

30. The Panel considers it important and useful for ICANN’s witnesses, and in particular, Mr. Chalaby as well as for Ms. Sophia Bekele Eshete to be present at the hearing of this IRP.

31. While the Panel takes note of ICANN’s position depicted on page 2 of its 8 April 2015 letter, the Panel nonetheless invites ICANN to reconsider its position.

32. The Panel also takes note of ICANN’s offer in that same letter to address written questions to its witnesses before the hearing, and if the Panel needs more information after the hearing to clarify the evidence presented during the hearing. The Panel, however, is unanimously of the view that this approach is fundamentally inconsistent with the requirements in ICANN’s Bylaws for it to act openly, transparently, fairly and with integrity.

33. As already indicated in this Panel’s August 2014 Declaration, analysis of the propriety of ICANN’s decisions in this case will depend at least in part on evidence about the intentions and conduct of ICANN’s top personnel. Even though the Parties have explicitly agreed that neither will have an opportunity to cross-examine the witnesses of the other in this IRP, the Panel is of the view that ICANN should not be allowed to rely on written statements of its top officers attesting to the propriety of their actions and decisions without an opportunity for the Panel and thereafter DCA Trust’s counsel to ask any follow-up questions arising out of the Panel’s questions of ICANN’s witnesses. The same opportunity of course will be given to ICANN to ask questions of Ms. Bekele Eshete, after the Panel has directed its questions to her.

34. The Parties having agreed that there will be no cross-examination of witnesses in this IRP, the procedure for asking witnesses questions at the hearing shall be as follows:

- a) The Panel shall first have an opportunity to ask any witness any questions it deems necessary or appropriate;
- b) Each Party thereafter, shall have an opportunity to ask any follow-up questions the Panel permits them to ask of any witness.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

39. On 27 April and 4 May 2015, the Panel issued its Procedural Order No. 7 and 8, and on that last date, it held a prehearing conference call with the Parties as required by the ICDR Rules. In Procedural

Order No. 8, the Panel set out the order of witness and party presentations agreed upon by the Parties.

40. On 18 May 2015, and in response to ZA Central Registry's (ZACR) request to have two of its representatives along with a representative from the African Union Commission (AUC) attend at the IRP hearing scheduled for 22 and 23 May 2015 in Washington, D.C., the Panel issued its Procedural Order No. 9, denying the requests made by ZACR and AUC to be at the merits hearing of this matter in Washington, D.C.
41. In a letter dated 11 May 2015, ZACR and AUC's legal representative had submitted that both entities had an interest in this matter and it would be mutually beneficial for the IRP to permit them to attend at the hearing in Washington, D.C.
42. ZACR's legal representative had also argued that "allowing for interests of a materially affected party such as ZACR, the successful applicant for the dotAfrica gTLD, as well as broader public interests, to be present enhances the legitimacy of the proceedings and therefore the accountability and transparency of ICANN and its dispute resolution procedures."
43. For the Panel, Article 20 of the ICDR Rules, which applied in this matter, stated that the hearing of this IRP was "private unless the parties agree otherwise". The Parties in this IRP did not consent to the presence of ZACR and AUC. While ICANN indicated that it had no objection to the presence of ZACR and AUC, DCA Trust was not of the same view. Therefore, ZACR and AUC were not permitted to attend.
44. The in-person hearing of the merits of this IRP took place on 22 and 23 May 2015 at the offices of Jones Day LLP in Washington, D.C. All three individuals who had filed witness statements in this IRP, namely Ms. Sophia Bekele Eshete, representative for DCA Trust, Ms. Heather Dryden and Mr. Cherine Chalaby, representatives for ICANN, attended in person and answered questions put to them by the Panel and subsequently by the legal representatives of both Parties. In attendance at the hearing was also Ms. Amy Stathos, Deputy General Counsel of ICANN.
45. The proceedings of the hearing were reported by Ms. Cindy L. Sebo of TransPerfect Legal Solutions, who is a Registered Merit Real-Time Court Reporter.

46. On the last day of the hearing, DCA Trust was asked by the Panel to clearly and explicitly articulate its prayers for relief. In a document entitled Claimant's Final Request for Relief which was signed by the Executive Director of DCA Trust, Ms. Sophia Bekele and marked at the hearing as Hearing Exhibit 4, DCA Trust asked the Panel to:

Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB) by:

- Discriminating against DCA and wrongfully assisting the AUC and ZACR to obtain rights to the .AFRICA gTLD;
- Failing to apply ICANN's procedures in a neutral and objective manner, with procedural fairness when it accepted the GAC Objection Advice against DCA; and
- Failing to apply its procedures in a neutral and objective manner, with procedural fairness when it approved the BGC's recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice against DCA;

And to declare that:

- DCA is the prevailing party in this IRP and, consequently, shall be entitled to its costs in this proceeding; and
- DCA is entitled to such other relief as the Panel may find appropriate under the circumstances described herein.

Recommend, as a result of each of these violations, that:

- ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR;
- ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA; and
- ICANN compensate DCA for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

47. In its response to DCA Trust's Final Request for Relief, ICANN submitted that, "the Panel should find that no action (or inaction) of the ICANN Board was inconsistent with the Articles of Incorporation or Bylaws, and accordingly none of DCA's requested relief is appropriate."

48. ICANN also submitted that:

DCA urges that the Panel issue a declaration in its favor...and also asks that the Panel declare that DCA is the prevailing party and entitled to its costs. Although ICANN believes that the evidence does not support the

declarations that DCA seeks, ICANN does not object to the form of DCA's requests.

At the bottom of DCA's Final Request for Relief, DCA asks that the Panel recommend that ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR, and that ICANN permit DCA's application to proceed and give DCA no less than 18 additional months from the date of the Panel's declaration to attempt to obtain the requisite support of the countries in Africa. ICANN objects to that appropriateness of these requested recommendations because they are well outside the Panel's authority as set forth in the Bylaws.

[...]

Because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from recommending how the Board should then proceed in light of the Panel's declaration. Pursuant to Paragraph 12 of that same section of the Bylaws, the Board will consider the Panel's declaration at its next meeting, and if the Panel has declared that the Board's conduct was inconsistent with the Articles or the Bylaws, the Board will have to determine how to act upon the opinion of the Panel.

By way of example only, if the Panel somehow found that the unanimous NGPC vote on 4 June 2013 was not properly taken, the Board might determine that the vote from that meeting should be set aside and that the NGPC should consider the issue anew. Likewise, if the Panel were to determine that the NGPC did not adequately consider the GAC advice at [the] 4 June 2013 meeting, the Board might require that the NGPC reconsider the GAC advice.

In all events, the Bylaws mandate that the Board has the responsibility of fashioning the appropriate remedy once the Panel has declared whether or not it thinks the Board's conduct was inconsistent with ICANN's Articles of Incorporation and Bylaws. The Bylaws do not provide the Panel with the authority to make any recommendations or declarations in this respect.

49. In response to ICANN's submissions above, on 15 June 2015, DCA Trust advanced that the Panel had already ruled that its declaration on the merits will be binding on the Parties and that nothing in ICANN's Bylaws, the Supplementary Procedures or the ICDR Rules applicable in these proceedings prohibits the Panel from making a recommendation to the ICANN Board of Directors regarding an appropriate remedy. DCA Trust also submitted that:

According to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "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. Indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself suggested that DCA could seek relief through ICANN's accountability

mechanisms or, in other words, the Reconsideration process and the Independent Review Process. If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

50. On 25 June 2015, the Panel issued its Procedural Order No. 10, directing the Parties to by 1 July 2015 simultaneously file their detailed submissions on costs and their allocation in these proceedings.
51. The additional factual background and reasons in the above decisions, procedural orders and declarations rendered by the Panel are hereby adopted and incorporated by reference in this Final Declaration.
52. On 1 and 2 July 2015, the Parties filed their respective positions and submissions on costs.

II. BRIEF SUMMARY OF THE PARTIES' POSITIONS ON THE MERITS & REQUEST FOR RELIEF

53. According to DCA Trust and as elaborated on in its Memorial on Merits dated 3 November 2014, the central dispute between it and ICANN in this IRP may be summarized as follows:

32. By preventing DCA'S application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

54. According to DCA Trust, among other things, "instead of functioning as a disinterested regulator of a fair and transparent gTLD application process, ICANN used its authority and oversight over that process to assist ZACR and to eliminate its only competitor, DCA, from the process."
55. DCA Trust also advanced that, "as a result, ICANN deprived DCA of the right to compete for .AFRICA in accordance with the rules ICANN established for the new gTLD program, in breach of the Applicant Guidebook ("AGB") and ICANN's Articles of Incorporation and Bylaws."

56. In its 3 December 2014 Response to DCA's Memorial on the Merits, among other things, ICANN submitted that, "ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN also pleaded that it acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration."
57. ICANN advanced that, "DCA is using this IRP as a mean to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook."
58. ICANN also added that, "ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world."
59. In its Final Request for Relief filed on 23 May 2015, DCA Trust asked this Panel to:
1. Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB);
 2. Declare that DCA Trust is the prevailing party in this IRP and, consequently entitled to its costs in this proceeding; and
 3. Recommend as a result of the Board violations a course of action for the Board to follow going forward.
60. In its response letter of 1 June 2015, ICANN confirmed that it did not object to the form of DCA Trust's requests above, even though it believes that the evidence does not support the declarations that DCA Trust seeks. ICANN did, however, object to the appropriateness of the request for recommendations on the ground that they are outside of the Panel's authority as set forth in the Bylaws.

III. THE ISSUES RAISED AND THE PANEL'S DECISION

61. After carefully considering the Parties' written and oral submissions, perusing the three witness statements filed and hearing *viva voce* the testimonies of the witnesses at the in-person hearing of this IRP in Washington, D.C., the Panel answers the following four questions put to it as follows:

1. Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

Answer: Yes.

2. Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook (AGB)?

Answer: Yes.

3. Who is the prevailing party in this IRP?

Answer: DCA Trust

4. Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

Answer: ICANN, in full.

Summary of Panel's Decision

For reasons explained in more detail below, and pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

Finally, DCA Trust is the prevailing party in this IRP and ICANN is responsible for bearing, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

IV. ANALYSIS OF THE ISSUES AND REASONS FOR THE PANEL'S DECISION

1) Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

62. Before answering this question, the Panel considers it necessary to quickly examine and address the issue of "standard of review" as referred to by ICANN in its 3 December 2014 Response to DCA's Memorial on the Merits or the "law applicable to these proceedings" as pleaded by DCA Trust in its 3 November 2014 Memorial on the Merits.

63. According to DCA Trust:

30. The version of ICANN's Articles of Incorporation and its Bylaws in effect at the time DCA filed its Request for IRP applies to these proceedings. [Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (21 November 1998) and Bylaws of the Internet Corporation for Assigned Names and Numbers (11 April 2013)]. ICANN's agreement with the U.S. Department of Commerce, National Telecommunications & Information Administration ("NTIA"), the "Affirmation of Commitments," is also instructive, as it explains ICANN's obligations in light of its role as regulator of the Domain Name System ("DNS"). The standard of review is a *de novo* "independent review" of whether the actions of the Board violated the Bylaws, with focus on whether the Board acted without conflict of interest, with due diligence and care, and exercised independent judgment in the best interests of ICANN and its many stakeholders. (Underlining added).

31. All of the obligations enumerated in these documents are to be carried out *first* in conformity with "relevant principles of international law" and *second* in conformity with local law. As explained by Dr. Jack Goldsmith in his Expert Report submitted in *ICM v. ICANN*, the reference to "principles of international law" in ICANN's Articles of Incorporation should be understood to include both customary international law and general principles of law.

64. In response, ICANN submits that:

11. The IRP is a unique process available under ICANN's Bylaws for persons or entities that claim to have been materially and adversely affected by a decision or action of the ICANN Board, but only to the extent that Board action was inconsistent with ICANN's Bylaws or Articles. This IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN's Bylaws or Articles. ICANN's Bylaws specifically identify the deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, 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?

12. DCA disregards the plain language of ICANN's Bylaws and relies instead on the IRP Panel's declaration in a prior Independent Review proceeding, *ICM v. ICANN*. However, *ICM* was decided in 2010 under a previous version of ICANN's Bylaws. In its declaration, the *ICM* Panel explicitly noted that ICANN's then-current Bylaws "d[id] not specify or imply that the [IRP] process provided for s[hould] (or s[hould] not) accord deference to the decisions of the ICANN Board." As DCA acknowledges, the version of ICANN's Bylaws that apply to this proceeding are the version as amended in April 2013. The current Bylaws provide for the deferential standard of review set forth above. [Underlining is added]

65. For the following reasons, the Panel is of the view that the standard of review is a *de novo*, objective and independent one examining whether the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation and Bylaws.
66. ICANN is not an ordinary California nonprofit organization. Rather it has a large international purpose and responsibility to coordinate and ensure the stable and secure operation of the Internet's unique identifier systems.
67. Indeed, Article 4 of ICANN's Articles of Incorporation require ICANN to "operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets." ICANN's Bylaws also impose duties on it to act in an open, transparent and fair manner with integrity.
68. ICANN's Bylaws (as amended on 11 April 2013) which both Parties explicitly agree that applies to this IRP, reads in relevant parts as follows:

ARTICLE IV: ACCOUNTABILITY AND REVIEW

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.

[...]

4. Requests for such independent review shall be referred to an Independent Review Process Panel [...], which shall be charged with comparing contested actions of the Board to 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?

69. Section 8 of the Supplementary Procedures similarly subject the IRP to the standard of review set out in subparagraphs a., b., and c., above, and add:

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.

70. In the Panel's view, Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, a *de novo, objective and independent* accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.

71. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board [...], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.

72. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM.

73. Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.

74. As previously decided by this Panel, such accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

75. Such accountability also requires, to use the words of the IRP Panel in the *Booking.com B.V. v. ICANN* (ICDR Case Number: 50-20-1400-0247), this IRP Panel to "objectively" determine whether or not the Board's actions are in fact consistent with the Articles of Incorporation, Bylaws and Guidebook, which this Panel, like the one in *Booking.com* "understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness."

76. The Panel therefore concludes that the "standard of review" in this IRP is a *de novo, objective and independent* one, which does not require any presumption of correctness.

77. With the above in mind, the Panel now turns its mind to whether or not the Board in this IRP acted or failed to act in a manner inconsistent

with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

DCA Trust's Position

78. In its 3 November 2014 Memorial on the Merits, DCA Trust criticizes ICANN for variety of shortcomings and breaches relating to the Articles of Incorporation, Bylaws and Applicant Guidebook. DCA Trust submits:

32. By preventing DCA's application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

79. DCA Trust also pleads that ICANN breached its Articles of Incorporation and Bylaws by discriminating against DCA Trust and failing to permit competition for the .AFRICA gTLD, ICANN abused its Regulatory authority in its differential treatment of the ZACR and DCA Trust applications, and in contravention of the rules for the New gTLD Program, ICANN colluded with AUC to ensure that the AUC would obtain control over .AFRICA.

80. According to DCA Trust:

34. ICANN discriminated against DCA and abused its regulatory authority over new gTLDs by treating it differently from other new gTLD applicants without justification or any rational basis— particularly relative to DCA's competitor ZACR—and by applying ICANN's policies in an unpredictable and inconsistent manner so as to favor DCA's competitor for .AFRICA. ICANN staff repeatedly disparaged DCA and portrayed it as an illegitimate bidder for .AFRICA, and the Board failed to stop the discriminatory treatment despite protests from DCA.

35. Moreover, ICANN staff worked with InterConnect to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation, even going so far as to draft a letter supporting ZACR for the AUC to submit back to ICANN. While ICANN staff purported to hold DCA to the strict geographic support requirement set forth in the AGB, once DCA was removed from contention for .AFRICA, ICANN staff immediately bypassed these very same rules in order to allow ZACR's application to pass the GNP evaluation. After DCA's application was pulled from processing on 7 June 2013, ICANN staff directed InterConnect to equate the AUC's support for ZACR's application as support from 100% of African governments. This was a complete change of policy for ICANN, which had insisted (until DCA's application was no longer being considered) that the AUC endorsement was not material to the geographic requirement.

36. However, none of the AUC statements ZACR submitted were adequate endorsements under the AGB, either. ICANN staff then took the remarkable step of drafting the AUC endorsement letter in order to enable ZACR to pass review. The Director of gTLD Operations, Trang Nguyen, personally composed an endorsement letter corresponding to all the AGB requirements for Commissioner Ibrahim's signature. Once Commissioner Ibrahim responded with a signed, stamped copy of the letter incorporating minor additions, ICANN staff rushed to pass ZACR's application just over one week later.

37. In its Response to the GAC Advice rendered against its application, DCA raised concerns that the two .AFRICA applications had been treated differently, though at the time it had no idea of just how far ICANN was going or would go to push ZACR's application through the process. Apparently the NGPC failed to make any inquiry into those allegations. .AFRICA was discussed at one meeting only, and there is no rationale listed for the NGPC's decision in the "Approved Resolutions" for the 4 June 2013 meeting. An adequate inquiry into ICANN staff's treatment of DCA's and ZACR's application—even simply asking the Director of gTLD Operations whether there was any merit to DCA's concerns—would have revealed a pattern of discriminatory behavior against DCA and special treatment by both ICANN staff and the ICANN Board in favor of ZACR's application.

38. In all of these acts and omissions, ICANN breached the AGB and its own Articles of Incorporation and Bylaws, which require it to act in good faith, avoid discriminating against any one party, and ensure open, accurate and unbiased application of its policies. Furthermore, ICANN breached principles of international law by failing to exercise its authority over the application process in good faith and committing an abuse of right by ghost-writing an endorsement letter for ZACR and the AUC, and then decreeing that the letter was all that would be needed for ZACR to pass. Finally, the Board's failure to inquire into the actions of its staff, even when on notice of the myriad of discriminatory actions, violates its obligation to comply with its Bylaws with appropriate care and diligence.

81. DCA Trust submits that the NGPC breached ICANN's Articles of Incorporation and Bylaws by failing to apply ICANN's Procedures in a neutral and objective manner with procedural fairness, when it accepted the GAC Objection Advice against DCA Trust, the NGPC should have investigated questions about the GAC Objection Advice being obtained through consensus, and the NGPC should have consulted with an independent expert about the GAC advice given that the AUC used the GAC to circumvent the AGB's community objection procedures.

82. According to DCA Trust:

44. The decision of the NGPC, acting pursuant to the delegated authority of the ICANN Board, to accept the purported "consensus" GAC Objection Advice, violated ICANN's Articles of Incorporation and Article III § 1 of its Bylaws, requiring transparency, consistency and fairness. ICANN ignored

the serious issues raised by DCA and others with respect to the rendering and consideration of the GAC Objection Advice, breaching its obligation to operate “to the maximum extent possible in an open and transparent manner and consistent with procedures designed to ensure fairness.” It also breaches ICANN’s obligation under Article 4 of its Articles of Incorporation to abide by principles of international law, including good faith application of rules and regulations and the prohibition on the abuse of rights.

45. The NGPC gave undue deference to the GAC and failed to investigate the serious procedural irregularities and conflicts of interest raised by DCA and others relating to the GAC’s Objection Advice on .AFRICA. ICANN had a duty under principles of international law to exercise good faith and due diligence in evaluating the GAC advice rather than accepting it wholesale and without question, despite having notice of the irregular manner in which the advice was rendered. Importantly, ICANN was well aware that the AUC was using the GAC to effectively reserve .AFRICA for itself, pursuant to ICANN’s own advice that it should use the GAC for that purpose and contrary to the New gTLD Program objective of enhancing competition for TLDs. The AUC’s very presence on the GAC as a member rather than an observer demonstrates the extraordinary lengths ICANN took to ensure that the AUC was able to reserve .AFRICA for its own use notwithstanding the new gTLD application process then underway.

46. The ICANN Board and staff members had actual knowledge of information calling into question the notion that there was a consensus among the GAC members to issue the advice against DCA’s application, prohibiting the application of the rule in the AGB concerning consensus advice (which creates a “strong presumption” for the Board that a particular application “should not proceed” in the gTLD evaluation process). The irregularities leading to the advice against DCA’s application included proposals offered by Alice Munyua, who no longer represented Kenya as a GAC advisor at the time, and the fact that the genuine Kenya GAC advisor expressly refused to endorse the advice. Redacted - GAC Designated Confidential Information

Finally, the ICANN Board knew very well that the AUC might attempt to use the GAC in an anticompetitive manner, since it was ICANN itself that informed the AUC it could use the GAC to achieve that very goal.

47. At a bare minimum, this information put ICANN Board and staff members on notice that further investigation into the rationale and support for the GAC’s decision was necessary. During the very meeting wherein the NGPC accepted the Objection Advice, the NGPC acknowledged that due diligence required a conversation with the GAC, even where the advice was consensus advice. The evidence shows that ICANN simply decided to push through the AUC’s appointed applicant in order to allow the AUC to control .AFRICA, as it had previously requested.

48. Even if the GAC’s Objection Advice could be characterized as “consensus” advice, the NGPC’s failure to consult with an independent expert about the GAC’s Objection Advice was a breach of ICANN’s duty to act to the “maximum extent feasible in an open and transparent manner

and consistent with procedures designed to ensure fairness.” The AGB specifically provides that when the Board is considering any form of GAC advice, it “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.”

49. Given the unique circumstances surrounding the applications for .AFRICA—namely that one applicant was the designee of the AUC, which wanted to control .AFRICA without competition— ICANN should not have simply accepted GAC Objection Advice, proposed and pushed through by the AUC. If it was in doubt as to how to handle GAC advice sponsored by DCA’s only competitor for .AFRICA, it could have and should have consulted a third-party expert in order to obtain appropriate guidance. Its failure to do so was, at a minimum, a breach of ICANN’s duty of good faith and the prohibition on abuse of rights under international law. In addition, in light of the multiple warning signs identified by DCA in its Response to the GAC Objection Advice and its multiple complaints to the Board, failure to consult an independent expert was certainly a breach of the Board’s duty to ensure its fair and transparent application of its policies and its duty to promote and protect competition.

83. DCA Trust also submits that the NGPC breached ICANN’s Articles of Incorporation and Bylaws by failing to apply its procedures in a neutral and objective manner, with procedural fairness, when it approved the BGC’s recommendation not to reconsider the NGPC’s acceptance of the GAC Objection Advice against DCA.

84. According to DCA Trust:

50. Not only did the NGPC breach ICANN’s Articles of Incorporation and its Bylaws by accepting the GAC’s Objection Advice, but the NGPC also breached ICANN’s Articles of Incorporation and its Bylaws by approving the BGC’s recommendation not to reconsider the NGPC’s earlier decision to accept the GAC Objection Advice. Not surprisingly, the NGPC concluded that its earlier decision should not be reconsidered.

51. First, the NGPC’s decision not to review its own acceptance of the GAC Objection Advice lacks procedural fairness, because the NGPC literally reviewed its own decision to accept the Objection Advice. It is a well-established general principle of international law that a party cannot be the judge of its own cause. No independent viewpoint entered into the process. In addition, although Mr. Silber recused himself from the vote on .AFRICA, he remained present for the entire discussion of .AFRICA, and Mr. Disspain apparently concluded that he did not feel conflicted, so both participated in the discussion and Mr. Disspain voted on DCA’s RFR.

52. Second, the participation of the BGC did not provide an independent intervention into the NGPC’s decision-making process, because the BGC is primarily a subset of members of the NGPC. At the time the BGC made its recommendation, the majority of BGC members were also members of the NGPC.

53. Finally, the Board did not exercise due diligence and care in accepting the BGC's recommendation, because the BGC recommendation essentially proffered the NGPC's inadequate diligence in accepting the GAC Objection Advice in the first place, in order to absolve the NGPC of the responsibility to look into any of DCA's grievances in the context of the Request for Review. The basis for the BGC's recommendation to deny was that DCA did not state proper grounds for reconsideration, because failure to follow correct procedure is not a ground for reconsideration, and DCA did not identify the actual information an independent expert would have provided, had the NGPC consulted one. Thus, the BGC essentially found that the NGPC did not fail to take account of material information, because the NGPC did not have before it the material information that would have been provided by an independent expert's viewpoint. The BGC even claimed that if DCA had wanted the NGPC to exercise due diligence and consult an independent expert, DCA should have made such a suggestion in its Response to the GAC Objection Advice. Applicants should not have to remind the Board to comply with its Bylaws in order for the Board to exercise due diligence and care.

54. ICANN's acts and omissions with respect to the BGC's recommendation constitute further breaches of ICANN's Bylaws and Articles of Incorporation, including its duty to carry out its activities in good faith and to refrain from abusing its position as the regulator of the DNS to favor certain applicants over others.

85. Finally, DCA Trust pleads that:

[As] a result of the Board's breaches of ICANN's Articles of Incorporation, Bylaws and general principles of international law, ICANN must halt the process of delegating .AFRICA to ZACR and ZACR should not be permitted to retain the rights to .AFRICA it has procured as a result of the Board's violations. Because ICANN's handling of the new gTLD application process for .AFRICA was so flawed and so deeply influenced by ICANN's relationships with various individuals and organizations purporting to represent "the African community," DCA believes that any chance it may have had to compete for .AFRICA has been irremediably lost and that DCA's application could not receive a fair evaluation even if the process were to be re-set from the beginning. Under the circumstances, DCA submits that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

ICANN's Position

86. In its Response to DCA's Memorial on the Merits filed on 3 December 2014 ("ICANN Final Memorial"), ICANN submits that:

2. [...] Pursuant to ICANN's New gTLD Applicant Guidebook ("Guidebook"), applications for strings that represent geographic regions—such as "Africa"—require the support of at least 60% of the respective national governments in the relevant region. As DCA has acknowledged on

multiple occasions, including in its Memorial, DCA does not have the requisite governmental support; indeed, DCA now asks that ICANN be required to provide it with eighteen more months to try to gather the support that it was supposed to have on the day it submitted its application in 2012.

3. DCA is using this IRP as a means to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook. The Guidebook provides that countries may endorse multiple applications for the same geographic string. However, in this instance, the countries of Africa chose to endorse only the application submitted by ZA Central Registry (“ZACR”) because ZACR prevailed in the Request for Proposal (“RFP”) process coordinated by the African Union Commission (“AUC”), a process that DCA chose to boycott. There was nothing untoward about the AUC’s decision to conduct an RFP process and select ZACR, nor was there anything inappropriate about the African countries’ decision to endorse only ZACR’s application.

4. Subsequently, as they had every right to do, GAC representatives from Africa urged the GAC to issue advice to the ICANN Board that DCA’s application for .AFRICA not proceed (the “GAC Advice”). One or more countries from Africa—or, for that matter, from any continent—present at the relevant GAC meeting could have opposed the issuance of this GAC Advice, yet not a single country stated that it did not want the GAC to issue advice to the ICANN Board that DCA’s application should not proceed. As a result, under the GAC’s rules, the GAC Advice was “consensus” advice.

5. GAC consensus advice against an application for a new gTLD creates a “strong presumption” for ICANN’s Board that the application should not proceed. In accordance with the Guidebook’s procedures, the Board’s New gTLD Program Committee (the “NGPC”) considered the GAC Advice, considered DCA’s response to the GAC Advice, and properly decided to accept the GAC Advice that DCA’s application should not proceed. As ZACR’s application for .AFRICA subsequently passed all evaluation steps, ICANN and ZACR entered into a registry agreement for the operation of .AFRICA. Following this Panel’s emergency declaration, ICANN has thus far elected not to proceed with the delegation of the .AFRICA TLD into the Internet root zone.

6. DCA’s papers contain much mudslinging and many accusations, which frankly do not belong in these proceedings. According to DCA, the entire ICANN community conspired to prevent DCA from being the successful applicant for .AFRICA. However, the actions that DCA views as nefarious were, in fact, fully consistent with the Guidebook. They also were not actions taken by the Board or the NGPC that in any way violated ICANN’s Bylaws or Articles, the only issue that this IRP Panel is tasked with assessing.

87. ICANN submits that the Board properly advised the African Union’s member states of the Guidebook Rules regarding geographic strings, the NGPC did not violate the Bylaws or Articles of Incorporation by accepting the GAC Advice, the AUC and the African GAC members properly supported the .AFRICA applicant chosen through the RFP

process, the GAC issued consensus advice opposing DCA's application and the NGPC properly accepted the consensus GAC Advice.

88. According to ICANN:

13. DCA's first purported basis for Independent Review is that ICANN improperly responded to a 21 October 2011 communiqué issued by African ministers in charge of Communication and Information Technologies for their respective countries ("Dakar Communiqué"). In the Dakar Communiqué, the ministers, acting pursuant to the Constitutive Act of the African Union, committed to continued and enhanced participation in ICANN and the GAC, and requested that ICANN's Board take numerous steps aimed at increasing Africa's representation in the ICANN community, including that ICANN "include ['Africa'] and its representation in any other language on the Reserved Names List in order [for those strings] to enjoy [] special legislative protection, so [they could be] managed and operated by the structure that is selected and identified by the African Union."

14. As DCA acknowledges, in response to the request in the Dakar Communiqué that .AFRICA (and related strings) be reserved for a operator of the African ministers' own choosing, ICANN advised that .AFRICA and its related strings could not be placed on the Reserved Names List because ICANN was "not able to take actions that would go outside of the community-established and documented guidelines of the program." Instead, ICANN explained that, pursuant to the Guidebook, "protections exist that w[ould] allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings."

15. It was completely appropriate for ICANN to point the AU member states to the publicly-stated Guidebook protections for geographic names that were put in place to address precisely the circumstance at issue here—where an application for a string referencing a geographic designation did not appear to have the support of the countries represented by the string. DCA argues that ICANN was giving "instructions . . . as to how to bypass ICANN's own rules," but all ICANN was doing was responding to the Dakar Communiqué by explaining the publicly-available rules that ICANN already had in place. This conduct certainly did not violate ICANN's Bylaws or Articles.

16. In particular, ICANN explained that, pursuant to the Guidebook, "Africa" constitutes a geographic name, and therefore any application for .AFRICA would need: (i) documented support from at least 60% of the national governments in the region; and (ii) no more than one written statement of objection . . . from "relevant governments in the region and/or from public authorities associated with the continent and region." Next, ICANN explained that the Guidebook provides an opportunity for the GAC, whose members include the AU member states, to provide "Early Warnings" to ICANN regarding specific gTLD applications. Finally, ICANN explained that there are four formal objection processes that can be initiated by the public, including the Community Objection process, which may be filed where 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. Each of these explanations was factually accurate and based on publicly available information. Notably, ICANN did not mention the possibility of GAC consensus advice against a particular application (and, of course, such advice could not have occurred if even a single country had voiced its disagreement with that advice during the GAC meeting when DCA's application was discussed).

17. DCA's objection to ICANN's response to the Dakar Communiqué reflects nothing more than DCA's dissatisfaction with the fact that African countries, coordinating themselves through the AUC, opposed DCA's application. However, the African countries had every right to voice that opposition, and ICANN's Board acted properly in informing those countries of the avenues the Guidebook provided them to express that opposition.

18. In another attempt to imply that ICANN improperly coordinated with the AUC, DCA insinuates that the AUC joined the GAC at ICANN's suggestion. ICANN's response to the Dakar Communiqué does not even mention this possibility. Further, in response to DCA's document requests, ICANN searched for communications between ICANN and the AUC relating to the AUC becoming a voting member of the GAC, and the search revealed no such communications. This is not surprising given that ICANN has no involvement in, much less control over, whether the GAC grants to any party voting membership status, including the AUC; that decision is within the sole discretion of the GAC. ICANN's Bylaws provide that membership in the GAC shall be open to "multinational governmental organizations and treaty organizations, on the invitation of the [GAC] through its Chair." In any event, whether the AUC was a voting member of the GAC is irrelevant to DCA's claims. As is explained further below, the AUC alone would not have been able to orchestrate consensus GAC Advice opposing DCA's application.

19. DCA's next alleged basis for Independent Review is that ICANN's NGPC improperly accepted advice from the GAC that DCA's application should not proceed. However, nearly all of DCA's Memorial relates to conduct of the AUC, the countries of the African continent, and the GAC. None of these concerns is properly the subject of an Independent Review proceeding because they do not implicate the conduct of the ICANN Board or the NGPC. The only actual decision that the NGPC made was to accept the GAC Advice that DCA's application for .AFRICA should not proceed, and that decision was undoubtedly correct, as explained below.

20. Although the purpose of this proceeding is to test whether ICANN's Board (or, in this instance, the NGPC) acted in conformance with its Bylaws and Articles, ICANN addresses the conduct of third parties in the next few sections because that additional context demonstrates that the NGPC's decision to accept the GAC Advice—the only decision reviewable here—was appropriate in all aspects.

21. After DCA's application was posted for public comment (as are all new gTLD applications), sixteen African countries—Benin, Burkina Faso, Comoros, Cameroon, Democratic Republic of Congo, Egypt, Gabon, Ghana, Kenya, Mali, Morocco, Nigeria, Senegal, South Africa, Tanzania and Uganda—submitted GAC Early Warnings regarding DCA's application.

Early Warnings are intended to “provid[e] [] applicant[s] with an indication that the[ir] application is seen as potentially sensitive or problematic by one or more governments.” These African countries used the Early Warnings to notify DCA that they had requested the AUC to conduct an RFP for .AFRICA, that ZACR had been selected via that RFP, and that they objected to DCA’s application for .AFRICA. They further notified DCA that they did not believe that DCA had the requisite support of 60% of the countries on the African continent.

22. DCA minimizes the import of these Early Warnings by arguing that they did not involve a “permissible reason” for objecting to DCA’s application. But DCA does not explain how any of these reasons was impermissible, and the Guidebook explicitly states that Early Warnings “may be issued for any reason.” DCA demonstrated the same dismissive attitude towards the legitimate concerns of the sixteen governments that issued Early Warnings by arguing to the ICANN Board and the GAC that the objecting governments had been “teleguided (or manipulated).”

23. In response to these Early Warnings, DCA conceded that it did not have the necessary level of support from African governments and asked the Board to “waive th[e] requirement [that applications for geographic names have the support of the relevant countries] because of the confusing role that was played by the African Union.” DCA did not explain how the AUC’s role was “confusing,” and DCA ignored the fact that, pursuant to the Guidebook, the AUC had every right to promote one applicant over another. The AUC’s decision to promote an applicant other than DCA did not convert the AUC’s role from proper to improper or from clear to confusing.

24. Notably, long before the AUC opposed DCA’s application, DCA itself recognized the AUC’s important role in coordinating continent-wide technology initiatives. In 2009, DCA approached the AUC for its endorsement prior to seeking the support of individual African governments. DCA obtained the AUC’s support at that time, including the AUC’s commitment to “assist[] in the coordination of [the] initiative with African Ministers and Governments.”

25. The AUC, however, then had a change of heart (which it was entitled to do, particularly given that the application window for gTLD applications had not yet opened and would not open for almost two more years). On 7 August 2010, African ministers in charge of Communication and Information Technologies for their respective countries signed the Abuja Declaration. In that declaration, the ministers requested that the AUC coordinate various projects aimed at promoting Information and Communication Technologies projects on the African continent. Among those projects was “set[ting] up the structure and modalities for the [i]mplementation of the DotAfrica Project.”

26. Pursuant to that mandate, the AUC launched an open RFP process, seeking applications from private organizations (including DCA) interested in operating the .AFRICA gTLD. The AUC notified DCA that “following consultations with relevant stakeholders . . . [it] no longer endorse[d] individual initiatives [for .AFRICA].” Instead, “in coordination with the Member States . . . the [AUC] w[ould] go through [an] open [selection]

process”—hardly an inappropriate decision (and not a decision of ICANN or its Board). DCA then refused to participate in the RFP process, thereby setting up an inevitable clash with whatever entity the AUC selected. When DCA submitted its gTLD application in 2012 and attached its 2009 endorsement letter from the AUC, DCA knew full well (but did not disclose) that the AUC had retracted its support.

27. In sum, the objecting governments' concerns were the result of DCA's own decision to boycott the AUC's selection process, resulting in the selection of a different applicant, ZACR, for .AFRICA. Instead of addressing those governments' concerns, and instead of obtaining the necessary support of 60% of the countries on the African continent, DCA asked ICANN to re-write the Guidebook in DCA's favor by eliminating the most important feature of any gTLD application related to a geographic region—the support of the countries in that region. ICANN, in accordance with its Bylaws, Articles and Guidebook, properly ignored DCA's request to change the rules for DCA's benefit.

28. At its 10 April 2013 meeting in Beijing, the GAC advised ICANN that DCA's application for .AFRICA should not proceed.⁴⁰ As noted earlier, the GAC operates on the basis of consensus: if a single GAC member at the 10 April 2013 meeting (from any continent, not just from Africa) had opposed the advice, the advice would not have been considered “consensus.”⁴¹ As such, the fact that the GAC issued consensus GAC Advice against DCA's application shows that not a single country opposed that advice. Most importantly, this included Kenya: Michael Katundu, the GAC Representative for Kenya, and Kenya's only official GAC representative, was present at the 10 April 2013 Beijing meeting and did not oppose the issuance of the consensus GAC Advice.

29. DCA attempts to argue that the GAC Advice was not consensus advice and relies solely on the purported email objection of Sammy Buruchara, Kenya's GAC advisor (as opposed to GAC representative). As a preliminary matter (and as DCA now appears to acknowledge), the GAC's Operating Principles require that votes on GAC advice be made in person. Operating Principle 19 provides that:

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organisation is not represented at that meeting. Any decision made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

Similarly, Operating Principle 40 provides:

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

25. DCA argues that Mr. Buruchara objected to the GAC Advice via email, but even if objections could be made via email (which they cannot), Mr. Katundu, Kenya's GAC representative who was in Beijing at the GAC

meeting, not Mr. Buruchara, Kenya's GAC advisor, was authorized to speak on Kenya's behalf. Accordingly, under the GAC rules, Mr. Buruchara's email exchanges could not have constituted opposition to the GAC Advice.

26. Redacted - GAC Designated Confidential Information

And, tellingly, DCA did not to submit a declaration from Mr. Buruchara, which might have provided context or support for DCA's argument.

27. Redacted - GAC Designated Confidential Information

28. Notably, immediately prior to becoming Kenya's GAC advisor, Mr. Buruchara had served as the chairman of DCA's Strategic Advisory Board. But despite Mr. Buruchara's close ties with DCA and with Ms. Bekele, the Kenyan government had: (i) endorsed the Abuja Declaration; (ii) supported the AUC's processes for selecting the proposed registry operator; and (iii) issued an Early Warning objecting to DCA's application.

In other words, the Kenyan government was officially on record as supporting ZACR's application and opposing DCA's application, regardless of what Mr. Buruchara was writing in emails.

29. Furthermore, correspondence produced by DCA in this proceeding (but not referenced in either of DCA's briefs) shows that, despite Ms. Bekele's and Mr. Buruchara's efforts to obtain the support (or at least non-opposition) of the Kenyan government, the Kenyan government had rescinded its earlier support of DCA in favor of ZACR. For example, in February 2013, Ms. Bekele emailed a Kenyan government official asking that Kenya issue an Early Warning regarding ZACR's application. The official responded that he would have to escalate the matter to the Foreign Ministry because the Kenyan president "was part of the leaders of the AU who endorsed AU to be the custodian of dot Africa." On 10 April 2013, Ms. Bekele emailed Mr. Buruchara, asking him to make further points objecting to the proposed GAC advice. Mr. Buruchara responded that he was unable to do so because the Kenyan government had been informed (erroneously informed, according to Mr. Buruchara), that Mr. Buruchara was "contradict[ing] the Heads of State agreement in Abuja." On 8 July 2013,

Mr. Buruchara explained to Ms. Bekele that he “stuck [his] neck out for DCA inspite [sic] of lack of Govt support.”

30. Because DCA did not submit a declaration from Mr. Buruchara (and because Ms. Bekele’s declaration is, of course, limited to her own interpretation of email correspondence drafted by others), the Panel is left with a record demonstrating that: (i) Mr.

Buruchara was not authorized by the Kenyan government to oppose the GAC Advice; Redacted - GAC Designated Confidential Information and (iii) the actual GAC representative from Kenya (Mr. Katundu) attended the 10 April 2013 meeting in Beijing and did not oppose the issuance of the consensus GAC Advice that DCA’s application for .AFRICA should not proceed.

31. In short, DCA’s primary argument in support of this Independent Review proceeding—that the GAC should not have issued consensus advice against DCA’s application—is not supported by any evidence and is, instead, fully contradicted by the evidence. And, of course, Independent Review proceedings do not test whether the GAC’s conduct was appropriate (even though in this instance there is no doubt that the GAC appropriately issued consensus advice).

32. As noted above, pursuant to the Guidebook, GAC consensus advice that a particular application should not proceed creates a “strong presumption for the ICANN Board that the application should not be approved.” The ICANN Board would have been required to develop a reasoned and well-supported rationale for not accepting the consensus GAC Advice; no such reason existed at the time the NGPC resolved to accept that GAC Advice (5 June 2013), and no such reason has since been revealed. The consensus GAC Advice against DCA’s application was issued in the ordinary course, it reflected the sentiment of numerous countries on the African continent, and it was never rescinded.

33. DCA’s objection to the Board’s acceptance of the GAC Advice is twofold. First, DCA argues that the NGPC failed to investigate DCA’s allegation that the GAC advice was not consensus advice. Second, DCA argues that the NGPC should have consulted an independent expert prior to accepting the advice. DCA also argued in its IRP Notice that two NGPC members had conflicts of interest when they voted to accept the GAC Advice, but DCA does not pursue that argument in its Memorial (and the facts again demonstrate that DCA’s argument is incorrect).

34. As to the first argument, the Guidebook provides that, when the Board receives GAC advice regarding a particular application, it publishes that advice and notifies the applicant. The applicant is given 21 days from the date of the publication of the advice to submit a response to the Board. Those procedures were followed here. Upon receipt of the GAC Advice, ICANN posted the advice and provided DCA with an opportunity to respond. DCA submitted a lengthy response explaining “[w]hy DCA Trust disagree[d]” with the GAC Advice. A primary theme was that its application had been unfairly blocked by the very countries whose support the Guidebook required DCA to obtain, and that the AUC should not have been allowed to endorse an applicant for .AFRICA. DCA argued that it had been

unfairly “victimized” and “muzzled into insignificance” by the “collective power of the governments represented at ICANN,” and that “the issue of government support [should] be made irrelevant in the process so that both contending applications for .Africa would be allowed to move forward” In other words, DCA was arguing that the AUC’s input was inappropriate, and DCA was requesting that ICANN change the Guidebook requirement regarding governmental support for geographic names in order to accommodate DCA. ICANN’s NGPC reviewed and appropriately rejected DCA’s arguments.

35. One of DCA’s three “supplementary arguments,” beginning on page 10 of its response to the GAC Advice, was that there had been no consensus GAC advice, in part allegedly evidenced by Mr. Buruchara’s (incomplete) email addressed above. DCA, however, chose not to address the fact that: (i) DCA lacked the requisite support of the African governments; (ii) Mr. Buruchara was not the Kenyan GAC representative; (iii) Mr. Buruchara was not at the Beijing meeting; (iv) the government of Kenya had withdrawn any support it may have previously had for DCA’s application; and (iv) the actual Kenyan GAC representative (Mr. Katundu) was at the ICANN meeting in Beijing and did not oppose the issuance of the GAC Advice against DCA’s application for .AFRICA. All of these facts were well known to DCA at the time of its response to the GAC Advice.

36. The NGPC’s resolution accepting the GAC Advice states that the NGPC considered DCA’s response prior to accepting the GAC Advice, and DCA presents no evidence to the contrary. DCA’s disagreement with the NGPC’s decision does not, of course, demonstrate that the NGPC failed to exercise due diligence in determining to accept the consensus GAC Advice.

37. As to DCA’s suggestion that the NGPC should have consulted an independent expert, the Guidebook provides that it is within the Board’s discretion to decide whether to consult with an independent expert:

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 NGPC clearly did not violate its Bylaws, Articles or Guidebook in deciding that it did not need to consult any independent expert regarding the GAC Advice. Because DCA’s challenge to the GAC Advice was whether one or more countries actually had opposed the advice, there was no reason for the NGPC to retain an “expert” on that subject, and DCA has never stated what useful information an independent expert possibly could have provided.

89. ICANN also submits that the NGPC properly denied DCA’s request for reconsideration, ICANN’s actions following the acceptance of the GAC Advice are not relevant to the IRP, and in any event they were not improper, the ICANN staff directed the ICC to treat the two

African applications consistently, and ICANN staff did not violate any policy in drafting a template letter at the AUC request.

90. According to ICANN:

38. DCA argues that the NGPC improperly denied DCA's Reconsideration Request, which sought reconsideration of the NGPC's acceptance of the GAC Advice. Reconsideration is an accountability mechanism available under ICANN's Bylaws and administered by ICANN's Board Governance Committee ("BGC"). DCA's Reconsideration Request asked that the NGPC's acceptance of the GAC Advice be rescinded and that DCA's application be reinstated. Pursuant to the Bylaws, reconsideration of a Board (or in this case NGPC) action is appropriate only where the NGPC took an action "without consideration of material information" or in "reliance on false or inaccurate material information."

39. In its Reconsideration Request, DCA argued (as it does here) that the NGPC failed to consider material information by failing to consult with an independent expert prior to accepting the GAC Advice. The BGC noted that DCA had not identified any material information that the NGPC had not considered, and that DCA had not identified what advice an independent expert could have provided to the NGPC or how such advice might have altered the NGPC's decision to accept the GAC Advice. The BGC further noted that, as discussed above, the Guidebook is clear that the decision to consult an independent expert is at the discretion of the NGPC.

40. DCA does not identify any Bylaws or Articles provision that the NGPC violated in denying the Reconsideration Request. Instead, DCA simply disagrees with the NGPC's determination that DCA had not identified any material information on which the NGPC failed to rely. That disagreement is not a proper basis for a Reconsideration Request or an IRP. DCA also argues (again without citing to the Bylaws or Articles) that, because the NGPC accepted the GAC Advice, the NGPC could not properly consider DCA's Reconsideration Request. In fact, the DCA's Reconsideration Request was handled exactly in the manner prescribed by ICANN's Bylaws: the BGC—a separate Board committee charged with considering Reconsideration Requests—reviewed the material and provided a recommendation to the NGPC. The NGPC then reviewed the BGC's recommendation and voted to accept it. In short, the various Board committees conducted themselves exactly as ICANN's Bylaws require.

41. The NGPC accepted the GAC Advice on 4 June 2013. As a result, DCA's application for .AFRICA did not proceed. In its Memorial, DCA attempts to cast aspersions on ICANN's evaluation of ZACR's application, but that evaluation has no bearing on whether the NGPC acted consistently with its Bylaws and Articles in handling the GAC advice related to DCA's application. Indeed, the evaluation of ZACR's application did not involve any action by ICANN's Board (or NGPC), and is therefore not a proper basis for Independent Review. Although the actions of ICANN's staff are not relevant to this proceeding, ICANN addresses DCA's allegations for the sake of thoroughness and because the record demonstrates that ZACR's application was evaluated fully in conformance with the Guidebook requirements.

42. DCA alleges that “ICANN staff worked with [the ICC] to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation.” DCA’s argument is based on false and unsupported characterizations of the ICC’s evaluation of the two .AFRICA applications.

43. First, DCA claims (without relevant citation) that ICANN determined that the AUC’s endorsement would count as an endorsement from each of the AU’s member states only after ICANN had stopped processing DCA’s application. In fact, the record indicates that ICANN accepted the ICC’s recommendation that the AUC’s endorsement would qualify as an endorsement from each of the AU’s member states while DCA’s application was still in contention, at a time when the recommendation had the potential to benefit both applicants for .AFRICA (had DCA also in fact received the AUC’s support).

44. The Guidebook provides that the Geographic Names Panel is responsible for “verifying the relevance and authenticity of supporting documentation.” Accordingly, it was the ICC’s responsibility to evaluate how the AUC’s endorsement should be treated. The ICC recommended that the AUC’s endorsement should count as an endorsement from each of the AU’s member states. The ICC’s analysis was based on the Abuja Declaration, which the ICC interpreted as “instruct[ing] the [AUC] to pursue the DotAfrica project, and in [the ICC’s] independent opinion, provide[d] suitable evidence of support from relevant governments or public authorities.” The evidence shows that ICANN accepted the ICC’s recommendation before the NGPC accepted the GAC Advice regarding DCA’s application— in a 26 April 2013 email discussing the preparation of clarifying questions regarding the AUC’s letters of support, ICANN explained to the ICC that “if the applicant(s) is/are unable to obtain a revised letter of support from the AU [], they may be able to fulfill the requirements by approaching the individual governments.”

45. DCA also claims that ICANN determined that endorsements from the UNECA would not be taken into account for geographic evaluations. This simply is not true. Pursuant to the ICC’s advice, the UNECA’s endorsement was taken into account. Like the AUC, the UNECA had signed letters of support for both DCA and ZACR. The ICC advised that because the UNECA was specifically named in the Abuja Declaration, it too should be treated as a relevant public authority. ICANN accepted the ICC’s advice.

46. DCA argues that, after ICANN had stopped processing DCA’s application, ICANN staff improperly assisted the AUC in drafting a support letter for ZACR. As is reflected in the clarifying questions the ICC drafted regarding the endorsement letters submitted on behalf of each of the two .AFRICA applications, the Guidebook contains specific requirements for letters of support from governments and public authorities. In addition to “clearly express[ing] the government’s or public authority’s support for or non- objection to the applicant’s application,” letters must “demonstrate the government’s or public authority’s understanding of the string being requested and its intended use” and 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 . . .”. In light of these specific requirements, the Guidebook even includes a sample letter of support.

47. The first letter of support that the AUC submitted for ZACR's application did not follow the correct format and resulted in a clarifying question from the ICC. As a result, the AUC requested ICANN staff's assistance in drafting a letter that conformed to the Guidebook's requirements. ICANN staff drafted a template based on the sample letter of support in the Guidebook, and the AUC then made significant edits to that template. DCA paints this cooperation as nefarious, but there was absolutely nothing wrong with ICANN staff assisting the AUC, assistance that DCA would certainly have welcomed, and which ICANN would have provided, had the AUC been supporting DCA instead of ZACR.

91. Finally, ICANN submits:

50. ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration. ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world.

51. DCA knew, as did all applicants for new gTLDs, that some of the applications would be rejected. There can only be one registry operator for each gTLD string, and in the case of strings that relate to geographic regions, no application can succeed without the significant support of the countries in that region. There is no justification whatsoever for DCA's repeated urging that the support (or lack thereof) of the countries on the African continent be made irrelevant to the process.

52. Ultimately, the majority of the countries in Africa chose to support another application for the .AFRICA gTLD, and decided to oppose DCA's application. At a critical time, no country stood up to defend DCA's application. These countries—and the AUC— had every right to take a stand and to support the applicant of their choice. In this instance, that choice resulted in the GAC issuing consensus advice, which the GAC had every right to do. Nothing in ICANN's Bylaws or Articles, or in the Guidebook, required ICANN to challenge that decision, to ignore that decision, or to change the rules so that the input of the AUC, much less the GAC, would become irrelevant. To the contrary, the AUC's role with respect to the African community is critical, and it was DCA's decision to pursue a path at odds with the AUC that placed its application in jeopardy, not anything that ICANN (or ICANN's Board or the NGPC) did. The NGPC did exactly what it was supposed to do in this circumstance, and ICANN urges this IRP Panel to find as such. Such a finding would allow the countries of Africa to soon provide their citizens with what all parties involved believe to be a very important step for Africa – access to .AFRICA on the internet.

The Panel's Decision

92. The Panel in this IRP, has been asked to determine whether, in the case of the application of DCA Trust for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains (“gTLD”) Internet Expansion Program (the “New gTLD Program”), the Board acted or failed to act in a manner inconsistent with ICANN’s Articles of Incorporation, Bylaws or the Applicant Guidebook?
93. After reviewing the documentation filed in this IRP, reading the Parties’ respective written submissions, reading the written statements and listening to the testimony of the three witnesses brought forward, listening to the oral presentations of the Parties’ legal representatives at the hearing in Washington, D.C., reading the transcript of the hearing, and deliberating, the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.
94. ICANN is bound by its own Articles of Incorporation to act fairly, neutrally, non-discriminatorily and to enable competition. Article 4 of ICANN’s Articles of Incorporation sets this out explicitly:
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.
95. ICANN is also bound by its own Bylaws to act and make decisions “neutrally and objectively, with integrity and fairness.”
96. These obligations and others are explicitly set out in a number of provisions in ICANN’s Bylaws:

ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES

Section 2. CORE (Council of Registrars) 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.

[...]

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.

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. [Underlining and bold is that of the Panel]

97. As set out in Article IV (Accountability and Review) of ICANN's Bylaws, in carrying out its mission as set out in its 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 the Bylaws.
98. As set out in Section 3 (Independent Review of Board Actions) of Article IV, "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 casually connected to the Board's alleged violation of the Bylaws or Articles of Incorporation, and not as a result of third parties acting in line with the Board's action."
99. In this IRP, among the allegations advanced by DCA Trust against ICANN, is that the ICANN Board, and its constituent body, the GAC, breached their obligation to act transparently and in conformity with procedures that ensured fairness. In particular, DCA Trust criticizes the ICANN Board here, for allowing itself to be guided by the GAC, a body "with apparently no distinct rules, limited public records, fluid definitions of membership and quorums" and unfair procedures in dealing with the issues before it.
100. According to DCA Trust, ICANN itself asserts that the GAC is a "constituent body." The exchange between the Panel and counsel for ICANN at the in-person hearing in Washington, D.C. is a living proof of that point.

HONORABLE JUDGE CAHILL:

Are you saying we should only look at what the Board does? The reason I'm asking is that your -- the Bylaws say that ICANN and its constituent bodies shall operate, to the maximum extent feasible, in an open and transparent manner. Does the constituent bodies include, I don't know,

GAC or anything? What is "constituent bodies"?

MR. LEVEE:

Yeah. What I'll talk to you about tomorrow in closing when I lay out what an IRP Panel is supposed to address, the Bylaws are very clear. Independent Review Proceedings are for the purpose of testing conduct or inaction of the ICANN Board. They don't apply to the GAC. They don't apply to supporting organizations. They don't apply to Staff.

HONORABLE JUDGE CAHILL:

So you think that the situation is a -- we shouldn't be looking at what the constituent -- whatever the constituent bodies are, even though that's part of your Bylaws?

MR. LEVEE:

Well, when I say not -- when you say not looking, part of DCA's claims that the GAC did something wrong and that ICANN knew that.

HONORABLE JUDGE CAHILL:

So is GAC a constituent body?

MR. LEVEE:

It is a constituent body, to be clear --

HONORABLE JUDGE CAHILL:

Yeah.

MR. LEVEE:

-- whether -- I don't think an IRP Panel -- if the only thing that happened here was that the GAC did something wrong --

HONORABLE JUDGE CAHILL:

Right.

MR. LEVEE:

-- an IRP Panel would not be -- an Independent Review Proceeding is not supposed to address that, whether the GAC did something wrong.

Now, if ICANN knew -- the Board knew that the GAC did something wrong, and that's how they link it, they say, Look, the GAC did something wrong, and ICANN knew it, the Board -- if the Board actually knew it, then we're dealing with Board conduct.

The Board knew that the GAC did not, in fact, issue consensus advice. That's the allegation. So it's fair to look at the GAC's conduct.

101. The Panel is unanimously of the view that the GAC is a constituent body of ICANN. This is not only clear from the above exchange between the Panel and counsel for ICANN, but also from Article XI (Advisory Committees) of ICANN's Bylaws and the Operating Principles of the GAC. Section 1 (General) of Article XI of ICANN's Bylaws states:

The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 2, under the heading, Specific Advisory Committees states:

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee

a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues. [Underlining is that of the Panel]

Section 6 of the preamble of GAC's Operating Principles is also relevant. That Section reads as follows:

The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests.

102. According to DCA Trust, based on the above, and in particular, Article III (Transparency), Section 1 of ICANN's Bylaws, therefore, the GAC was bound to the transparency and fairness obligations of that provision to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness", but as ICANN's own witness, Ms. Heather Dryden acknowledged during the hearing, the GAC did not act with transparency or in a manner designed to insure fairness.

Mr. ALI:

Q. But what was the purpose of the discussion at the Prague meeting with respect to AUC? If there really is no difference or distinction between voting/nonvoting, observer or whatever might be the opposite of observer,

or the proper terminology, what was -- what was the point?

THE WITNESS:

A. I didn't say there was no difference. The issue is that there isn't GAC agreement about what are the -- the rights, if you will, of -- of entities like the AUC. And there might be in some limited circumstances, but it's also an extremely sensitive issue. And so not all countries have a shared view about what those -- those entities, like the AUC, should be able to do.

Q. So not all countries share the same view as to what entities, such as the AUC, should be able to do. Is that what you said? I'm sorry. I didn't --

A. Right, because that would only get clarified if there is a circumstance where that link is forced. In our business, we talk about creative ambiguity. We leave things unclear so we don't have conflict.

103. As explained by ICANN in its Closing Presentation at the hearing, ICANN's witness, Ms. Heather Dryden also asserted that the GAC Advice was meaningless until the Board acted upon it. This last point is also clear from examining Article 1, Principle 2 and 5 of ICANN GAC's Operating Principles. Principle 2 states that "the GAC is not a decision making body" and Principle 5 states that "the GAC shall have no legal authority to act for ICANN".

MR. ALI:

Q. I would like to know what it is that you, as the GAC Chair, understand to be the consequences of the actions that the GAC will take --

HONORABLE JUDGE CAHILL:

The GAC will take?

MR. ALI:

Q. -- the GAC will take -- the consequences of the actions taken by the GAC, such as consensus advice?

HONORABLE JUDGE CAHILL:

There you go.

THE WITNESS:

That isn't my concern as the Chair. It's really for the Board to interpret the outputs coming from the GAC.

104. Ms. Dryden also stated that the GAC made its decision without providing any rationale and primarily based on politics and not on potential violations of national laws and sensitivities.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's a deference to that.

That's certainly the case here as well.

105. ICANN was bound by its Bylaws to conduct adequate diligence to ensure that it was applying its procedures fairly. Section 1 of Article III of ICANN's Bylaws, require it and its constituent bodies to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Board must also as per Article IV, Section 3, Paragraph 4 exercise due diligence and care in having a reasonable amount of facts in front of it.

106. In this case, on 4 June 2013, the NGPC accepted the GAC Objection Advice to stop processing DCA Trust's application. On 1 August 2013, the BGC recommended to the NGPC that it deny DCA Trust's Request for Reconsideration of the NGPC's 4 June 2013 decision, and on 13 August 2013, the NGPC accepted the BGC's recommendation (i.e., the NGPC declined to reconsider its own decision) without any further consideration.

107. In this case, ICANN through the BGC was bound to conduct a meaningful review of the NGPC's decision. According to ICANN's Bylaws, Article IV, Section 2, the Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The [BGC] shall have the authority to, among other things, conduct whatever factual investigation is deemed appropriate, and request additional written submissions from the affected party, or from others.

108. Finally, the NGPC was not bound by – nor was it required to give deference to – the decision of the BGC.

109. The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address this issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to insure the fairness required by Article III, Sec. 1 above, and are therefore inconsistent with the Articles of Incorporation and Bylaws of ICANN.

110. The following excerpt of exchanges between the Panel and one of ICANN's witnesses, Ms. Heather Dryden, the then Chair of the GAC, provides a useful background for the decisions reached in this IRP:

PRESIDENT BARIN:

But be specific in this case. Is that what happened in the .AFRICA case?

THE WITNESS:

The decision was very quick, and --

PRESIDENT BARIN:

But what about the consultations prior? In other words, were -- were you privy to --

THE WITNESS:

No. If -- if colleagues are talking among themselves, then that's not something that the GAC, as a whole, is -- is tracking or -- or involved in. It's really those interested countries that are.

PRESIDENT BARIN:

Understood. But I assume -- I also heard you say, as the Chair, you never want to be surprised with something that comes up. So you are aware of -- or you were aware of exactly what was happening?

THE WITNESS:

No. No. You do want to have a good sense of where the problems are, what's going to come unresolved back to the full GAC meeting, but that's -- that's the extent of it.

And that's the nature of -- of the political process.

Contact Information Redacted

HONORABLE JUDGE CAHILL:

Okay.

THE WITNESS:

-- that question was addressed via having that meeting.

PRESIDENT BARIN:

And what's your understanding of what -- what the consequence of that decision is or was when you took it? So what happens from that moment on?

THE WITNESS:

It's conveyed to the Board, so all the results, the agreed language coming out of GAC is conveyed to the Board, as was the case with the communiqué from the Beijing meeting.

PRESIDENT BARIN:

And how is that conveyed to the Board?

THE WITNESS:

Well, it's a written document, and usually Support Staff are forwarding it to Board Staff.

ARBITRATOR KESSEDJIAN:

Could you speak a little bit louder? I don't know whether I am tired, but I --

THE WITNESS:

Okay. So as I was saying, the document is conveyed to the Board once it's concluded.

PRESIDENT BARIN:

When you say "the document", are you referring to the communiqué?

THE WITNESS:

Yes.

PRESIDENT BARIN:

Okay. And there are no other documents?

THE WITNESS:

The communiqué --

PRESIDENT BARIN:

In relation to .AFRICA. I'm not interested in any other.

THE WITNESS:

Yes, it's the communiqué.

PRESIDENT BARIN:

And it's prepared by your staff? You look at it?

THE WITNESS:

Right --

PRESIDENT BARIN:

And then it's sent over to --

THE WITNESS:

-- right, it's agreed by the GAC in full, the contents.

PRESIDENT BARIN:

And then sent over to the Board?

THE WITNESS:

And then sent, yes.

PRESIDENT BARIN:

And what happens to that communiqué? Does the Board receive that and say, Ms. Dryden, we have some questions for you on this, or --

THE WITNESS:

Not really. If they have questions for clarification, they can certainly ask that in a meeting. But it is for them to receive that and then interpret it and -- and prepare the Board for discussion or decision.

PRESIDENT BARIN:

Okay. And in this case, you weren't asked any questions or anything?

THE WITNESS:

I don't believe so. I don't recall.

PRESIDENT BARIN:

Any follow-ups, right?

THE WITNESS:

Right.

PRESIDENT BARIN:

And in the subsequent meeting, I guess the issue was tabled. The Board meeting that it was tabled, were you there?

THE WITNESS:

Yes. I don't particularly recall the meeting, but yes.

[...]

ARBITRATOR KESSEDJIAN:

Can I turn your attention to Paragraph 5 of your declaration?

Here, you basically repeat what is in the ICANN Guidebook literature, whatever. These are the exact words, actually, that you use in your declaration in terms of why there could be an objection to an applicant -- to a specific applicant. And you use three criteria: problematic, potentially violating national law, and raise sensitivities.

Now, I'd like you to, for us -- for our benefit, to explain precisely, as concrete as you can be, what those three concepts -- how those three concepts translate in the DCA case. Because this must have been discussed in order to get this very quick decision that you are mentioning. So I'd like to understand, you know, because these are the criteria -- these are the three criteria; is that correct?

THE WITNESS:

That is what the witness statement says, but the link to the GAC and the role that I played in terms of the GAC discussion did not involve me interpreting those three things. In fact, the GAC did not provide rationale for the consensus objection.

ARBITRATOR KESSEDJIAN:

No.

But, I mean, look, the GAC is taking a decision which -- very quickly -- I'm using your words, "very quickly" -- erases years and years and years of work, a lot of effort that have been put by a single applicant. And the way I understand the rules is that the -- the GAC advice -- consensus advice against that applicant are -- is based on those three criteria. Am I wrong in that analysis?

THE WITNESS:

I'm saying that the GAC did not identify a rationale for those governments that put forward a string or an application for consensus objection. They might have identified their reasons, but there was not GAC agreement about those reasons or -- or -- or -- or rationale for that. We had some discussion earlier about Early Warnings. So Early Warnings were issued by individual countries, and they indicated their rationale. But, again, that's not a GAC view.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's [...] deference to that. That's certainly the case here as well. The -- if a country tells -- tells the GAC or says it has a concern, that's not really something that -- that's evaluated, in the sense you mean, by the other governments. That's not the way governments work with each other.

HONORABLE JUDGE CAHILL:

So you don't go into the reasons at all with them?

THE WITNESS:

To issue a consensus objection, no.

HONORABLE JUDGE CAHILL:

Okay. ---

[...]

PRESIDENT BARIN:

I have one question for you. We spent, now, a bit of time or a considerable amount of time talking to you about the process, or the procedure leading to the consensus decision.

Can you tell me what your understanding is of why the GAC consensus objection was made finally?

[...]

But in terms of the .AFRICA, the decision -- the issue came up, the agenda -- the issue came up, and you made a decision, correct?

THE WITNESS:

The GAC made a decision.

PRESIDENT BARIN:

Right. When I say "you", I mean the GAC.

Do you know -- are you able to express to us what your understanding of the substance behind that decision was? I mean, in other words, we've spent a bit of time dealing with the process.

Can you tell us why the decision happened?

THE WITNESS:

The sum of the GAC's advice is reflected in its written advice in the communiqué. That is the view to GAC. That's -- that's --

[...]

ARBITRATOR KESSEDJIAN:

I just want to come back to the point that I was making earlier. To your Paragraph 5, you said -- you answered to me saying that is my declaration, but it was not exactly what's going on. Now, we are here to --

at least the way I understand the Panel's mandate, to make sure that the rules have been obeyed by, basically. I'm synthesizing. So I don't understand how, as the Chair of the GAC, you can tell us that, basically, the rules do not matter -- again, I'm rephrasing what you said, but I'd like to give you another opportunity to explain to us why you are mentioning those criteria in your written declaration, but, now, you're telling us this doesn't matter.

If you want to read again what you wrote, or supposedly wrote, it's Paragraph 5.

THE WITNESS:

I don't need to read again my declaration. Thank you. The header for the GAC's discussions throughout was to refer to strings or applications that were controversial or sensitive. That's very broad. And --

ARBITRATOR KESSEDJIAN:

I'm sorry. You say the rules say problematic, potentially violate national law, raise sensitivities. These are precise concepts.

THE WITNESS:

Problematic, violate national law -- there are a lot of laws -- and sensitivities does strike me as being quite broad.

[...]

ARBITRATOR KESSEDJIAN:

Okay. So we are left with what? No rules?

THE WITNESS:

No rationale with the consensus objections.

That's the -- the effect.

ARBITRATOR KESSEDJIAN:

I'm done.

HONORABLE JUDGE CAHILL:

I'm done.

PRESIDENT BARIN:

So am I.

111. The Panel understands that the GAC provides advice to the ICANN Board on matters of public policy, especially in cases where ICANN activities and policies may interact with national laws or international agreements. The Panel also understands that GAC advice is developed through consensus among member nations. Finally, the Panel understands that although the ICANN Board is required to consider GAC advice and recommendations, it is not obligated to follow those recommendations.

112. Paragraph IV of ICANN's Beijing, People's Republic of China 11 April 2013 Communiqué [Exhibit C-43] under the heading "GAC Advice to the ICANN Board" states:

IV. GAC Advice to the ICANN Board

1. New gTLDs

a. GAC Objections to the Specific Applications

i. The GAC Advises the ICANN Board that:

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:

1. The application for .africa (Application number 1-1165-42560)

[...]

Footnote 3 to Paragraph IV.1. (a)(i)(i) above in the original text adds, "Module 3.1: 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." A similar statement in this regard can be found in paragraph 5 of Ms. Dryden's 7 February 2014 witness statement.

113. In light of the clear "Transparency" obligation provisions found in ICANN's Bylaws, the Panel would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting DCA Trust's application.

114. The Panel would have had a similar expectation with respect to the NGPC Response to the GAC Advice regarding .AFRICA which was expressed in ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01 [Exhibit C-45]. In that document, in response to DCA Trust's application, the NGPC stipulated:

The NGPC accepts this advice. The AGB provides that “if GAC advised 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. The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may withdraw [...] or seek relief according to ICANN’s accountability mechanisms (see ICANN’s Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

115. Based on the foregoing, after having carefully reviewed the Parties’ written submissions, listened to the testimony of the three witnesses, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN’s Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

116. As indicated above, there are perhaps a number of other instances, including certain decisions made by ICANN, that did not proceed in the manner and spirit in which they should have under the Articles of Incorporation and Bylaws of ICANN.

117. DCA Trust has criticized ICANN for its various actions and decisions throughout this IRP and ICANN has responded to each of these criticisms in detail. However, the Panel, having carefully considered these criticisms and decided that the above is dispositive of this IRP, it does not find it necessary to determine who was right, to what extent and for what reasons in respect to the other criticisms and other alleged shortcomings of the ICANN Board identified by DCA Trust.

2) Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN’s Articles of Incorporation, Bylaws or the Applicant Guidebook?

118. In the conclusion of its Memorial on the Merits filed with the Panel on 3 November 2014, DCA Trust submitted that ICANN should remove ZACR’s application from the process altogether and allow DCA’s application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments

to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

119. In its Final Request for Relief filed with the Panel on 23 May 2015, DCA Trust requested that this Panel recommend to the ICANN Board that it cease all preparations to delegate the .AFRICA gTLD to ZACR and recommend that ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA.

120. DCA Trust also requested that this Panel recommend to ICANN that it compensate DCA Trust for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

121. In its response to DCA Trust's request for the recommendations set out in DCA Trust's Memorial on the Merits, ICANN submitted that this Panel does not have the authority to grant the affirmative relief that DCA Trust had requested.

122. According to ICANN:

48. DCA's request should be denied in its entirety, including its request for relief. DCA requests that this IRP Panel issue a declaration requiring ICANN to "rescind its contract with ZACR" and to "permit DCA's application to proceed through the remainder of the application process." Acknowledging that it currently lacks the requisite governmental support for its application, DCA also requests that it receive "18 months to negotiate with African governments to obtain the necessary endorsements." In sum, DCA requests not only that this Panel remove DCA's rival for .AFRICA from contention (requiring ICANN to repudiate its contract with ZACR), but also that it rewrite the Guidebook's rules in DCA's favor.

49. IRP Panels do not have authority to award affirmative relief. Rather, an IRP Panel is limited to stating its opinion as to "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" and recommending (as this IRP Panel has done previously) that the Board stay any action or decision, or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel. The Board will, of course, give extremely serious consideration to the Panel's recommendations.

123. In its response to DCA Trust's amended request for recommendations filed on 23 May 2015, ICANN argued that because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from

recommending how the Board should then proceed in light of the Panel's declaration.

124. In response, DCA Trust submitted that according to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "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.

125. According to ICANN, "indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself [suggests] that DCA could seek relief through ICANN's accountability mechanisms or, in other words, the Reconsideration process and the Independent Review Process." Furthermore:

If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

126. After considering the Parties' respective submissions in this regard, the Panel is of the view that it does have the power to recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

127. Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws states:

ARTICLE IV: ACCOUNTABILITY AND REVIEW
Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

11. The IRP Panel shall have the authority to:

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.

128. The Panel finds that both the language and spirit of the above section gives it authority to recommend how the ICANN Board might fashion a remedy to redress injury or harm that is directly related and causally connected to the Board's violation of the Bylaws or the Articles of Incorporation.

129. As DCA Trust correctly points out, with which statement the Panel agrees, "if the IRP mechanism – the mechanism of last resort for

gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.”

130. Use of the imperative language in Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, is clearly supportive of this point. That provision clearly states that the IRP Panel has the authority to recommend a course of action until such time as the Board considers the opinion of the IRP and acts upon it.
131. Furthermore, use of the word “opinion”, which means the formal statement by a judicial authority, court, arbitrator or “Panel” of the reasoning and the principles of law used in reaching a decision of a case, is demonstrative of the point that the Panel has the authority to recommend affirmative relief. Otherwise, like in section 7 of the Supplementary Procedures, the last sentence in paragraph 11 would have simply referred to the “declaration of the IRP”. Section 7 under the heading “Interim Measures of Protection” says in part, that an “IRP PANEL may 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 IRP declaration.”
132. The scope of Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws is clearly broader than Section 7 of the Supplementary Procedures.
133. Pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, therefore, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust’s application to proceed through the remainder of the new gTLD application process.

3) Who is the prevailing party in this IRP?

134. In its letter of 1 July 2015, ICANN submits that, “ICANN believes that the Panel should and will determine that ICANN is the prevailing party. Even so, ICANN does not seek in this instance the putative effect that would result if DCA were required to reimburse ICANN for all of the costs that ICANN incurred. This IRP was much longer [than] anticipated (in part due to the passing of one of the panelists last summer), and the Panelists’ fees were far greater than an ordinary IRP, particularly because the Panel elected to conduct a live hearing.”

135. DCA Trust on the other hand, submits that, “should it prevail in this IRP, ICANN should be responsible for all of the costs of this IRP, including the interim measures proceeding.” In particular, DCA Trust writes:

On March 23, 2014, DCA learned via email from a supporter of ZA Central Registry (“ZACR”), DCA’s competitor for .AFRICA, that ZACR would sign a registry agreement with ICANN in three days’ time (March 26) to be the registry operator for .AFRICA. The very same day, we sent a letter on behalf of DCA to ICANN’s counsel asking ICANN to refrain from executing the registry agreement with ZACR in light of the pending IRP proceedings. See DCA’s Request for Emergency Arbitrator and Interim Measures of Protection, Annex I (28 Mar. 2014). Instead, ICANN entered into the registry agreement with ZACR the very next day—two days ahead of schedule. [...] Later that same day, ICANN responded to DCA’s request by treating the execution of the contract as a *fait accompli* and, for the first time, informed DCA that it would accept the application of Rule 37 of the 2010 [ICDR Rules], which provides for emergency measures of protection, even though ICANN’s Supplementary Procedures for ICANN Independent Review Process expressly provide that Rule 37 does not apply to IRPs. A few days later, on March 28, 2014, DCA filed a Request for Emergency Arbitrator and Interim Measures of Protection with the ICDR. ICANN responded to DCA’s request on April 4, 2014. An emergency arbitrator was appointed by the ICDR; however, the following week, the original panel was fully constituted and the parties’ respective submissions were submitted to the Panel for its review on April 13, 2014. After a teleconference with the parties on April 22 and a telephonic hearing on May 5, the Panel ruled that “ICANN must immediately refrain from any further processing of any application for .AFRICA” during the pendency of the IRP. Decision on Interim Measures of Protection, ¶ 51 (12 May 2014).

136. A review of the various procedural orders, decisions, and declarations in this IRP clearly indicates that DCA Trust prevailed in many of the questions and issues raised.

137. In its letter of 1 July 2015, DCA Trust refers to several instances in which ICANN was not successful in its position before this Panel. According to DCA Trust, the following are some examples, “ICANN’s Request for Partial Reconsideration, ICANN’s request for the Panel to rehear the proceedings, and the evidentiary treatment of ICANN’s written witness testimony in the event it refused to make its witnesses available for questioning during the merits hearing.”

138. The Panel has no doubt, as ICANN writes in its letter of 1 July 2015, that the Parties’ respective positions in this IRP “were asserted in good faith.” According to ICANN, “although those positions were in many instances diametrically opposed, ICANN does not doubt that DCA believed in the credibility of the positions that it took, and

[ICANN believes] that DCA feels the same about the positions ICANN took.”

139. The above said, after reading the Parties’ written submissions concerning the issue of costs and deliberation, the Panel is unanimously of the view that DCA Trust is the prevailing party in this IRP.

4) Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

140. DCA Trust submits that ICANN should be responsible for *all* costs of this IRP, including the interim measures proceeding. Among other arguments, DCA Trust submits:

This is consistent with ICANN’s Bylaws and Supplementary Procedures, which together provide that in ordinary circumstances, the party not prevailing shall be responsible for all costs of the proceeding. Although ICANN’s Supplementary Procedures do not explain what is meant by “all costs of the proceeding,” the ICDR Rules that apply to this IRP provide that “costs” include the following:

- (a) the fees and expenses of the arbitrators;
- (b) the costs of assistance required by the tribunal, including its experts;
- (c) the fees and expenses of the administrator;
- (d) the reasonable costs for legal representation of a successful party; and
- (e) any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 21.

Specifically, these costs include all of the fees and expenses paid and owed to the [ICDR], including the filing fees DCA paid to the ICDR (totaling \$4,750), all panelist fees and expenses, including for the emergency arbitrator, incurred between the inception of this IRP and its final resolution, legal costs incurred in the course of the IRP, and all expenses related to conducting the merits hearing (e.g., renting the audiovisual equipment for the hearing, printing hearing materials, shipping hard copies of the exhibits to the members of the Panel).

Although in “extraordinary” circumstances, the Panel may allocate up to half of the costs to the prevailing party, DCA submits that the circumstances of this IRP do not warrant allocating costs to DCA should it prevail. The reasonableness of DCA’s positions, as well as the meaningful contribution this IRP has made to the public dialogue about both ICANN’s accountability mechanisms and the appropriate deference owed by ICANN to its Governmental Advisory Committee, support a full award of costs to

DCA.

[...]

To the best of DCA's knowledge, this IRP was the first to be commenced against ICANN under the new rules, and as a result there was little guidance as to how these proceedings should be conducted. Indeed, at the very outset there was controversy about the applicable version of the Supplemental Rules as well as the form to be filed to initiate a proceeding. From the very outset, ICANN adopted positions on a variety of procedural issues that have increased the costs of these proceedings. In DCA's respectful submission, ICANN's positions throughout these proceedings are inconsistent with ICANN's obligations of transparency and the overall objectives of the IRP process, which is the only independent accountability mechanism available to parties such as DCA.

141. DCA Trust also submits that ICANN's conduct in this IRP increased the duration and expense of this IRP. For example, ICANN failed to appoint a standing panel, it entered into a registry agreement with DCA's competitor for .AFRICA during the pendency of this IRP, thereby forcing DCA Trust to request for interim measures of protection in order to preserve its right to a meaningful remedy, ICANN attempted to appeal declarations of the Panel on procedural matters where no appeal mechanism was provided for under the applicable procedures and rules, and finally, ICANN refused only a couple of months prior to the merits hearing, to make its witnesses available for viva voce questioning at the hearing.

142. ICANN in response submits that, "both the Bylaws and the Supplementary Procedures provide that, in the ordinary course, costs shall be allocated to the prevailing party. These costs include the Panel's fees and the ICDR's fees, [they] would also include the costs of the transcript."

143. ICANN explains on the other hand that this case was extraordinary and this Panel should exercise its discretion to have each side bear its own costs as this IRP "was in many senses a first of its kind." According to ICANN, among other things:

This IRP was the first associated with the Board's acceptance of GAC advice that resulted in the blocking of an application for a new gTLD under the new gTLD Program;

This was the first IRP associated with a claim that one or more ICANN Board members had a conflict of interest with a Board vote; and

This was the first (and still only) IRP related to the New gTLD Program that involved a live hearing, with a considerable amount of debate associated with whether to have a hearing.

144. After reading the Parties' written submissions concerning the issue of costs and their allocation, and deliberation, the Panel is unanimous in deciding that DCA Trust is the prevailing party in this IRP and ICANN shall bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.
145. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, however, DCA Trust and ICANN shall each bear their own expenses, and they shall also each bear their own legal representation fees.
146. For the avoidance of any doubt therefore, the Panel concludes that ICANN shall be responsible for paying the following costs and expenses:
- a) the fees and expenses of the panelists;
 - b) the fees and expenses of the administrator, the ICDR;
 - c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
 - d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
147. The above amounts are easily quantifiable and the Parties are invited to cooperate with one another and the ICDR to deal with this part of this Final Declaration.

V. DECLARATION OF THE PANEL

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.
149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to

refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

150. The Panel declares DCA Trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:

- a) the fees and expenses of the panelists;
- b) the fees and expenses of the administrator, the ICDR;
- c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
- d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
- e) As a result of the above, the administrative fees of the ICDR totaling US\$4,600 and the Panelists' compensation and expenses totaling US\$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US\$198,046.04

151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

The Panel finally would like to take this opportunity to fondly remember its collaboration with the Hon. Richard C. Neal (Ret. and now Deceased) and to congratulate both Parties' legal teams for their hard work, civility and responsiveness during the entire proceedings. The Panel was extremely impressed with the quality of the written work presented to it and oral advocacy skills of the Parties' legal representatives.

This Final Declaration has sixty-three (63) pages.

Date: Thursday, 9 July 2015.

Place of the IRP, Los Angeles, California.



Professor Catherine Kessedjian



Hon. William J. Cahill (Ret.)



Babak Barin, President

EXHIBIT 2

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Independent Review Panel**

CASE # 50 2013 001083

DECLARATION ON THE IRP PROCEDURE

In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation for Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures (ICDR Rules)* of the International Centre for Dispute Resolution (ICDR), and the *Supplementary Procedures for ICANN Independent Review Process*

**Between: DotConnectAfrica Trust;
("Claimant" or "DCA Trust")**

Represented by Mr. Arif H. Ali, Ms. Marguerite Walter and Ms. Erica Franzetti of Weil, Gotshal, Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 2005, U.S.A.

And

**Internet Corporation for Assigned Names and Numbers (ICANN);
("Respondent" or "ICANN")**

Represented by Mr. Jeffrey A. LeVee of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

**IRP Panel:
Babak Barin, *Chair*
Prof. Catherine Kessedjian
Hon. Richard C. Neal (Ret.)**

I. BACKGROUND

- 1) DCA Trust is a non-profit organization established under the laws of the Republic of Mauritius on 15 July 2010 with its registry operation - DCA Registry Services (Kenya) Limited - as its principal place of business in Nairobi, Kenya. DCA Trust was formed with the charitable purpose of, among other things, advancing information technology education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa and for the public good.
- 2) In March 2012, DCA Trust applied to ICANN for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains ("gTLD") Internet Expansion Program (the "New gTLD Program"), an internet resource available for delegation under that program.
- 3) ICANN is a non-profit corporation established under the laws of the State of California, U.S.A., on 30 September 1998 and headquartered in Marina del Rey, California. According to its Articles of Incorporation, ICANN was established for the benefit of the Internet community as a whole and is tasked with carrying out its activities in conformity with relevant principles of international law, international conventions, and local law.
- 4) On 4 June 2013, the ICANN Board New gTLD Program Committee ("NGPC") posted a notice that it had decided not to accept DCA Trust's application.
- 5) On 19 June 2013, DCA Trust filed a request for reconsideration by the ICANN Board Governance Committee ("BGC"), which denied the request on 1 August 2013.
- 6) On 19 August 2013, DCA Trust informed ICANN of its intention to seek relief before an Independent Review Panel under ICANN's Bylaws. Between August and October 2013, DCA Trust and ICANN participated in a Cooperative Engagement Process ("CEP") to try and resolve the issues relating to DCA Trust's application. Despite several meetings, no resolution was reached.
- 7) On 24 October 2013, DCA Trust filed a Notice of Independent Review Process with the ICDR in accordance with Article IV, Section 3, of ICANN's Bylaws.

II. SUMMARY OF THE PARTIES' POSITIONS ON THE MERITS

- 8) According to DCA Trust, the central dispute between it and ICANN in the Independent Review Process ("IRP") invoked by DCA Trust in October 2013 and described in its Amended Notice of Independent Review Process submitted to ICANN on 10 January 2014 arises out of:

“(1) ICANN’s breaches of its Articles of Incorporation, Bylaws, international and local law, and other applicable rules in the administration of applications for the .AFRICA top-level domain name in its 2012 General Top-Level Domains (“gTLD”) Internet Expansion Program (the “New gTLD Program”); and (2) ICANN’s wrongful decision that DCA’s application for .AFRICA should not proceed [...].”¹

9) According to DCA Trust, “ICANN’s administration of the New gTLD Program and its decision on DCA’s application were unfair, discriminatory, and lacked appropriate due diligence and care, in breach of ICANN’s Articles of Incorporation and Bylaws.”² DCA Trust also advanced that “ICANN’s violations materially affected DCA’s right to have its application processed in accordance with the rules and procedures laid out by ICANN for the New gTLD Program.”³

10) In its 10 February 2014 [sic]⁴ Response to DCA Trust’s Amended Notice, ICANN submitted that in these proceedings, “DCA challenges the 4 June 2013 decision of the ICANN Board New gTLD Program Committee (“NGPC”), which has delegated authority from the ICANN Board to make decisions regarding the New gTLD. In that decision, the NGPC unanimously accepted advice from ICANN’s Governmental Advisory Committee (“GAC”) that DCA’s application for .AFRICA should not proceed. DCA argues that the NGPC should not have accepted the GAC’s advice. DCA also argues that ICANN’s subsequent decision to reject DCA’s Request for Reconsideration was improper.”⁵

11) ICANN argued that the challenged decisions of ICANN’s Board “were well within the Board’s discretion” and the Board “did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Applicant Guidebook (“Guidebook”) that the Board adopted for implementing the New gTLD Program.”⁶

12) Specifically, ICANN also advanced that “ICANN properly investigated and rejected DCA’s assertion that two of ICANN’s Board members had conflicts of interest with regard to the .AFRICA applications, [...] numerous African countries issued “warnings” to ICANN regarding DCA’s application, a signal from those governments that they had serious concerns regarding DCA’s application; following the issuance of those warnings, the GAC issued “consensus advice” against DCA’s application; ICANN then accepted the GAC’s advice, which was entirely consistent with ICANN’s Bylaws and the

¹ Claimant’s Amended Notice of Independent Review Process, *para.* 2.

² *Ibid.*

³ *Ibid.*

⁴ ICANN’s Response to Claimant’s Amended Notice contains a typographical error; it is dated “February 10, 2013” rather than 2014.

⁵ ICANN’s Response to Claimant’s Amended Notice, *para.* 4. Underlining is from the original text.

⁶ *Ibid.*, *para.* 5.

Guidebook; [and] ICANN properly denied DCA's Request for Reconsideration."⁷

13) In short, ICANN argued that in these proceedings, "the evidence establishes that the process worked exactly as it was supposed to work."⁸

14) In the merits part of these proceedings, the Panel will decide the above and other related issues raised by the Parties in their submissions.

III. PROCEDURAL BACKGROUND LEADING TO THIS DECISION

15) On 24 April 2013, 12 May, 27 May and 4 June 2014 respectively, the Panel issued a Procedural Order No. 1, a Decision on Interim Measures of Protection, a list of questions for the Parties to brief in their 20 May 2014 memorials on the procedural and substantive issues identified in Procedural Order No. 1 ("12 May List of Questions"), a Procedural Order No. 2 and a Decision on ICANN's Request for Partial Reconsideration of certain portions of its Decision on Interim Measures of Protection. The Decision on Interim Measures of Protection and the Decision on ICANN's Request for Partial Reconsideration of certain portions of the Decision on Interim Measures of Protection have no bearing on this Declaration. Consequently, they do not require any particular consideration by the Panel in this Declaration.

16) In Procedural Order No. 1 and the 12 May List of Questions, based on the Parties' submissions, the Panel identified a number of questions relating to the future conduct of these proceedings, including the method of hearing of the merits of DCA Trust's amended Notice of Independent Review Process that required further briefing by the Parties. In Procedural Order No. 1, the Panel identified some of these issues as follows:

B. Future conduct of the IRP proceedings, including the hearing of the merits of Claimant's Amended Notice of Independent Review Process, if required.

Issues:

- a) Interpretation of the provisions of ICANN's Bylaws, the *International Dispute Resolution Procedures* of the ICDR, and the *Supplementary Procedures for ICANN Independent Review Process* (together the "IRP Procedure"), including whether or not there should be *viva voce* testimony permitted.
- b) Document request and exchange.
- c) Additional filings, including any memoranda and hearing exhibits (if needed and appropriate).

⁷ *Ibid.*

⁸ ICANN's Response to Claimant's Amended Notice, *para.* 6. Underlining is from the original text.

- d) Consideration of method of hearing of the Parties, i.e., telephone, video or in-person and determination of a location for such a hearing, if necessary or appropriate, and consideration of any administrative issues relating to the hearing.

17) In that same Order, in light of: (a) the exceptional circumstances of this case; (b) the fact that some of the questions raised by the Parties implicated important issues of fairness, due process and equal treatment of the parties ("Outstanding Procedural Issues"); and (c) certain *primaie impressionis* or first impression issues that arose in relation to the IRP Procedure, the Panel requested the Parties to file two rounds of written memorials, including one that followed the 12 May List of Questions.

18) On 5 and 20 May 2014, the Parties filed their submissions with supporting material for consideration by the Panel.

IV. ISSUES TO BE DECIDED BY THE PANEL

19) Having read the Parties' submissions and supporting material, and listened to their respective arguments by telephone, the Panel answers the following questions in this Declaration:

- 1) Does the Panel have the power to interpret and determine the IRP Procedure as it relates to the future conduct of these proceedings?
- 2) If so, what directions does the Panel give the Parties with respect to the Outstanding Procedural Issues?
- 3) Is the Panel's decision concerning the IRP Procedure and its future Declaration on the Merits in this proceeding binding?

Summary of the Panel's findings

20) The Panel is of the view that it has the power to interpret and determine the IRP Procedure as it relates to the future conduct of these proceedings and consequently, it issues the procedural directions set out in paragraphs 58 to 61, 68 to 71 and 82 to 87 (below), which directions may be supplemented in a future procedural order. The Panel also concludes that this Declaration and its future Declaration on the Merits of this case are binding on the Parties.

V. ANALYSIS OF THE ISSUES AND REASONS FOR THE DECISION

1) Can the Panel interpret and determine the IRP Procedure as it relates to the future conduct of these proceedings?

Interpretation and Future Conduct of the IRP Proceedings

DCA Trusts' Submissions

21) In its 5 May 2014 Submission on Procedural Issues ("DCA Trust First Memorial"), DCA Trust submitted, *inter alia*, that:

"[Under] California law and applicable federal law, this IRP qualifies as an arbitration. It has all the characteristics that California courts look to in order to determine whether a proceeding is an arbitration: 1) a third-party decision-maker; 2) a decision-maker selected by the parties; 3) a mechanism for assuring the neutrality of the decision-maker; 4) an opportunity for both parties to be heard; and 5) a binding decision[...]. Thus, the mere fact that ICANN has labeled this proceeding an independent review process rather than an arbitration (and the adjudicator of the dispute is called a Panel rather than a Tribunal) does not change the fact that the IRP - insofar as its procedural framework and the legal effects of its outcome are concerned - is an arbitration."⁹

22) According to DCA Trust, the IRP Panel is a neutral body appointed by the parties and the ICDR to hear disputes involving ICANN. Therefore, it "qualifies as a third-party decision-maker for the purposes of defining the IRP as an arbitration."¹⁰ DCA Trust submits that, "ICANN's Bylaws contain its standing offer to arbitrate, through the IRP administered by the ICDR, disputes concerning Board actions alleged to be inconsistent with the Articles of Incorporation or the Bylaws."¹¹

23) DCA Trust submits that, it "accepted ICANN's standing offer to arbitrate by submitting its Notice of Independent Review [...] to the ICDR on 24 October 2013 [...] when the two party-appointed panelists were unable to agree on a chairperson, the ICDR made the appointment pursuant to Article 6 of the ICDR Rules, amended and effective 1 June 2009. The Parties thus chose to submit their dispute to the IRP Panel for resolution, as with any other arbitration."¹²

24) According to DCA Trust, "the Supplementary Procedures provide that the IRP is to be comprised of 'neutral' [individuals] and provide that the panel shall be comprised of members of a standing IRP Panel or as selected by the

⁹ DCA Trust First Memorial, *para.* 4 and 5.

¹⁰ *Ibid*, *para.* 8.

¹¹ *Ibid*, *para.* 9.

¹² *Ibid*.

parties under the ICDR Rules. The ICDR Rules [...] provide that panelists serving under the rules, 'shall be impartial and independent', and require them to disclose any circumstances giving rise to 'justifiable doubts' as to their impartiality and independence [...]. The IRP therefore contains a mechanism for ensuring the neutrality of the decision-maker, just like any other arbitration."¹³

25) DCA Trust further submitted that the "IRP affords both parties an opportunity to be heard, both in writing and orally" and the "governing instruments of the IRP - *i.e.*, the Bylaws, the ICDR Rules, and the Supplementary Procedures - confirm that the IRP is final and binding." According to DCA Trust, the "IRP is the final accountability and review mechanism available to the parties materially affected by ICANN Board decisions. The IRP is also the only ICANN accountability mechanism conducted by an independent third-party decision-maker with the power to render a decision resolving the dispute and naming a prevailing party [...]. The IRP represents a fundamentally different stage of review from those that precede it. Unlike reconsideration or cooperative engagement, the IRP is conducted pursuant to a set of independently developed international arbitration rules (as minimally modified) and administered by a provider of international arbitration services, not ICANN itself."¹⁴

26) As explained in its 20 May 2014 Response to the Panel's Questions on Procedural Issues ("DCA Trust Second Memorial"), according to DCA Trust, "the IRP is the *sole forum* in which an applicant for a new gTLD can seek independent, third-party review of Board actions. Remarkably, ICANN makes no reciprocal waivers and instead retains all of its rights against applicants in law and equity. ICANN cannot be correct that the IRP is a mere 'corporate accountability mechanism'. Such a result would make ICANN - the caretaker of an immensely important (and valuable) global resource - effectively judgment-proof."¹⁵

27) Finally DCA Trust submitted that:

"[It] is [...] critical to understand that ICANN created the IRP as an alternative to allowing disputes to be resolved by courts. By submitting its application for a gTLD, DCA agreed to eight pages of terms and conditions, including a nearly page-long string of waivers and releases. Among those conditions was the waiver of all of its rights to challenge ICANN's decision on DCA's application in court. For DCA and other gTLD applicants, the IRP is their only recourse; no other legal remedy is available. The very design of this process is evidence that the IRP is fundamentally unlike the forms of

¹³ *Ibid*, paras. 10, 11 and 12.

¹⁴ *Ibid*, paras. 13, 16, 21 and 23.

¹⁵ DCA Trust Second Memorial, *para.* 6. Bold and italics are from the original text.

administrative review that precede it and is meant to provide a final and binding resolution of disputes between ICANN and persons affected by its decisions.”¹⁶

ICANN’s Submissions

28) In response, in its first memorial entitled ICANN’s Memorandum Regarding Procedural Issues filed on 5 May 2014 (“ICANN First Memorial”), ICANN argued, *inter alia*, that:

“[This] proceeding is *not* an arbitration. Rather, an IRP is a truly unique ‘Independent Review’ process established in ICANN’s Bylaws with the specific purpose of providing for ‘independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws’. Although ICANN is using the International Center [sic] for Dispute Resolution (‘ICDR’) to administer these proceedings, nothing in the Bylaws can be construed as converting these proceedings into an ‘arbitration’, and the Bylaws make clear that these proceedings are not to be deemed as the equivalent of an ‘international arbitration.’ Indeed, the word ‘arbitration’ does not appear in the relevant portion of the Bylaws, and as discussed below, the ICANN Board retains full authority to accept or reject the declaration of all IRP Panels [...] ICANN’s Board had the authority to, and did, adopt Bylaws establishing internal accountability mechanisms and defining the scope and form of those mechanisms. Cal. Corp. Code § 5150(a) (authorizing the board of a non-profit public benefit corporation to adopt and amend the corporation’s bylaws).”¹⁷

29) In its 20 May 2014 Further Memorandum Regarding Procedural Issues (“ICANN Second Memorial”), ICANN submitted that many of the questions that the Panel posed “are outside the scope of this Independent Review Proceeding [...] and the Panel’s mandate.”¹⁸ According to ICANN:

“The Panel’s mandate is set forth in ICANN’s Bylaws, which limit the Panel to ‘comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and [...] declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws’.”¹⁹

The Panel’s Decision on its power to interpret and determine the IRP Procedure

(i) Mission and Core Values of ICANN

30) ICANN is not an ordinary California non-profit organization. Rather, ICANN has a large international purpose and responsibility, 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.

¹⁶ DCA Trust First Memorial, *para.* 22.

¹⁷ ICANN First Memorial, *paras.* 10 and 11. Bold and italics are from the original text.

¹⁸ ICANN Second Memorial, *para.* 2.

¹⁹ *Ibid.*

31) ICANN coordinates the allocation and assignment of the three sets of unique identifiers for the Internet. ICANN's special and important mission is reflected in the following provisions of its Articles of Incorporation:

3. This Corporation is a [non-profit] public benefit corporation and is not organized for the private gain of any person. It is organized under the California [Non-profit] Public Benefit Corporation Law for charitable and public purposes. The Corporation is *organized, and will be operated, exclusively for charitable, educational, and scientific purposes ...* In furtherance of the foregoing purposes, and in *recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization*, the Corporation shall, except as limited by Article 5 hereof, *pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet* by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).

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. [Emphasis by way of italics is added]

32) In carrying out its mission, ICANN must be accountable to the global internet community for operating in a manner that is consistent with its Bylaws, and with due regard for its core values.

33) In performing its mission, among others, the following core values must guide the decisions and actions of ICANN: preserve and enhance the operational stability, security and global interoperability of the internet, employ open and transparent policy development mechanisms, make decisions by applying documented policies neutrally and objectively, with integrity and fairness and remain accountable to the internet community through mechanisms that enhance ICANN's effectiveness.

34) The core values of ICANN as described in its Bylaws are deliberately expressed in general terms, so as to 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 situation will necessarily depend on many factors that cannot be fully anticipated or enumerated.

(ii) Accountability of ICANN

35) Consistent with its large and important international responsibilities, ICANN's Bylaws acknowledge a responsibility to the community and a need for a means of holding ICANN accountable for compliance with its mission and "core values." Thus, Article IV of ICANN's Bylaws, entitled "Accountability and Review," states:

"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."

36) ICANN's Bylaws establish three accountability mechanisms: the Independent Review Process and two other avenues: Reconsideration Requests and the Ombudsman.

37) ICANN's BGC is the body designated to review and consider Reconsideration Requests. The Committee is empowered to make final decisions on certain matters, and recommendations to the Board of Directors on others. ICANN's Bylaws expressly provide that the Board of Directors "*shall not be bound to follow the recommendations of the BGC.*"

38) ICANN's Bylaws provide that 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 [...] or the Independent Review Policy have not been invoked." The Ombudsman's powers appear to be limited to "clarifying issues" and "using conflict resolution tools such as negotiation, facilitation, and 'shuttle diplomacy.'" The Ombudsman is specifically barred from "instituting, joining, or supporting in any way any legal actions challenging ICANN's structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies."

39) The avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

"Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS

OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM.”²⁰

40) Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, the ultimate “accountability” remedy for applicants is the IRP.

(iii) IRP Procedures

41) The Bylaws of ICANN as amended on 11 April 2013, in Article IV (Accountability and Review), Section 3 (Independent Review of Board Actions), paragraph 1, require ICANN to put in place, in addition to the reconsideration process identified in Section 2, a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with ICANN’s Articles of Incorporation or Bylaws.

42) Paragraphs 7 and 8 of Section 2 of the Bylaws, require all IRP proceedings to be administered by an international dispute resolution provider appointed by ICANN, and for that IRP Provider (“IRPP”) to, with the approval of the ICANN’s Board, establish operating rules and procedures, which shall implement and be consistent with Section 3.

43) In accordance with the above provisions, ICANN selected the ICDR, the international division of the American Arbitration Association, to be the IRPP.

44) With the input of the ICDR, ICANN prepared a set of Supplementary Procedures for ICANN IRP (“Supplementary Procedures”), to “supplement the [ICDR’s] International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws.”

45) According to the Definitions part of the Supplementary Procedures, “Independent Review or IRP” refers to “the procedure that takes place upon filing of a request to review ICANN Board actions or inactions alleged to be inconsistent with ICANN’s Bylaws or Articles of Incorporation”, and “International Dispute Resolution Procedures or Rules” refers to the ICDR’s International Arbitration Rules (“ICDR Rules”) that will govern the process in combination with the Supplementary Rules.

46) The Preamble of the Supplementary Rules indicates that these “procedures supplement the [ICDR] Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws” and Article

²⁰ Applicant Guidebook, Terms and Conditions for Top Level Domain Applications, *para.* 6. Capital letters are from the original text.

2 of the Supplementary Procedures requires the ICDR to apply the Supplementary Procedures, *in addition* to the ICDR Rules, in all cases submitted to it in connection with Article IV, Section 3(4) of ICANN's Bylaws. In the event there is any inconsistency between the Supplementary Procedures and the ICDR Rules, ICANN requires the Supplementary Procedures to govern.

- 47) The online Oxford English Dictionary defines the word "supplement" as "a thing added to something else in order to complete or enhance it". Supplement, therefore, means to complete, add to, extend or supply a deficiency. In this case, according to ICANN's desire, the Supplementary Rules were designed to "add to" the ICDR Rules.
- 48) A key provision of the ICDR Rules, Article 16, under the heading "Conduct of Arbitration" confers upon the Panel the power to "conduct [proceedings] in whatever manner [the Panel] considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case."
- 49) Another key provision, Article 36 of the ICDR Rules, directs the Panel to "interpret and apply these Rules insofar as they relate to its powers and duties". Like in all other ICDR proceedings, the details of exercise of such powers are left to the discretion of the Panel itself.
- 50) Nothing in the Supplementary Procedures either expressly or implicitly conflicts with or overrides the general and broad powers that Articles 16 and 36 of the ICDR Rules confer upon the Panel to interpret and determine the manner in which the IRP proceedings are to be conducted and to assure that each party is given a fair opportunity to present its case.
- 51) To the contrary, the Panel finds support in the "Independent Review Process Recommendations" filed by ICANN, which indicates that the Panel has the *discretion* to run the IRP proceedings in the manner it thinks appropriate. [Emphasis added].
- 52) Therefore, the Panel is of the view that it has the power to interpret and determine the IRP Procedure as it relates to the future conduct of these proceedings, and it does so here, with specificity in relation to the issues raised by the Parties as set out below.

2) What directions does the Panel give the Parties with respect to the Outstanding Procedural Issues?

a) Document request and exchange

Parties' Submissions

- 53) In the DCA Trust First Memorial, DCA Trust seeks document production, since according to it, "information potentially dispositive of the outcome of these proceedings is in ICANN's possession, custody or control."²¹ According to DCA Trust, in this case, "ICANN has submitted witness testimony that, among other things, purports to rely on secret documents that have not been provided." Given that these proceedings may be "DCA's only opportunity to present and have its claims decided by an independent decision-maker", DCA Trust argues "that further briefing on the merits should be allowed following any and all document production in these proceedings."²²
- 54) According to DCA Trust, "by choosing the ICDR Rules, the Parties also chose the associated ICDR guidelines including the Guidelines for Arbitrators Concerning Exchanges of Information ("ICDR Guidelines"). The ICDR Guidelines provide that 'parties shall exchange, in advance of the hearing, all documents upon which each intends to rely' [...]"²³ DCA Trust submits that, "nothing in the Bylaws or Supplementary Procedures excludes such document production, leaving the ICDR Rules to cover the field."²⁴
- 55) DCA Trust therefore, requests that the Panel issue a procedural order providing the Parties with an opportunity to request documents from one another, and to seek an order from the Panel compelling production of documents if necessary.
- 56) ICANN agrees with DCA Trust, that pursuant to the ICDR Guidelines, which it refers to as "Discovery Rules", "a party must request that a panel order the production of documents."²⁵ According to ICANN, "those documents must be 'reasonably believed to exist and to be relevant and material to the outcomes of the case,' and requests must contain 'a description of specific documents or classes of documents, along with an explanation of their materiality to the outcome of the case."²⁶ ICANN argues, however, that despite the requirement by the Supplementary Rules that, '*all necessary evidence* to demonstrate the requestor's claims that ICANN violated its Bylaws or Articles of Incorporation

²¹ DCA Trust First Memorial, *para.* 61.

²² *Ibid*, *paras.* 61 and 66.

²³ *Ibid*, *para.* 67.

²⁴ *Ibid*.

²⁵ ICANN First Memorial, *para.* 28.

²⁶ *Ibid*.

should be part of the [initial written] submission’, DCA Trust has not to date “provided any indication as to what information it believes the documents it may request may contain and has made no showing that those documents could affect the outcome of the case.”²⁷

57) ICANN further submits that, “while ICANN recognizes that the Panel may order the production of documents within the parameters set forth in the Discovery Rules, ICANN will object to any attempts by DCA to propound broad discovery of the sort permitted in American civil litigation.”²⁸ In support of its contention, ICANN refers to the ICDR Guidelines and states that those Guidelines have made it ‘clear that its Discovery Rules do not contemplate such broad discovery. The introduction of these rules states that their purpose is to promote ‘the goal of providing a simpler, less expensive and more expeditious form of dispute resolution than resort to national courts.’ According to ICANN, the ICDR Guidelines note that:

“One of the factors contributing to complexity, expense and delay in recent years has been the migration from court systems into arbitration of procedural devices that allow one party to a court proceeding access to information in the possession of the other, without full consideration of the differences between arbitration and litigation. The purpose of these guidelines is to make it clear to arbitrators that they have the authority, the responsibility and, in certain jurisdictions, the mandatory duty to manage arbitration proceedings so as to achieve the goal of providing a simpler, less expensive, and more expeditious process.”²⁹

The Panel’s directions concerning document request and exchange

58) Seeing that the Parties are both in agreement that some form of documentary exchange is permitted under the IRP Procedure, and considering that Articles 16 and 19 of the ICDR Rules respectively specify, *inter alia*, that, “[s]ubject to these Rules the [Panel] may conduct [these proceedings] in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case” and “at any time during the proceedings, the tribunal may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate”, the Panel concludes that some document production is necessary to allow DCA Trust to present its case.

59) The Panel is not aware of any international dispute resolution rules, which prevent the parties to benefit from some form of document production. Denying document production would be especially unfair in the circumstances of this case given ICANN’s reliance on internal confidential documents, as advanced by DCA Trust. In any event, ICANN’s espoused goals

²⁷ *Ibid*, para. 29. Bold and italics are from the original text.

²⁸ *Ibid*, para. 30.

²⁹ ICDR Guidelines for Arbitrators on Exchanges of Information, Introduction.

of accountability and transparency would be disserved by a regime that truncates the usual and traditional means of developing and presenting a claim.

60)The Panel, therefore, orders a reasonable documentary exchange in these proceedings with a view to maintaining efficiency and economy, and invites the Parties to agree by or before 29 August 2014, on a form, method and schedule of exchange of documents between them. If the Parties are unable to agree on such a documentary exchange process, the Panel will intervene and, with the input of the Parties, provide further guidance.

61)In this last regard, the Panel directs the Parties attention to paragraph 6 of the ICDR Guidelines, and advises, that it is very “receptive to creative solutions for achieving exchanges of information in ways that avoid costs and delay, consistent with the principles of due process expressed in these Guidelines.”

b) Additional filings, including memoranda and hearing exhibits

Parties’ Submissions

62)In the DCA Trust First Memorial, DCA Trust submits that:

“[The] plain language of the Supplementary Procedures pertaining to written submissions clearly demonstrates that claimants in IRPs are not limited to a single written submission incorporating all evidence, as argued by ICANN. Section 5 of the Supplementary Procedures states that ‘initial written submissions of the parties shall not exceed 25 pages.’ The word ‘initial’ confirms that there may be subsequent submissions, subject to the discretion of the Panel as to how many additional written submissions and what page limits should apply.”³⁰

63)DCA Trust also submits that, “Section 5 of the Supplementary Procedures [...] provides that ‘[a]ll necessary evidence to demonstrate the requestor’s claims that ICANN violated its Bylaws or Articles of Incorporation should be part of the submission.’ Use of the word ‘should’—and not ‘shall’—confirms that it is desirable, but not required that all necessary evidence be included with the Notice of Independent Review. Plainly, the Supplementary Procedures do not preclude a claimant from adducing additional evidence nor would it make any sense if they did given that claimants may, subject to the Panel’s discretion, submit document requests.”³¹

64)According to DCA Trust, in addition, “section 5 of the Supplementary Procedures provides that ‘the Panel may request additional written submissions from the party seeking review, the Board, the Supporting

³⁰ DCA Trust First Memorial, *para.* 57.

³¹ *Ibid*, *para.* 58.

Organizations, or from other parties.’ Thus, the Supplementary Procedures clearly contemplate that additional written submissions may be necessary to give each party a fair opportunity to present its case.”³²

65) In response, ICANN submits that, DCA Trust “has no automatic right to additional briefing under the Supplementary Procedures.”³³ According to ICANN, “paragraph 5 of the Supplementary Procedures, which governs written statements, provides:

The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font. *All necessary evidence to demonstrate the requestor’s claims that ICANN violated its Bylaws or Articles of Incorporation should be part of the 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.” [Bold and italics are ICANN’s]

ICANN adds:

“This section clearly provides that DCA [Trust’s] opportunity to provide briefing and evidence in this matter has concluded, subject only to a request for additional briefing from the Panel. DCA has emphasized that the rule references the ‘initial’ written submission, but the word ‘initial’ refers to the fact that the Panel ‘may request additional written submissions,’ not that DCA [Trust] has some ‘right’ to a second submission. There is no Supplementary Rule that even suggests the possibility of a second submission as a matter of right. The fact that DCA [Trust] has twice failed to submit evidence in support of its claims is not justification for allowing DCA [Trust] a third attempt.”³⁴

66) ICANN further notes, that in its 20 April 2014 letter to the Panel, ICANN already submitted that, “DCA [Trust’s] argument that it submitted its papers ‘on the understanding that opportunities would be available to make further submissions’ is false. ICANN stated in an email to DCA [Trust’s] counsel on 9 January 2014—prior to the submission of DCA [Trust’s] Amended Notice—that the Supplementary [Procedures] bar the filing of supplemental submissions absent a request from the Panel.”³⁵

67) According to ICANN:

“[The] decision as to whether to allow supplemental briefing is within the Panel’s discretion, and ICANN urges the Panel to decline to permit supplemental briefing for two reasons. First, despite having months to consider how DCA [Trust] might respond to ICANN’s presentation on the merits, DCA [Trust] has never even attempted to explain

³² *Ibid*, para. 59.

³³ ICANN First Memorial, para. 24.

³⁴ *Ibid*.

³⁵ *Ibid*, para. 25.

what it could say in additional briefing that would refute the materials in ICANN's presentation. [...] The fact that DCA is unable to identify supplemental witnesses six months after filing its Notice of IRP is strong indication that further briefing would not be helpful in this case. Second, as ICANN has explained on multiple occasions, DCA [Trust] has delayed these proceedings substantially, and further briefing would compound that delay [...] as ICANN noted in its letter of 20 April 2014, despite DCA [Trust's] attempts to frame this case as implicating issues 'reach[ing] far beyond the respective rights of the parties as concerns the delegation of .AFRICA,' the issues in this case are in fact extremely limited in scope. This Panel is authorized only to address whether ICANN violated its Bylaws or Articles of Incorporation *in its handling of DCA's Application for .AFRICA*. The parties have had the opportunity to submit briefs and evidence regarding that issue. DCA [Trust] has given no indication that it has further dispositive arguments to make or evidence to present. The Panel should resist DCA's attempt to delay these proceedings even further via additional briefing."³⁶

The Panel's directions concerning additional filings

- 68) As with document production, in the face of Article 16 of the ICDR Rules, the Panel is of the view that both Parties ought to benefit from additional filings. In this instance again, while it is possible as ICANN explains, that the drafters of the Supplementary Procedures may have desired to preclude the introduction of additional evidence not submitted with an initial statement of claim, the Panel is of the view that such a result would be inconsistent with ICANN's core values and the Panel's obligation to treat the parties fairly and afford both sides a reasonable opportunity to present their case.
- 69) Again, every set of dispute resolution rules, and every court process that the Panel is aware of, allows a claimant to supplement its presentation as its case proceeds to a hearing. The goal of a fair opportunity to present one's case is in harmony with ICANN's goals of accountability, transparency, and fairness.
- 70) The Panel is aware of and fully embraces the fact that ICANN tried to curtail unnecessary time and costs in the IRP process. However, this may not be done at the cost of a fair process for both parties, particularly in light of the fact that the IRP is the exclusive dispute resolution mechanism provided to applicants.
- 71) Therefore, the Panel will allow the Parties to benefit from additional filings and supplemental briefing going forward. The Panel invites the Parties in this regard to agree on a reasonable exchange timetable. If the Parties are unable to agree on the scope and length of such additional filings and supplemental briefing, the Panel will intervene and, with the input of the Parties, provide further guidance.

³⁶ *Ibid*, paras. 26 and 27.

c) Method of Hearing and Testimony

Parties' Submissions

72) In the DCA Trust First Memorial, DCA Trust submitted that:

"[The] parties agree that a hearing on the merits is appropriate in this IRP. DCA [Trust] respectfully requests that the Panel schedule a hearing on the merits after document discovery has concluded and the parties have had the opportunity to file memorials on the merits. Although the Panel clearly has the authority to conduct a hearing in-person, in the interest of saving time and minimizing costs, DCA [Trust] would agree to a video hearing, as stated during the April 22 hearing on procedural matters."³⁷

73) In response, ICANN submitted that, "during the 22 April 2014 Call, ICANN agreed that this IRP is one in which a telephonic or video conference would be helpful and offered to facilitate a video conference."³⁸ In addition, in the ICANN First Memorial, ICANN argued that according to Article IV, Section 3.12 of the Bylaws and paragraph 4 of the Supplementary Procedures, the IRP should conduct its proceedings by email and otherwise via Internet to the maximum extent feasible and in the extraordinary event that an in-person hearing is deemed necessary by the panel, the in-person hearing shall be limited to argument only.

74) ICANN also advanced, that:

"[It] does not believe [...] that this IRP is sufficiently 'extraordinary' so as to justify an in-person hearing, which would dramatically increase the costs for the parties. As discussed above, the issues in this IRP are straightforward – limited to whether ICANN's Board acted consistent with its Bylaws and Articles of Incorporation in relation to DCA's application for AFRICA. – and can, easily [...], be resolved following a telephonic oral argument with counsel and the Panel."³⁹

75) In the DCA Trust First Memorial, DCA Trust also argued that, in "April 2013, ICANN amended its Bylaws to limit telephonic or in-person hearings to 'argument only.' At some point after the ICM Panel's 2009 decision in *ICM v. ICANN*, ICANN also revised the Supplementary Procedures to limit hearings to 'argument only.' Accordingly, and as ICANN argued at the procedural hearing, ICANN's revised Bylaws and Supplementary Procedures suggest that there is to be no cross-examination of witnesses at the hearing. However, insofar as neither the Supplementary Procedures nor the Bylaws expressly exclude cross-examination, this provision remains ambiguous."⁴⁰

³⁷ DCA Trust First Memorial, *para.* 63.

³⁸ ICANN First Memorial, *para.* 36.

³⁹ *Ibid*, *para.* 36.

⁴⁰ DCA Trust First Memorial, *para.* 64.

76) DCA Trust submitted that:

"[Regardless] of whether the parties themselves may examine witnesses at the hearing, it is clear that the Panel may do so. Article 16(1) provides that the Panel 'may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.' It is, moreover, customary in international arbitration for tribunal members to question witnesses themselves – often extensively – in order to test their evidence or clarify facts that are in dispute. In this case, ICANN has submitted witness testimony that, among other things, purports to rely on secret documents that have not been provided. As long as those documents are withheld from DCA [Trust], it is particularly important for that witness testimony to be fully tested by the Panel, if not by the parties. Particularly in light of the important issues at stake in this matter and the general due process concerns raised when parties cannot test the evidence presented against them, DCA [Trust] strongly urges the Panel to take full advantage of its opportunity to question witnesses. Such questioning will in no way slow down the proceedings, which DCA [Trust] agrees are to be expedited – but not at the cost of the parties' right to be heard, and the Panel's right to obtain the information it needs to render its decision."⁴¹

77) In response, ICANN submitted that:

"[Both] the Supplementary Procedures and ICANN's Bylaws unequivocally and unambiguously prohibit live witness testimony in conjunction with any IRP." Paragraph 4 of the Supplementary Procedures, which according to ICANN governs the "Conduct of the Independent Review", demonstrates this point. According to ICANN, "indeed, two separate phrases of Paragraph 4 explicitly prohibit live testimony: (1) the phrase limiting the in-person hearing (and similarly telephonic hearings) to 'argument only,' and (2) the phrase stating that 'all evidence, including witness statements, must be submitted in advance.' The former explicitly limits hearings to the argument of counsel, excluding the presentation of any evidence, including any witness testimony. The latter reiterates the point that *all* evidence, *including witness testimony*, is to be presented in writing and prior to the hearing. Each phrase unambiguously excludes live testimony from IRP hearings. Taken together, the phrases constitute irrefutable evidence that the Supplementary Procedures establish a truncated hearing procedure."⁴²

78) ICANN added:

"[Paragraph] 4 of the Supplementary Procedures is based on the exact same and unambiguous language in Article IV, Section 3.12 of the Bylaws, which provides that '[i]n 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.*' [...] While DCA [Trust] may prefer a different procedure, the Bylaws and the Supplementary Procedures could not be any clearer in this regard. Despite the Bylaws' and Supplementary Procedures' clear and unambiguous prohibition of live witness testimony, DCA [Trust] attempts to argue that the Panel should instead be guided by Article 16 of the ICDR Rules, which states that subject to the ICDR Rules, 'the tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each

⁴¹ *Ibid*, paras. 65 and 66.

⁴² ICANN First Memorial, paras. 15 and 16.

party has the right to be heard and is given a fair opportunity to present its case.’ However, as discussed above, the Supplementary Procedures provide that ‘[i]n the event there is any inconsistency between these Supplementary Procedures and [ICDR’s International Arbitration Rules], these Supplementary Procedures will govern,’ and the Bylaws require that the ICDR Rules ‘be consistent’ with the Bylaws. As such, the Panel ***does not have discretion*** to order live witness testimony in the face of the Bylaws’ and Supplementary Procedures’ clear and unambiguous prohibition of such testimony.”⁴³

79) ICANN further submitted:

“[During] the 22 April Call, DCA vaguely alluded to ‘due process’ and ‘constitutional’ concerns with prohibiting cross-examination. As ICANN did after public consultation, and after the *ICM* IRP, ICANN has the right to establish the rules for these procedures, rules that DCA agreed to abide by when it filed its Request for IRP. First, ‘constitutional’ protections do not apply with respect to a *corporate accountability mechanism*. Second, ‘due process’ considerations (though inapplicable to corporate accountability mechanisms) were already considered as part of the design of the revised IRP. And the United States Supreme Court has repeatedly affirmed the right of parties to tailor unique rules for dispute resolution processes, including even *binding arbitration proceedings* (which an IRP is not). The Supreme Court has specifically noted that ‘[t]he point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute. . . . And the informality of arbitral proceedings is itself desirable, reducing the cost and increasing the speed of dispute resolution’.”⁴⁴

80) According to ICANN:

“[The] U.S. Supreme Court has explicitly held that the right to tailor unique procedural rules includes the right to dispense with certain procedures common in civil trials, including the right to cross-examine witnesses [...] Similarly, international arbitration norms recognize the right of parties to tailor their own, unique arbitral procedures. ***‘Party autonomy is the guiding principle in determining the procedure to be followed in international arbitration.’*** It is a principle that is endorsed not only in national laws, but by international arbitral institutions worldwide, as well as by international instruments such as the New York Convention and the Model Law.”⁴⁵

81) In short, ICANN advanced that:

“[Even] if this were a formal ‘arbitration’, ICANN would be entitled to limit the nature of these proceedings so as to preclude live witness testimony. The fact that this proceeding is not an arbitration further reconfirms ICANN’s right to establish the rules that govern these proceedings [...] DCA [Trust] argues that it will be prejudiced if cross-examination of witnesses is not permitted. However, the procedures give both parties equal opportunity to present their evidence—the inability of either party to examine witnesses at the hearing would affect both the Claimant and ICANN equally. In this instance, DCA [Trust] did not submit witness testimony with its Amended Notice (as clearly it should have). However, were DCA [Trust] to present any written witness statements in support of its position, ICANN would not be entitled to cross examine

⁴³ *Ibid*, paras. 17 and 18. Bold and italics are from the original text.

⁴⁴ *Ibid*, para. 19.

⁴⁵ *Ibid*, paras. 20 and 21. Bold and italics are from the original text.

those witnesses, just as DCA [Trust] is not entitled to cross examine ICANN's witnesses. Of course, the parties are free to argue to the IRP Panel that witness testimony should be viewed in light of the fact that the rules do not permit cross-examination."⁴⁶

The Panel's directions on method of hearing and testimony

- 82) The considerations and discussions under the prior headings addressing document exchange and additional filings apply to the hearing and testimony issues raised in this IRP proceeding as well.
- 83) At this juncture, the Panel is of the preliminary view that at a minimum a video hearing should be held. The Parties appear to be in agreement. However, the Panel does not wish to close the door to the possibility of an in-person hearing and live examination of witnesses, should the Panel consider that such a method is more appropriate under the particular circumstances of this case after the Parties have completed their document exchange and the filing of any additional materials.
- 84) While the Supplementary Procedures appear to limit both telephonic and in-person hearings to "argument only", the Panel is of the view that this approach is fundamentally inconsistent with the requirements in ICANN's Bylaws for accountability and for decision making with objectivity and fairness.
- 85) Analysis of the propriety of ICANN's decisions in this case will depend at least in part on evidence about the intentions and conduct of ICANN's top personnel. ICANN should not be allowed to rely on written statements of these officers and employees attesting to the propriety of their actions without an appropriate opportunity in the IRP process for DCA Trust to challenge and test the veracity of such statements.
- 86) The Panel, therefore, reserves its decision to order an in-person hearing and live testimony pending a further examination of the representations that will be proffered by each side, including the filing of any additional evidence which this Decision permits. The Panel also permits both Parties at the hearing to challenge and test the veracity of statements made by witnesses.
- 87) Having said this, the Panel acknowledges the Parties' desire that the IRP proceedings be as efficient and economical as feasible, consistent with the overall objectives of a fair and independent proceeding. The Panel will certainly bear this desire and goal in mind as these proceedings advance further.

⁴⁶ *Ibid*, paras. 22 and 23.

3) Is the Panel's Decision on the IRP Procedure and its future Declaration on the Merits in this proceeding binding?

DCA Trust's Submissions

88) In addition to the submissions set out in the earlier part of this Decision, DCA Trust argues that, the language used in the Bylaws to describe the IRP process is demonstrative that it is intended to be a binding process. When the language in the Bylaws for reconsideration is compared to that describing the IRP, DCA Trust explains:

"[It] is clear that the declaration of an IRP is intended to be final and binding [...] For example, the Bylaws provide that the [ICANN] [Board Governance Committee] BGC 'shall act on a Reconsideration Request on the basis of the written public record' and 'shall make a final determination or recommendation.' The Bylaws even expressly state that 'the Board *shall not be bound to follow the recommendations*' of the BGC. By contrast, the IRP Panel makes 'declarations' — defined by ICANN in its Supplementary Procedures as 'decisions/opinions'— that 'are final and have precedential value.' The IRP Panel 'shall specifically designate the prevailing party' and may allocate the costs of the IRP Provider to one or both parties. Moreover, nowhere in ICANN's Bylaws or the Supplementary Procedures does ICANN state that the Board shall not be bound by the declaration of the IRP. If that is what ICANN intended, then it certainly could have stated it plainly in the Bylaws, as it did with reconsideration. The fact that it did not do so is telling."⁴⁷

89) In light of the foregoing, DCA Trust advances:

"[The] IRP process is an arbitration in all but name. It is a dispute resolution procedure administered by an international arbitration service provider, in which the decision-makers are neutral third parties chosen by the parties to the dispute. There are mechanisms in place to assure the neutrality of the decision-makers and the right of each party to be heard. The IRP Panel is vested with adjudicative authority that is equivalent to that of any other arbitral tribunal: it renders decisions on the dispute based on the evidence and arguments submitted by the parties, and its decisions are binding and have *res judicata* and precedential value. The procedures appropriate and customary in international arbitration are thus equally appropriate in this IRP. But in any event, and as discussed below, the applicable rules authorize the Panel to conduct this IRP in the manner it deems appropriate regardless of whether it determines that the IRP qualifies as an arbitration."⁴⁸

ICANN's Submissions

90) In response, ICANN submits that:

"[The] provisions of Article IV, Section 3 of the ICANN Bylaws, which govern the Independent Review process and these proceedings, make clear that the declaration of the Panel will not be binding on ICANN. Section 3.11 gives the IRP panels the authority

⁴⁷ DCA Trust First Memorial, *paras.* 33, 34 and 35. Bold and italics are from the original text.

⁴⁸ *Ibid.* *para.* 44.

to 'declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws' and '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.' Section 3.21 provides that '[w]here feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting.' Section 3 never refers to the IRP panel's declaration as a 'decision' or 'determination.' It does refer to the 'Board's subsequent action on [the IRP panel's] declaration [...].' That language makes clear that the IRP's declarations are advisory and not binding on the Board. Pursuant to the Bylaws, the Board has the discretion to consider an IRP panel's declaration and take whatever action it deems appropriate."⁴⁹

91) According to ICANN:

"[This] issue was addressed extensively in the *ICM* IRP, a decision that has precedential value to this Panel. The *ICM* Panel specifically considered the argument that the IRP proceedings were 'arbitral and not advisory in character,' and unanimously concluded that its declaration was 'not binding, but rather advisory in effect.' At the time that the *ICM* Panel rendered its declaration, Article IV, Section 3 of ICANN's Bylaws provided that 'IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators . . . nominated by that provider.' *ICM* unsuccessfully attempted to rely on that language in arguing that the IRP constituted an arbitration, and that the IRP panel's declaration was binding on ICANN. Following that IRP, that language was removed from the Bylaws with the April 2013 Bylaws amendments, further confirming that, under the Bylaws, an IRP panel's declaration is not binding on the Board."⁵⁰

92) ICANN also submits that:

"[The] lengthy drafting history of ICANN's independent review process confirms that IRP panel declarations are not binding. Specifically, the Draft Principles for Independent Review, drafted in 1999, state that 'the ICANN Board should retain ultimate authority over ICANN's affairs -- after all, it is the Board ... that will be chosen by (and is directly accountable to) the membership and supporting organizations.' And when, in 2001, the Committee on ICANN Evolution and Reform ('ERC') recommended the creation of an independent review process, it called for the creation of 'a process to require non-binding arbitration by an international arbitration body to review any allegation that the Board has acted in conflict with ICANN's Bylaws.' The individuals who actively participated in the process also agreed that the review process would not be binding. As one participant stated: IRP 'decisions will be nonbinding, because the Board will retain final decision-making authority'."⁵¹

93) According to ICANN:

"[The] only IRP Panel ever to issue a declaration, the *ICM* IRP Panel, unanimously rejected the assertion that IRP Panel declarations are binding and recognized that an IRP panel's declaration 'is not binding, but rather advisory in effect.' Nothing has occurred since the issuance of the *ICM* IRP Panel's declaration that changes the fact that IRP Panel declarations are not binding. To the contrary, in April 2013, following the

⁴⁹ ICANN First Memorial, *para.* 33,

⁵⁰ *Ibid*, *para.* 34,

⁵¹ ICANN Second Memorial, *para.* 5,

ICM IRP, in order to clarify even further that IRPs are not binding, all references in the Bylaws to the term 'arbitration' were removed as part of the Bylaws revisions. *ICM* had argued in the IRP that the use of the word 'arbitration' in the portion of the Bylaws related to Independent Review indicated that IRPs were binding, and while the *ICM* IRP Panel rejected that argument, to avoid any lingering doubt, ICANN removed the word 'arbitration' in conjunction with the amendments to the Bylaws."⁵²

94) ICANN further submits that:

"[The] amendments to the Bylaws, which occurred following a community process on the proposed IRP revisions, added, among other things, a sentence stating that 'declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.' DCA argues that this new language, which does not actually use the word 'binding,' nevertheless provides that IRP Panel declarations are binding, trumping years of drafting history, the sworn testimony of those who participated in the drafting process, the plain text of the Bylaws, and the reasoned declaration of a prior IRP panel. DCA is wrong."⁵³

95) According to ICANN:

"[The] language DCA references was added to ICANN's Bylaws to meet recommendations made by ICANN's Accountability Structures Expert Panel ('ASEP'). The ASEP was comprised of three world-renowned experts on issues of corporate governance, accountability, and international dispute resolution, and was charged with evaluating ICANN's accountability mechanisms, including the Independent Review process. The ASEP recommended, *inter alia*, that an IRP should not be permitted to proceed on the same issues as presented in a prior IRP. The ASEP's recommendations in this regard were raised in light of the second IRP constituted under ICANN's Bylaws, where the claimant presented claims that would have required the IRP Panel to [re-evaluate] the declaration of the IRP Panel in the *ICM* IRP. To prevent claimants from challenging a prior IRP Panel declaration, the ASEP recommended that '[t]he declarations of the IRP, and ICANN's subsequent actions on those declarations, should have precedential value.' The ASEP's recommendations in this regard did not convert IRP Panel declarations into binding decisions."⁵⁴

96) Moreover, ICANN argues:

"[One] of the important considerations underlying the ASEP's work was the fact that ICANN, while it operates internationally, is a California non-profit public benefit corporation subject to the statutory law of California as determined by United States courts. That law requires that ICANN's Board retain the ultimate responsibility for decision-making. As a result, the ASEP's recommendations were premised on the understanding that the declaration of the IRP Panel is not 'binding' on the Board. In any event, a declaration clearly can be both non-binding and precedential."⁵⁵

97) In short, ICANN argues that the IRP is *not* binding. According to ICANN, "not only is there no language in the Bylaws stating that IRP Panel declarations

⁵² *Ibid*, para. 6.

⁵³ *Ibid*, para. 7.

⁵⁴ *Ibid*, paras. 8 and 9.

⁵⁵ *Ibid*, paras. 9 and 10.

are binding on ICANN, there is no language stating that an IRP Panel even may determine if its advisory Declarations are binding.”⁵⁶ According to ICANN, words such as “arbitration” and “arbitrator” were removed from the Bylaws to ensure that the IRP Panel’s declarations do not have the force of normal commercial arbitration. ICANN also argues that DCA Trust, “fails to point to a *single piece of evidence* in all of the drafting history of the Bylaws or any of the amendments to indicate that ICANN intended, through its 2013 amendments, to convert a non-binding procedure into a binding one.”⁵⁷ Finally, ICANN submits that “it is not within the scope of this Panel’s authority to declare whether IRP Panel declarations are binding on ICANN’s Board...the Panel does not have the authority to re-write ICANN’s Bylaws or the rules applicable to this proceeding. The Panel’s mandate is strictly limited to ‘comparing contested actions of the Board [and whether it] has acted consistently with the provisions of those Articles of Incorporation and Bylaws, and [...] declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws’.”⁵⁸

The Panel’s Decision on Binding or Advisory nature of IRP decisions, opinions and declarations

98) Various provisions of ICANN’s Bylaws and the Supplementary Procedures support the conclusion that the Panel’s decisions, opinions and declarations are binding. There is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the Panel either advisory or non-binding.⁵⁹

99) In paragraph 1, the Supplementary Procedures define “Declaration” as the “decisions and/or opinions of the IRP Panel”. In paragraph 9, the Supplementary Procedures require any Declaration of a three-member IRP Panel to be signed by the majority and in paragraph 10, under the heading “Form and Effect of an IRP Declaration”, they require Declarations to be in writing, based on documentation, supporting materials and arguments submitted by the parties. The Supplementary Procedures also require the Declaration to “specifically designate the prevailing party”.⁶⁰

⁵⁶ ICANN letter of 2 June 2014 addressed to the Panel.

⁵⁷ *Ibid.* Italics are from the original decision.

⁵⁸ *Ibid.*

⁵⁹ The Reconsideration process established in the Bylaws expressly provides that ICANN’s “Board shall not be bound to follow the recommendations” of the BGC for action on requests for reconsideration. No similar language in the Bylaws or Supplementary Procedures limits the effect of the Panel’s IRP decisions, opinions and declarations to an advisory or non-binding effect. It would have been easy for ICANN to clearly state somewhere that the IRP’s decisions, opinions or declarations are “advisory”—this word appears in the Reconsideration Process.

⁶⁰ Moreover, the word “Declaration” in the common law legal tradition is often synonymous with a binding decision. According to Black’s Law Dictionary (7th Edition 1999) at page 846, a “declaratory

- 100) Section 10 of the Supplementary Procedures, resembles Article 27 of the ICDR Rules. Whereas Article 27 refers to “Awards”, section 10 refers to “Declarations”. Section 10 of the Supplementary Procedures, however, is silent on whether Declarations made by the IRP Panel are “final and binding” on the parties.
- 101) As explained earlier, as per Article IV, Section 3, paragraph 8 of the Bylaws, the Board of Directors of ICANN has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP set out in section 3. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures. These Rules have been supplemented⁶¹ with the Supplementary Procedures.
- 102) This is clear from two different parts of the Supplementary Procedures. First, in the preamble, where the Supplementary Procedures state that: “These procedures supplement the International Centre for Dispute Resolution’s International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws”.
- 103) And second, under section 2 entitled (Scope), that states that the “ICDR will apply these Supplementary Procedures, in addition to the INTERNATIONAL DISPUTE RESOLUTION PROCEDURES, in all cases submitted to the ICDR in connection with the Article IV, Section 3(4) of the ICANN Bylaws”. It is therefore clear that ICANN intended the operating rules and procedures for the independent review to be an international set of arbitration rules supplemented by a particular set of additional rules.
- 104) There is also nothing inconsistent between section 10 of the Supplementary Procedures and Article 27 of the ICDR Rules.
- 105) One of the hallmarks of international arbitration is the binding and final nature of the decisions made by the adjudicators. Binding arbitration is the essence of what the ICDR Rules, the ICDR itself and its parent, the American Arbitration Association, offer. The selection of the ICDR Rules as the baseline

judgment” is, “a binding adjudication that establishes the rights and other legal obligations of the parties without providing for or ordering enforcement”.

⁶¹ As explained by the Panel before, the word “supplement” means to complete, add to, extend or supply a deficiency. The Supplementary Procedures, therefore, *supplement* (not replace or supersede) the ICDR Rules. As also indicated by the Panel before, in the event there is any inconsistency between the Supplementary Procedures and the ICDR Rules, ICANN requires the Supplementary Procedures to govern.

set of procedures for IRP's, therefore, points to a binding adjudicative process.

106) Furthermore, the process adopted in the Supplementary Procedures is an adversarial one where counsel for the parties present competing evidence and arguments, and a panel decides who prevails, when and in what circumstances. The panelists who adjudicate the parties' claims are also selected from among experienced arbitrators, whose usual charter is to make binding decisions.

107) The above is further supported by the language and spirit of section 11 of ICANN's Bylaws. Pursuant to that section, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the Panel would not be considered advisory.

108) Moreover, even if it could be argued that ICANN's Bylaws and Supplementary Procedures are ambiguous on the question of whether or not a decision, opinion or declaration of the IRP Panel is binding, in the Panel's view, this ambiguity would weigh against ICANN's position. The relationship between ICANN and the applicant is clearly an adhesive one. There is no evidence that the terms of the application are negotiable, or that applicants are able to negotiate changes in the IRP.

109) In such a situation, the rule of *contra proferentem* applies. As the drafter and architect of the IRP Procedure, it was open to ICANN and clearly within its power to adopt a procedure that expressly and clearly announced that the decisions, opinions and declarations of IRP Panels were advisory only. ICANN did not adopt such a procedure.

110) ICANN points to the extensive public and expert input that preceded the formulation of the Supplementary Procedures. The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel's view, this could have easily been done.

111) The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor⁶²;

⁶² If the waiver of judicial remedies ICANN obtains from applicants is enforceable, and the IRP process is non-binding, as ICANN contends, then that process leaves TLD applicants and the Internet community with no compulsory remedy of any kind. This is, to put it mildly, a highly watered down notion of "accountability". Nor is such a process "independent", as the ultimate decision maker,

and, 2) the special, unique, and publicly important function of ICANN. As explained before, ICANN is not an ordinary private non-profit entity deciding for its own sake who it wishes to conduct business with, and who it does not. ICANN rather, is the steward of a highly valuable and important international resource.

112) Even in ordinary private transactions, with no international or public interest at stake, contractual waivers that purport to give up *all* remedies are forbidden. Typically, this discussion is found in the Uniform Commercial Code Official Comment to section 2719, which deals with “Contractual modification or limitation of remedy.” That Comment states:

“Under this section parties are left free to shape their remedies to their particular requirements and reasonable agreements limiting or modifying remedies are to be given effect. However, *it is the very essence of a sales contract that at least minimum adequate remedies be available.* If the parties intend to conclude a contract for sale within this Article *they must accept the legal consequence that there be at least a fair quantum of remedy for breach of the obligations or duties outlined in the contract.*” [Panel’s emphasis by way of italics added]

113) The need for a minimum adequate remedy is indisputably more important where, as in this case, the party arguing that there is no compulsory remedy is the party entrusted with a special, internationally important and valuable operation.

114) The need for a compulsory remedy is concretely shown by ICANN’s longstanding failure to implement the provision of the Bylaws and Supplementary Procedures requiring the creation of a standing panel. ICANN has offered no explanation for this failure, which evidences that a self-policing regime at ICANN is insufficient. The failure to create a standing panel has consequences, as this case shows, delaying the processing of DCA Trust’s claim, and also prejudicing the interest of a competing .AFRICA applicant.

115) Moreover, assuming for the sake of argument that it is acceptable for ICANN to adopt a remedial scheme with no teeth, the Panel is of the opinion that, at a minimum, the IRP should forthrightly explain and acknowledge that the process is merely advisory. This would at least let parties know before embarking on a potentially expensive process that a victory before the IRP panel may be ignored by ICANN. And, a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process. The Panel seriously doubts that the Senators questioning former ICANN President Stuart Lynn in 2002 would have been satisfied had they

ICANN, is also a party to the dispute and directly interested in the outcome. Nor is the process “neutral,” as ICANN’s “core values” call for in its Bylaws.

understood that a) ICANN had imposed on all applicants a waiver of all judicial remedies, *and* b) the IRP process touted by ICANN as the “ultimate guarantor” of ICANN accountability was only an advisory process, the benefit of which accrued only to ICANN.⁶³

ICM Case

- 116) The Parties in their submissions have discussed the impact on this Decision of the conclusions reached by the IRP panel in the matter of *ICM v. ICANN* (“*ICM Case*”). Although this Panel is of the opinion that the decision in the *ICM Case* should have no influence on the present proceedings, it discusses that matter for the sake of completeness.
- 117) In the *ICM Case*, another IRP panel examined the question centrally addressed in this part of this Decision: whether declarations and/or decisions by an IRP panel are binding, or merely advisory. The *ICM Case* panel concluded that its decision was advisory.⁶⁴
- 118) In doing so, the *ICM Case* panel noted that the IRP used an “international arbitration provider” and “arbitrators nominated by that provider,” that the ICDR Rules were to “govern the arbitration”, and that “arbitration connotes a binding process.” These aspects of the IRP, the panel observed, were “suggestive of an arbitral process that produces a binding award.”⁶⁵ But, the panel continued, “there are other indicia that cut the other way, and more deeply.” The panel pointed to language in the Interim Measures section of the Supplementary Procedures empowering the panel to “recommend” rather than order interim measures, and to language requiring the ICANN Board to “consider” the IRP declaration at its next meeting, indicating, in the panel’s view, the lack of binding effect of the Declaration.
- 119) The *ICM Case* panel specifically observed that “the relaxed temporal proviso to do no more than ‘consider’ the IRP declaration, and to do so at the next meeting of the Board ‘where feasible’, emphasized that it is not binding. If the IRP’s declaration were binding, there would be nothing to consider but rather a determination or decision to implement in a timely manner. The Supplementary Procedures adopted for IRP, in the article on ‘Form and Effect of an IRP Declaration’, significantly omit provision of Article 27 of the ICDR Rules specifying that an award ‘shall be final and binding on the parties’. Moreover, the preparatory work of the IRP provisions...confirms that the

⁶³ See in this regard the Memorandum of Jack Goldsmith dated 29 July 2010 at <https://cyber.law.harvard.edu/pubrelease/icann/pdfs/Jack%20Goldsmith%20on%20ICANN-final.pdf>, referred to in footnote 58 of DCA Trust’s Second Memorial.

⁶⁴ *ICM Case*, footnote 30. The panel’s brief discussion on this issue appears in *paras.* 132-134 of the *ICM Decision*.

⁶⁵ *Ibid*, *para.* 132.

intention of the drafters of the IRP process was to put in place a process that produced declarations that would not be binding and that left ultimate decision-making authority in the hands of the Board.”⁶⁶

120) Following the issuance of the *ICM* Case Declaration, ICANN amended its Bylaws, and related Supplementary Procedures governing IRPs, removing most, but not all, references to “arbitration”, and adding that the “declarations of the IRP Panel, and the Board’s subsequent action on those declarations, are final and have precedential value.”

Difference between this IRP and the *ICM* Case

121) According to DCA Trust, the panel in the *ICM* Matter, “based its decision that its declaration would not be binding, ‘but rather advisory in effect,’ on specific language in both a *different* set of Bylaws and a *different* set of Supplementary Procedures than those that apply in this dispute...one crucial difference in the Bylaws applicable during the *ICM* was the absence of the language describing panel declarations as ‘final and precedential.’”⁶⁷ The Panel agrees.

122) Section 3(21) of the 11 April 2013 ICANN Bylaws now provides: “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.” At the time the *ICM* Matter was decided, section 3(15) of Article IV of ICANN’s Bylaws did not contain the second sentence of section 3(21).

123) As explained in the DCA Trust First Memorial:

“[In] finding that the IRP was advisory, the *ICM* Panel also relied on the fact that the Bylaws gave the IRP [panel] the authority to ‘declare,’ rather than ‘decide’ or ‘determine,’ whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or the Bylaws. However, the *ICM* Panel did not address the fact that the Supplementary Procedures, which govern the process in combination with the ICDR Rules, defined ‘declaration’ as ‘decisions/opinions of the IRP’. If a ‘declaration’ is a ‘decision’, then surely a panel with the authority to ‘declare’ has the authority to ‘decide’.”⁶⁸

The Panel agrees with DCA Trust.

124) Moreover, as explained by DCA Trust:

⁶⁶ *Ibid*, para. 133.

⁶⁷ DCA Trust First Memorial, para. 36. Bold and italics are from the original text.

⁶⁸ *Ibid*, para. 39.

"[The] *ICM* Panel [...] found it significant that the Supplementary Procedures adopted for the IRP omitted Article 27 of the ICDR Rules – which specifies that an award ‘shall be final and binding on the parties.’ On that basis, the *ICM* Panel concluded that Article 27 did not apply. ICANN’s Supplementary Rules, however, were – and continue to be – silent on the effect of an award. In the event there is inconsistency between the Supplementary Procedures and the ICDR Rules, then the Supplementary Procedures govern; but there is nothing in the applicable rules suggesting that an *omission* of an ICDR Rule means that it does not apply. Indeed, the very same Supplementary Procedures provide that ‘the ICDR’s International Arbitration Rules [...] will govern the process *in combination* with these Supplementary Procedures. Furthermore, it is only in the event there is ‘any inconsistency’ between the Supplementary Procedures and the ICDR Rules that the Supplementary Procedures govern.”⁶⁹

Again, the Panel agrees with DCA Trust.

125) With respect, therefore, this Panel disagrees with the panel in the *ICM* Case that the decisions and declarations of the IRP panel are not binding. In reaching that conclusion, in addition to failing to make the observations set out above, the *ICM* panel did not address the issue of the applicant’s waiver of all judicial remedies, it did not examine the application of the *contra proferentem* doctrine, and it did not examine ICANN’s commitment to accountability and fair and transparent processes in its Articles of Incorporation and Bylaws.

126) ICANN argues that the panel’s decision in the *ICM* Case that declarations are not binding is dispositive of the question. ICANN relies on the provision in the Bylaws, quoted above, (3(21)) to the effect that declarations “have precedential value.” Like certain other terms in the IRP and Supplementary Procedures, the Panel is of the view that this phrase is ambiguous. Legal precedent may be either binding or persuasive.⁷⁰ The Bylaws do not indicate which kind of precedent is intended.

127) *Stare decisis* is the legal doctrine, which gives binding precedential effect, typically to earlier decisions on a settled point of law, decided by a higher court. The doctrine is not mandatory, as illustrated by the practice in common law jurisdictions of overruling earlier precedents deemed unwise or unworkable. In the present case, there is no “settled” law in the usual sense of a body of cases approved by a court of ultimate resort, but instead, a single decision by one panel on a controversial point, which this Panel, with respect, considers to be unconvincing.

128) Therefore, the Panel is of the view that the ruling in the *ICM* Case is *not* persuasive and binding upon it.

⁶⁹ *Ibid*, para. 40. Bold and italics are from the original text.

⁷⁰ Black’s Law Dictionary, (7th Edition 1999), p. 1195.

VI. DECLARATION OF THE PANEL

129)Based on the foregoing and the language and content of the IRP Procedure, the Panel is of the view that it has the power to interpret and determine the IRP Procedure as it relates to the future conduct of these proceedings.

130)Based on the foregoing and the language and content of the IRP Procedure, the Panel issues the following procedural directions:

(i) The Panel orders a reasonable documentary exchange in these proceedings with a view to maintaining efficacy and economy, and invites the Parties to agree by or before 29 August 2014, on a form, method and schedule of exchange of documents between them;

(ii) The Panel permits the Parties to benefit from additional filings and supplemental briefing going forward and invites the Parties to agree on a reasonable exchange timetable going forward;

(iii) The Panel allows a video hearing as per the agreement of the Parties, but reserves its decision to order an in-person hearing and live testimony pending a further examination of the representations that will be proffered by each side, including the filing of any additional evidence which this Decision permits; and

(iv) The Panel permits both Parties at the hearing to challenge and test the veracity of statements made by witnesses.

If the Parties are unable to agree on a reasonable documentary exchange process or to agree on the scope and length of additional filings and supplemental briefing, the Panel will intervene and, with the input of the Parties, provide further guidance.

131)Based on the foregoing and the language and content of the IRP Procedure, the Panel concludes that this Declaration and its future Declaration on the Merits of this case are binding on the Parties.

132)The Panel reserves its views with respect to any other issues raised by the Parties for determination at the next stage of these proceedings. At that time, the Panel will consider the Parties' respective arguments in those regards.

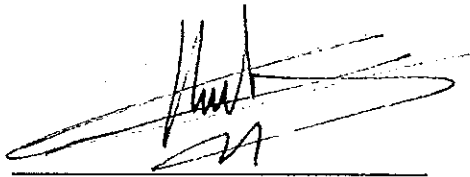
133)The Panel reserves its decision on the issue of costs relating to this stage of the proceeding until the hearing of the merits.

This 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 Declaration of this Panel.

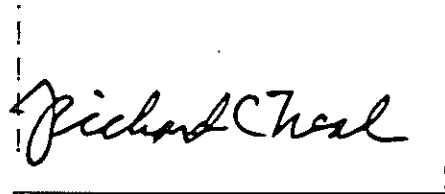
This Declaration on the IRP Procedure has thirty-three (33) pages.

Thursday, 14 August 2014

Place of the IRP, Los Angeles, California.



Professor Catherine Kessedjian



Hon. Richard C. Neal

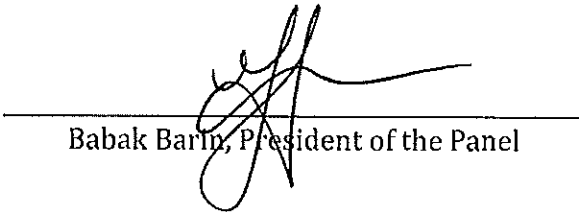

Babak Barin, President of the Panel

EXHIBIT 3

gTLD Applicant Guidebook

Version 2012-06-04



4 June 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at <http://gnso.icann.org/issues/new-gtlds>.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gns0.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.

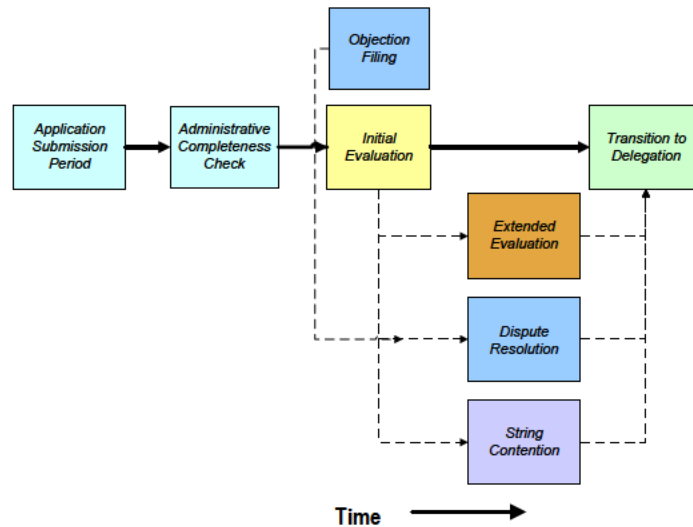


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

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 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.

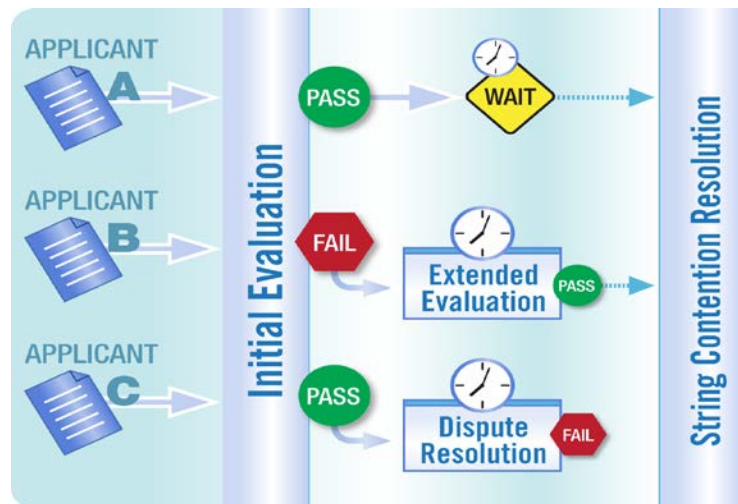


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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:

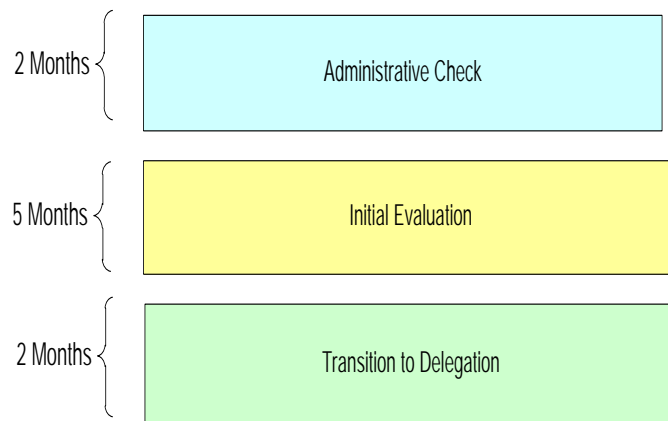


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

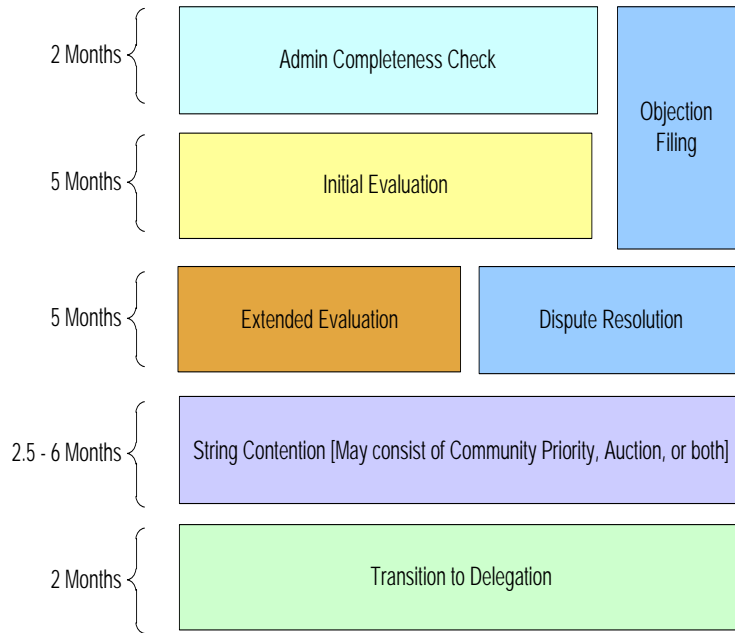


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

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 round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

1.5.2 Fees Required in Some Cases

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees¹⁰ include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

¹⁰ The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider's rules.

ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- **Community Priority Evaluation Fee** – In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel's review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

1.5.3 Payment Methods

Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.¹¹

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider's instructions.

1.5.4 Requesting a Remittance Form

The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.6 Questions about this Applicant Guidebook

For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

¹¹ Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

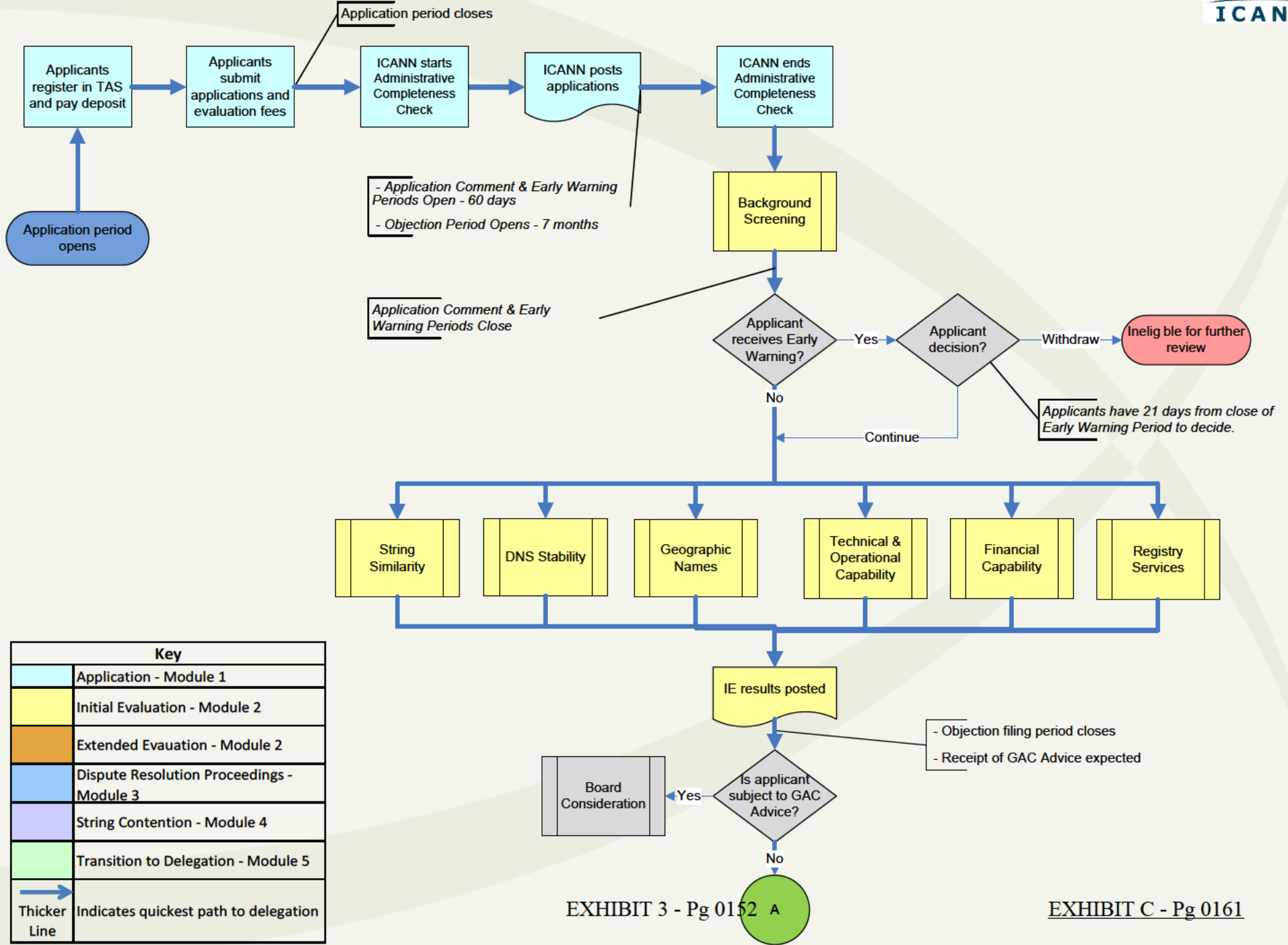
Currently, questions may be submitted via <newgTld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

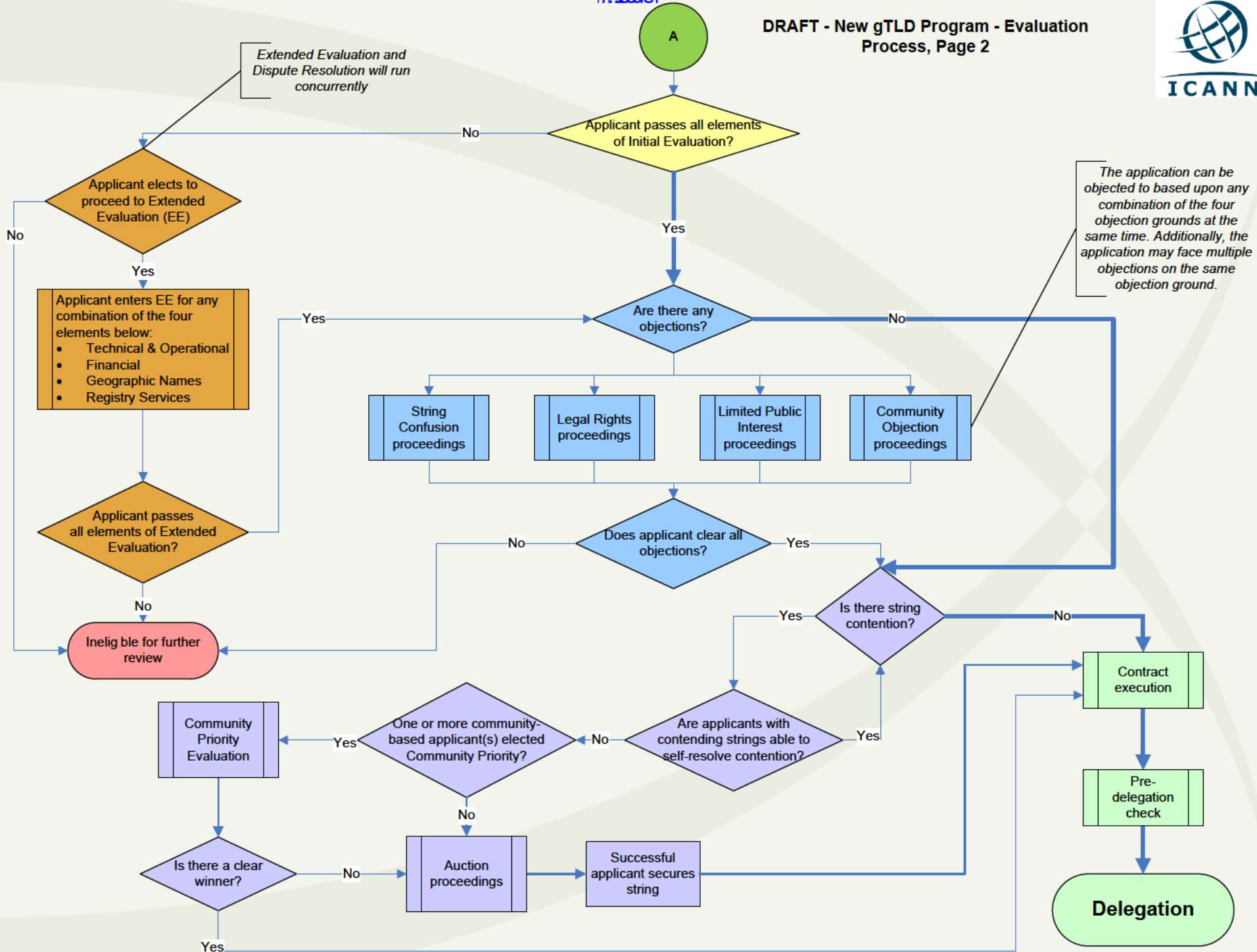


DRAFT - New gTLD Program - Evaluation Process



Key	
	Application - Module 1
	Initial Evaluation - Module 2
	Extended Evaluation - Module 2
	Dispute Resolution Proceedings - Module 3
	String Contention - Module 4
	Transition to Delegation - Module 5
	Indicates quickest path to delegation
	Thicker Line

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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
奧林匹克	奧林匹亞	奧林匹克
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	لال‌ال‌رم‌ح‌ال‌ا
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 Names⁶

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as "exceptionally reserved" by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the "Separable Country Names List," or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like "the." A transposition is considered a change in the sequence of the long or short-form name, for example, "RepublicCzech" or "IslandsCayman."

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant's interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

2.2.3.3 TLD Zone Contents

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD's DNS servers.

- NS records and in-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.



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 India
		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: i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+0066.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. Submission of IDN tables in a standards-based format is encouraged.	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	Descriptions should include: <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. 		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. 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.	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	Explanations should clearly state: <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	Descriptions should include: <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	Explanations should clearly state: <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	Descriptions should include proposed policies, if any, on the following: <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	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. 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. Endorsements presented as supporting documentation for this question should be submitted in the original language.			

	#	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> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> explain the various registration states as well as the criteria and procedures that are used to change state; describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and describe resourcing plans for this aspect of the criteria (number and 	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

	#	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"> 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; Plans are adequately resourced in the planned costs detailed in the financial section; Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and 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"> Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and 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"> 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; Details of well-developed abuse policies and procedures; Plans are sufficient to result in compliance with contractual requirements; Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and 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
		registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <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. A complete answer is expected to be no more than 20 pages.					
	29	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>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	Complete answer describes mechanisms designed to: <ol 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> <ol 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> <ol 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"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.</p>	
	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> <ul 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> <ul 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> <ul 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> <ol style="list-style-type: none"> (1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element; (2) A description of leading practices being or to be followed; (3) Backup procedures 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, or committed or readily available to carry out this function. <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> <ol style="list-style-type: none"> (1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement); (3) Escrow capabilities 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, or readily available to carry out this function. <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	DNSSEC: Provide <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	Complete answer demonstrates: <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. 	1 - meets requirements: Response includes <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. 0 - fails requirements: Does not meet all the requirements to score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	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>
<p>Demonstration of Financial Capability</p>	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
		(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges. A complete answer is expected to be no more than 10 pages.	N				
	49	(a) Contingency Planning: describe your contingency planning: <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. 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). 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. A complete answer is expected to be no more than 10 pages.	N		0-2	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.	2 - exceeds requirements: Response meets all attributes for a score of 1 and: <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. 1 - meets requirements: <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. 0 - fails requirements: Does not meet all the requirements to score a 1.
		(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe: <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. Provide an explanation if you do not believe there is any chance of reduced funding.	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	Year 1	Year 2	Year 3		
I) Projected Cash Inflows and Outflows							
A) Forecasted registration volume							
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05	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.	
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:							
i) Marketing Labor							
ii) Customer Support Labor		5 000	68 000	71 000	74 000	Costs are further detailed and explained in response to question 47.	
iii) Technical Labor		32 000	45 000	47 000	49 000		
G) Marketing		40 000	44 000	26 400	31 680		
H) Facilities		7 000	10 000	12 000	14 400		
I) General & Administrative		14 000	112 000	122 500	136 000		
J) Interest and Taxes		27 500	29 000	29 800	30 760		
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):							
i) Hot site maintenance		5 000	7 500	7 500	7 500		Provide a list and associated cost for each outsourced function. Outsourcing hot site to ABC Company cost based on number of servers hosted and customer support. Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management.
ii) Partial Registry Functions		32 000	37 500	41 000	43 000		
iii) (list type of activities being outsourced)		-	-	-	-		
iv) (list type of activities being outsourced)		-	-	-	-		
v) (list type of activities being outsourced)		-	-	-	-		
vi) (list type of activities being outsourced)		-	-	-	-		
L) Other Operating Costs		12 200	18 000	21 600	25 920		
M) Total Operating Cash Outflows		199 700	437 000	450 800	493 260		
N) Projected Net Operating Cash flow	E - M	(199 700)	(92 000)	46 000	205 079		
Ia) Break out of Fixed and Variable Operating Cash Outflows							
A) Total Variable Operating Costs							
		92 000	195 250	198 930	217 416	Variable Costs: -Start Up equals all labor plus 75% of marketing. -Years 1 through 3 equal 75% of all labor plus 50% of Marketing and 30% of G&A and Other Operating Costs Fixed Costs: equals Total Costs less Variable Costs	
B) Total Fixed Operating Costs		107 700	241 750	251 870	275 844		
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199 700	437 000	450 800	493 260	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	Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50 Commensurate with Question 24 Commensurate with Question 26 Commensurate with Question 35 Commensurate with Question 38 Commensurate with Question 43	
B) Provision of Whois		-	6 000	6 600	7 260		
C) DNS Resolution for Registered Domain Names		-	7 000	7 700	8 470		
D) Registry Data Escrow		-	8 000	8 800	9 680		
E) Maintenance of Zone in accordance with DNSSEC		-	9 000	9 900	10 890		
F) Other		-	-	-	-		
G) Total Critical Function Cash Outflows		-	35 000	38 500	42 350		
III) Projected Capital Expenditures							
A) Hardware							
B) Software		98 000	21 000	16 000	58 000	-Hardware & Software have a useful life of 3 years	
C) Furniture & Other Equipment		32 000	18 000	24 000	11 000		
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)		-	-	-	-	-Furniture & other equipment have a useful life of 5 years	
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							
B) Accounts receivable		668 300	474 300	413 000	471 679		
C) Other current assets		-	40 000	60 000	80 000		
D) Total Current Assets		668 300	584 300	579 000	711 679		
E) Accounts payable		41 000	110 000	113 000	125 300		
F) Short-term Debt		-	-	-	-		
G) Other Current Liabilities		-	-	-	-		
H) Total Current Liabilities		41 000	110 000	113 000	125 300		
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Yr - Cur Yr	173 000	234 000	288 000	373 000		
J) 3-year Reserve		186 000	186 000	186 000	186 000	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	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.	
B) Capital expenditures	= Sec. III) FE	(173 000)	(61 000)	(54 000)	(85 000)		
C) Change in Non Cash Current Assets	= Sec. IV) (B) (C): Prior Yr - Cur Yr	n/a	(110 000)	(56 000)	(74 000)		
D) Change in Total Current Liabilities	= Sec. IV) H: Cur Yr - Prior Yr	41 000	69 000	3 000	12 300		
E) Debt Adjustments	= Sec IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-		
F) Other Adjustments		-	-	-	-		
G) Projected Net Cash flow		(331 700)	(194 000)	(61 000)	58,379		
VI) Sources of funds							
A) Debt:							
i) On-hand at time of application		1 000 000	-	-	-	See below for comments on funding. Revenues are further detailed and explained in response to question 48.	
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	n/a				
D)	Change in Total Current Liabilities					
E)	Debt Adjustments	n/a				
F)	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: WBS (2/15)						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
I) Projected Cash inflows and outflows							
A)	Forecasted registration volume						
B)	Registration fee						
C)	Registration cash inflows						
D)	Other cash inflows						
	E) Total Cash Inflows						
Projected Operating Cash Outflows							
F) Labor:							
i)	Marketing Labor						
ii)	Customer Support Labor						
iii)	Technical Labor						
G)	Marketing						
H)	Facilities						
I)	General & Administrative						
J)	Interest and Taxes						
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):							
i)	(list type of activities being outsourced)						
ii)	(list type of activities being outsourced)						
iii)	(list type of activities being outsourced)						
iv)	(list type of activities being outsourced)						
v)	(list type of activities being outsourced)						
vi)	(list type of activities being outsourced)						
L)	Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa) Break out of Fixed and Variable Operating Cash Outflows							
A)	Total Variable Operating Costs						
B)	Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb) Break out of Critical Function Operating Cash Outflows							
A)	Operation of SRS						
B)	Provision of Whois						
C)	DNS Resolution for Registered Domain Names						
D)	Registry Data Escrow						
E)	Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III) Projected Capital Expenditures							
A)	Hardware						
B)	Software						
C)	Furniture & Other Equipment						
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)							
i)							
ii)							
iii)							
iv)							
v)							
vi)							
E)	Other Capital Expenditures						
	F) Total Capital Expenditures						
IV) Projected Assets & Liabilities							
A) Cash							
B)	Accounts receivable						
C)	Other current assets						
	D) Total Current Assets						
E) Accounts payable							
F)	Short-term Debt						
G)	Other Current Liabilities						
	H) Total Current Liabilities						
I) Total Property, Plant & Equipment (PP&E)							
J)	3-year Reserve						
K)	Other Long-term Assets						
	L) Total Long-term Assets						
M) Total Long-term Debt							
V) Projected Cash flow (excl. 3-year Reserve)							
A)	Net operating cash flows						
B)	Change in Non Cash Current Assets						
C)	Capital expenditures						
D)	Change in Non Cash 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:							



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 DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 ("Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law"), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
 - a. Level of global recognition of both entities;
 - b. Length of time the entities have been in existence;
 - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6ter 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:

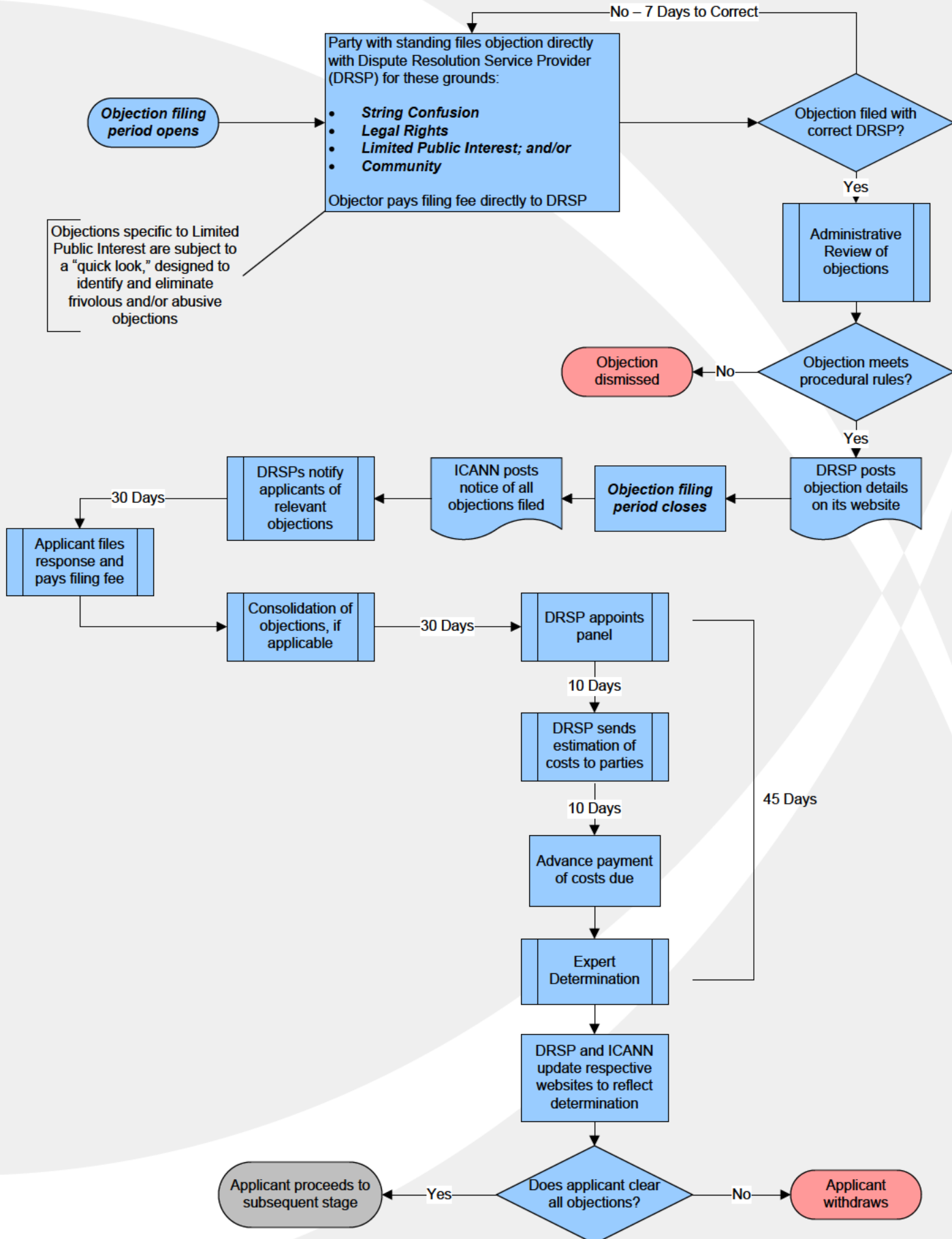
- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users 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.

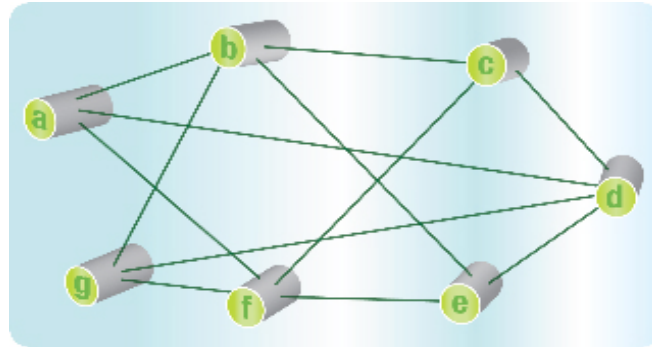


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

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.

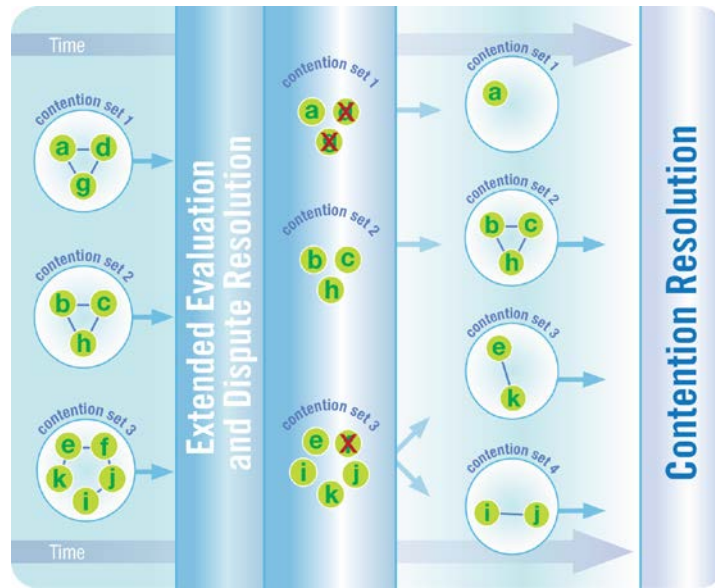


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

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.

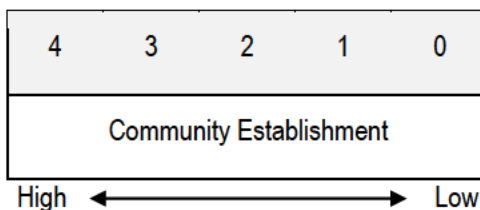
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

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

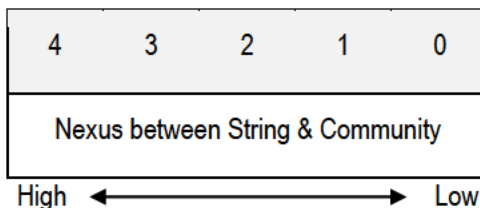
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international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

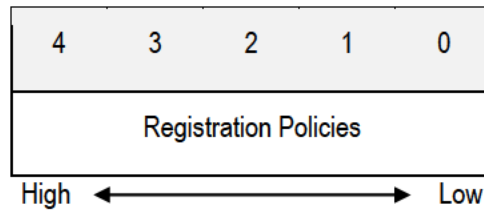
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"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

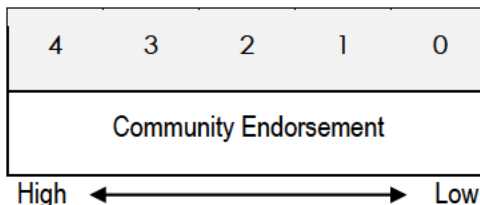
- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the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

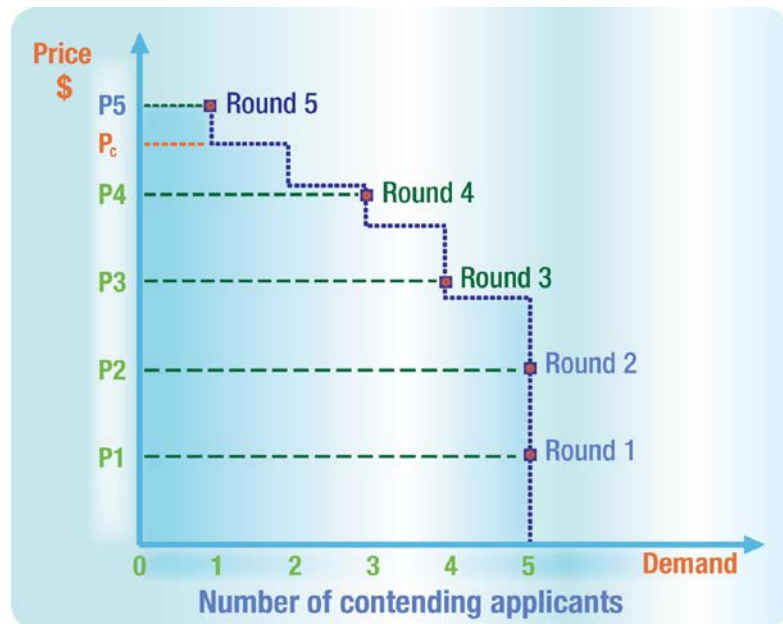


Figure 4-4 – Example of an auction for five mutually-contending applications.

- 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.

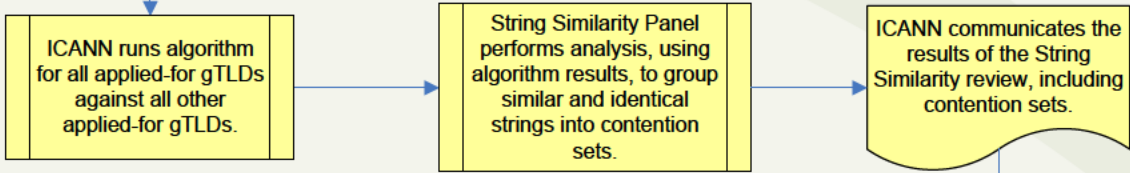
DRAFT - New gTLD Program - String Contention



Application/
Admin Check



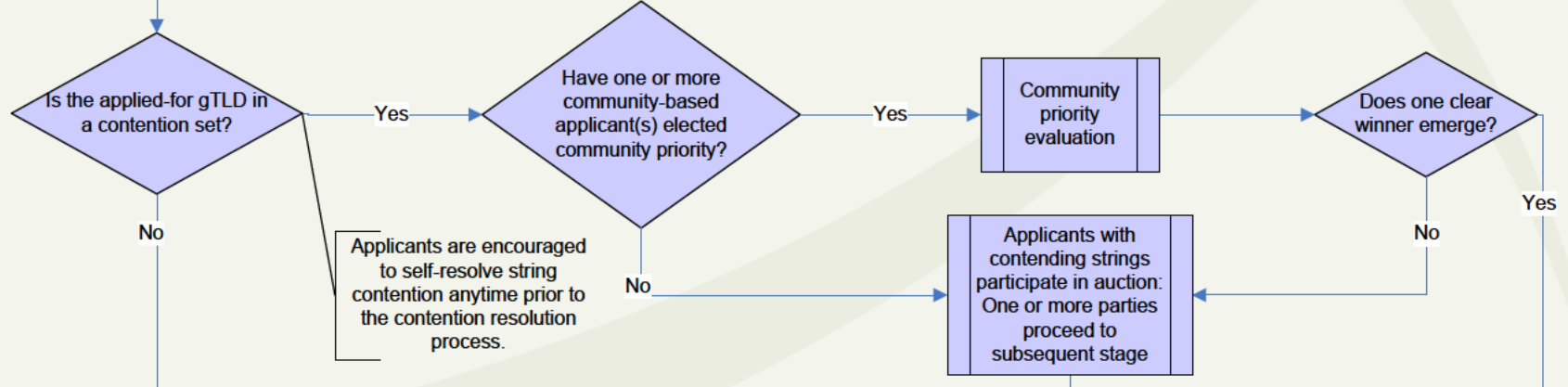
Initial Evaluation (IE)
String Review



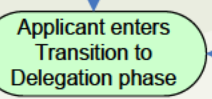
IE + EE
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to
Delegation





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.

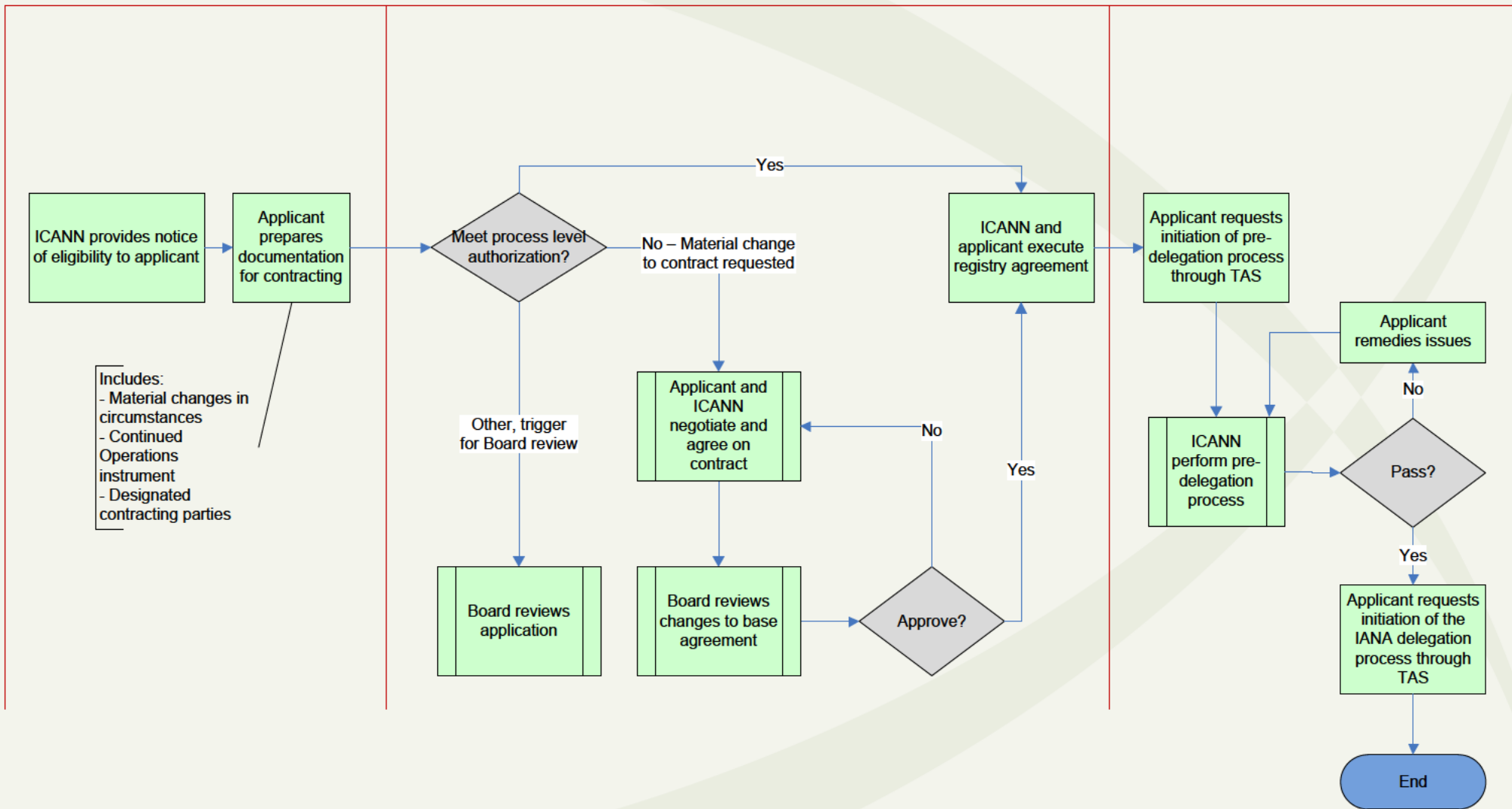
Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* (“Specification 1”).

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

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(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*
ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

6.5 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnatee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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7.7 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.8 General Notices. Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN’s web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient’s facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN’s website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[]
[]
[]

Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an "ICANN Determination"). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

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* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[]
President and CEO

Date:

[Registry Operator]

By: _____
[]
[]

Date:

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EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2. functional and performance specifications for the provision of Registry Services;
 - 1.2.3. Security and Stability of the registry database for the TLD;
 - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
 - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2 DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
 - (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.

5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
 - 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
 - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
 - 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
 - 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213

Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
IP Address: 192.0.2.123
IP Address: 2001:0DB8::1
Registrar: Example Registrar, Inc.
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www.example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. Zone File Access

2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. Use of Data by User. Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. Term of Use. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. No Fee for Access. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2 Co-operation

2.2.1. Assistance. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3 ICANN Access. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. Bulk Registration Data Access to ICANN

3.1. **Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. **Contents.** Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. **Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3. **Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. **Exceptional Access to Thick Registration Data.** In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label "EXAMPLE"** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
 - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;
 - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
 - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquires related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

- ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
 5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
 6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. **Definitions**

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. **Service Level Agreement Matrix**

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.

4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. EPP

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “IP address“ of the EPP servers of the TLD being monitored and make an “EPP test”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “EPP test” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitored.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

**TRADEMARK CLEARINGHOUSE
4 JUNE 2012**

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

- 2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.
 - 2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.
 - 2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).
- 2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.
- 2.4 Contractual Relationship.
 - 2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.
 - 2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.
 - 2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.
 - 2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below.

The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
4 JUNE 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

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1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

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effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

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the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
 - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
 - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
 - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
 - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
 - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
 - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

- 5.9.2.1. the nature of the domain name;
- 5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and
- 5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

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- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) "deliberate material falsehood," that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
- 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
- 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of "deliberate material falsehood" shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(b) impairing the distinctive character or the reputation of the complainant's mark; or

(c) creating a likelihood of confusion with the complainant's mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
- 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
- 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
- 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
- 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
- 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel's own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
- 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
 - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
 - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
 - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
 - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider ("Provider") is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant's satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

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- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

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11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application - Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

EXHIBIT 4

[English \(/translations\)](#) [العربية \(/ar\)](#) [Español \(/es\)](#)

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[IANA STEWARDSHIP & ACCOUNTABILITY \(/STEWARDSHIP-ACCOUNTABILITY\)](#)

Resources

- ▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)
(/resources/pages/welcome-2012-02-25-en)

- ▶ [Board](#)
(/resources/pages/board-of-directors-2014-03-19-en)

- ▶ [Accountability](#)
(/resources/accountability)

- ▶ [Governance](#)
(/resources/pages/governance-2012-02-25-en)

- ▶ [Groups](#)
(/resources/pages/groups-2012-02-06-en)

[Business](#)
(/resources/pages/business)

- ▶ [Contractual](#)

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

This page is available in:

English | العربية (<http://www.icann.org/resources/pages/bylaws-2012-02-25-ar>) | Deutsch (<http://www.icann.org/resources/pages/bylaws-2012-02-25-de>) | Español (<http://www.icann.org/resources/pages/bylaws-2012-02-25-es>) | Français (<http://www.icann.org/resources/pages/bylaws-2012-02-25-fr>) | Italiano (<http://www.icann.org/resources/pages/bylaws-2012-02-25-it>) | 日本語 (<http://www.icann.org/resources/pages/bylaws-2012-02-25-ja>) | 한국어 (<http://www.icann.org/resources/pages/bylaws-2012-02-25-ko>) | Português (<http://www.icann.org/resources/pages/bylaws-2012-02-25-pt>) | Русский (<http://www.icann.org/resources/pages/bylaws-2012-02-25-ru>) | 中文 (<http://www.icann.org/resources/pages/bylaws-2012-02-25-zh>)

As amended 30 July 2014

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▶ Public Comment (/public-comments)	
▶ Technical Functions (/resources/pages/technical-functions-2015-10-15-en)	ARTICLE I: MISSION AND CORE (Council of Registrars) 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
▶ Contact	

(/resources/pages/contact-2012-02-06-en)

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):

► Help

(/resources/pages/help-2012-02-03-en)

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 (Council of Registrars) 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)

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

- 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

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(/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

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 (/en/about/governance/bylaws#IV-2), 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 \(/en/about/governance/bylaws#IV-3\)](#).

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

The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board") shall consist of sixteen voting members ("Directors"). In addition, four non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in Section 9 of this Article. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

1. The Directors shall consist of:

a. Eight voting members selected by the Nominating Committee established by Article VII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.

b. Two voting members selected by the Address Supporting Organization (Supporting Organization) according to the provisions of Article VIII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.

c. Two voting members selected by the Country-Code Names Supporting Organization (Supporting Organization) according to the provisions of Article IX of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.

d. Two voting members selected by the Generic Names Supporting Organization (Supporting Organization) according to the provisions of Article X of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.

e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.

f. The President ex officio, who shall be a voting member.

2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN (Internet Corporation for Assigned Names and Numbers) Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 3 of this Article. At no time when it makes its selection shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) from countries in any one Geographic Region (as defined in Section 5 of this Article) to exceed five; and the Nominating Committee shall ensure when it makes its selections that the Board includes at least one Director who is from a country in each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region ("Diversity Calculation").

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

candidate has a permanent residence and place of habitation.

3. In carrying out their responsibilities to fill Seats 9 through 15, the Supporting Organizations (Supporting Organizations) and the At-Large Community shall seek to ensure that the ICANN (Internet Corporation for Assigned Names and Numbers) Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 3 of this Article. At any given time, no two Directors selected by a Supporting Organization (Supporting Organization) shall be citizens from the same country or of countries located in the same Geographic Region.

For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Supporting Organization (Supporting Organization) or the At-Large Community to use for selection purposes. For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

4. The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors, not including the President.

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN (Internet Corporation for Assigned Names and Numbers) Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;
2. Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);
3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;
4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD (generic Top Level Domain) registries and registrars; with ccTLD (Country

Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

5. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

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

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

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by Article VII, Section 8.

Section 5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the selection of Directors by the Nominating Committee, each Supporting Organization (Supporting Organization) and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization (Supporting Organization). One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 6. DIRECTORS' CONFLICTS OF INTEREST

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

Section 7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN (Internet Corporation for Assigned Names and Numbers) and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

Section 8. TERMS OF DIRECTORS

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:

a. The regular terms of Seats 1 through 3 shall begin at the conclusion of

ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2003 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;

b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2004 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;

c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2005 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;

d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2015;

e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2013; and

f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2014.

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.

3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

4. At least six months before the date specified for the commencement of the term as specified in paragraphs 1.d-f above, any Supporting Organization (Supporting Organization) or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its selection.
5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (Note: In the period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.)
6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:
 - a. One appointed by the Governmental Advisory Committee (Advisory Committee);
 - b. One appointed by the Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
 - c. One appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
 - d. One appointed by the Internet Engineering Task Force.
2. The non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its appointment.
3. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.
4. The non-voting liaisons shall be entitled to attend Board meetings and participate

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

Section 10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers)) or by giving written notice thereof to the President or the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to Section 12 of this Article.

Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

1. Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization (Supporting Organization), notice must be provided to that Supporting Organization (Supporting Organization) at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee (Advisory Committee) at the same time notice is provided to the Director.

2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee), any non-voting liaison may be removed, following notice to that liaison and to the organization by which that liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that liaison following such notice. The Board may request the Governmental Advisory Committee (Advisory Committee) to consider the replacement of the non-voting liaison appointed by that Committee if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization (Supporting Organization), in which case that vacancy shall be filled by that Supporting Organization (Supporting Organization), or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of Article XIII of these Bylaws. The selecting body shall give written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

2. The organizations selecting the non-voting liaisons identified in Section 9 of this Article are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

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

Section 14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a

the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). In the absence of designation, special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 16. NOTICE OF MEETINGS

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

Section 17. QUORUM

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

Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN (Internet Corporation for Assigned Names and Numbers) adopts and

implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN (Internet Corporation for Assigned Names and Numbers) shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

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

Section 20. ELECTRONIC MAIL

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN (Internet Corporation for Assigned Names and Numbers) shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 21. RIGHTS OF INSPECTION

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

1. Except for the President of ICANN (Internet Corporation for Assigned Names and Numbers), who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.

2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN (Internet Corporation for Assigned Names and Numbers) for services to ICANN (Internet Corporation for Assigned Names and Numbers) as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in

§53.4958-4(b) of the Treasury Regulations.

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

4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

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

6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.

7. As used in this Section 22, the following terms shall have the following meanings:

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

(b) A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full

disclosure by ICANN (Internet Corporation for Assigned Names and Numbers) to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

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

8. Each of the non-voting liaisons to the Board, with the exception of the Governmental Advisory Committee (Advisory Committee) liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison. If the Board determines to offer a compensation arrangement to one or more non-voting liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 23. PRESUMPTION OF ASSENT

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

ARTICLE VII: NOMINATING COMMITTEE

Section 1. DESCRIPTION

There shall be a Nominating Committee of ICANN (Internet Corporation for Assigned Names and Numbers), responsible for the selection of all ICANN (Internet Corporation for Assigned Names and Numbers) Directors except the President and those Directors selected by ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), and for such other selections as are set forth in these Bylaws.

Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board;
2. A non-voting Chair-Elect, appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board as a non-voting advisor;
3. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
5. A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization (Supporting Organization), established by Article X of these Bylaws, as follows:
 - a. One delegate from the Registries Stakeholder Group;
 - b. One delegate from the Registrars Stakeholder Group;
 - c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
 - d. One delegate from the Internet Service Providers Constituency;
 - e. One delegate from the Intellectual Property Constituency; and
 - f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.
8. One voting delegate each selected by the following entities:

- a. The Council of the Country Code Names Supporting Organization (Supporting Organization) established by Article IX of these Bylaws;
- b. The Council of the Address Supporting Organization (Supporting Organization) established by Article VIII of these Bylaws; and
- c. The Internet Engineering Task Force.

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

Section 3. TERMS

Subject to the provisions of the Transition Article of these Bylaws:

1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
2. The regular term of each voting delegate shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the immediately following ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.
3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.
4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.
5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article, or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a

by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.

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

Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN (Internet Corporation for Assigned Names and Numbers);
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'s activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 5. DIVERSITY

In carrying out its responsibilities to select members of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and selections to any other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into

account the continuing membership of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by Section 4 of this Article, make selections guided by Core Value 4 in Article I, Section 2.

Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 7. PROCEDURES

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

Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

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

Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (Internet Corporation for Assigned Names and Numbers) (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 2 of this Article.

ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

1. The Address Supporting Organization (Supporting Organization) (ASO (Address Supporting Organization)) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.
2. The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization (NRO (Number Resource Organization)), an

Number Resource Organization (NRO (Number Resource Organization)), an organization of the existing regional Internet registries (RIRs).

Section 2. ADDRESS COUNCIL

1. The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.
2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO (Address Supporting Organization).

ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

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

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO (Country Code Names Supporting Organization)'s community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), committees, and constituencies under ICANN (Internet Corporation for Assigned Names and Numbers).

Policies that apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO (Country Code Names Supporting Organization) may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD (Country Code Top Level Domain) managers, assisting in skills building within the global community of ccTLD (Country Code Top Level Domain) managers, and enhancing operational and technical cooperation among ccTLD (Country Code Top Level Domain) managers.

Section 2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall consist of (i) ccTLD (Country Code Top Level Domain) managers that have agreed in writing to be

members of the ccNSO (Country Code Names Supporting Organization) (see Section 4(2) of this Article) and (ii) a ccNSO (Country Code Names Supporting Organization) Council responsible for managing the policy-development process of the ccNSO (Country Code Names Supporting Organization).

Section 3. ccNSO (Country Code Names Supporting Organization) COUNCIL

1. The ccNSO (Country Code Names Supporting Organization) Council shall consist of (a) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 4(7) through (9) of this Article; (b) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee; (c) liaisons as described in paragraph 2 of this Section; and (iv) observers as described in paragraph 3 of this Section.

2. There shall also be one liaison to the ccNSO (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee (Advisory Committee); (b) the At-Large Advisory Committee (Advisory Committee); and (c) each of the Regional Organizations described in Section 5 of this Article. These liaisons shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

3. The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization)

Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

4. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (b) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (c) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

5. A ccNSO (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

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

7. A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting

Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) members shall be filled for the unexpired term by the procedure described in Section 4(7) through (9) of this Article.

8. The role of the ccNSO (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO (Country Code Names Supporting Organization) members as described in Section 4(6) of this Article) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

9. The ccNSO (Country Code Names Supporting Organization) Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. Notification of the ccNSO (Country Code Names Supporting Organization) Council's selections shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

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

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

12. Except as provided by paragraphs 9 and 10 of this Section, the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other means, provided that all ccNSO (Country Code Names Supporting Organization) Council members are permitted to participate by at least one means described in paragraph 14 of this Section. Except where determined by a majority vote of the members of the ccNSO (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

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

14. Members of the ccNSO (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO (Country Code Names Supporting Organization) Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (b) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (c) there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of

the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 4. MEMBERSHIP

1. The ccNSO (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in paragraph 2 of this Section shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing an ISO (International Organization for Standardization) 3166 country-code top-level domain and referred to in the IANA (Internet Assigned Numbers Authority) database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.

2. Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization) member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in the ccNSO (Country Code Names Supporting Organization), (a) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (a) adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide

by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names Supporting Organization) Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO (Country Code Names Supporting Organization) nor membership in any Regional Organization described in Section 5 of this Article shall be a condition for access to or registration in the IANA (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

4. The Geographic Regions of ccTLDs shall be as described in Article VI, Section 5 of these Bylaws. For purposes of this Article, managers of ccTLDs within a Geographic Region that are members of the ccNSO (Country Code Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

5. Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager. In the absence of such a designation, the ccTLD (Country Code Top Level Domain) manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database.

6. There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to

members of the ccNSO (Country Code Names Supporting Organization) to address the meeting. To the extent practicable, annual meetings of the ccNSO (Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

7. The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members from each Geographic Region (see Section 3(1)(a) of this Article) shall be selected through nomination, and if necessary election, by the ccNSO (Country Code Names Supporting Organization) members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

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

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

The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

10. Subject to clause 4(11), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership to the extent, and only to the extent, that the policies (a) only address issues that are within scope of the ccNSO (Country Code Names Supporting Organization) according to Article IX, Section 6 and Annex C; (b) have been developed through the ccPDP as described in Section 6 of this Article, and (c) have been recommended as such by the ccNSO (Country Code Names Supporting Organization) to the Board, and (d) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

11. A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) Council stating that (a) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section), and (b) failure to implement the policy would not impair DNS (Domain Name System) operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names Supporting Organization) Council shall make findings as to (a) whether the ccNSO (Country Code Names Supporting Organization) members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section) and (b) whether failure to implement the policy would impair DNS (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which

may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. REGIONAL ORGANIZATIONS

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

Section 6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

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

2. In developing global policies within the scope of the ccNSO (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 7. STAFF SUPPORT AND FUNDING

1. Upon request of the ccNSO (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council.

Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

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

3. The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in paragraphs 1 and 2 of this Section, as approved by the ccNSO (Country Code Names Supporting Organization) members.

4. Written notices given to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO (Country Code Names Supporting Organization) Council on request. The ICANN (Internet Corporation for Assigned Names and Numbers) Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) manager's designated representative, and which shall be posted on the Website.

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (Supporting Organization) (GNSO (Generic Names Supporting Organization)), which shall be responsible for developing and recommending to the ICANN (Internet Corporation for Assigned Names and Numbers) Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) shall consist of:

- (i) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 5 of this Article;
- (ii) Four Stakeholder Groups organized within Houses as described in Section 5 of this Article;
- (iii) Two Houses within the GNSO (Generic Names Supporting Organization) Council as described in Section 3(8) of this Article; and
- (iv) a GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization), as described in Section 3 of this Article.

Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors.

Section 3. GNSO (Generic Names Supporting Organization) COUNCIL

1. Subject to the provisions of Transition Article XX, Section 5 of these Bylaws and as described in Section 5 of Article X, the GNSO (Generic Names Supporting Organization) Council shall consist of:

- a. three representatives selected from the Registries Stakeholder Group;
- b. three representatives selected from the Registrars Stakeholder Group;
- c. six representatives selected from the Commercial Stakeholder Group;
- d. six representatives selected from the Non-Commercial Stakeholder Group; and
- e. three representatives selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO (Generic Names Supporting Organization) Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in Section 3(8) of this Article) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO (Generic Names Supporting Organization) Council at the same time.

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

There may also be liaisons to the GNSO (Generic Names Supporting Organization) Council from other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and/or Advisory Committees (Advisory Committees), from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO (Generic Names Supporting Organization) Council by providing written notice to the Chair of the GNSO (Generic Names Supporting Organization) Council and to the ICANN (Internet Corporation for Assigned Names and

Numbers) Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO (Generic Names Supporting Organization) Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO (Generic Names Supporting Organization) Council.

2. Subject to the provisions of the Transition Article XX, and Section 5 of these Bylaws, the regular term of each GNSO (Generic Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO (Generic Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

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

to the GNSO (Generic Names Supporting Organization) Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

3. A vacancy on the GNSO (Generic Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO (Generic Names Supporting Organization) Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO (Generic Names Supporting Organization) Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO (Generic Names Supporting Organization) Council member selected by the Nominating Committee may be removed for cause: i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 3(8) of this Article). Such removal shall be subject to reversal by the ICANN (Internet Corporation for Assigned Names and Numbers) Board on appeal by the affected GNSO (Generic Names Supporting Organization) Council member.

4. The GNSO (Generic Names Supporting Organization) Council is responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization). It shall adopt such procedures (the "GNSO (Generic Names Supporting Organization) Operating Procedures") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO (Generic Names Supporting Organization) Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO (Generic Names Supporting Organization) Council, the applicable procedures shall be as set forth in Section 6 of this Article.

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

6. The GNSO (Generic Names Supporting Organization) shall make selections to fill Seats 13 and 14 on the ICANN (Internet Corporation for Assigned Names and Numbers) Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO (Generic Names Supporting Organization), as described in Section 3(8) of this Article, shall make a selection to fill one of two ICANN (Internet Corporation for Assigned Names and Numbers) Board seats, as outlined below; any such selection must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

- a. the Contracted Party House shall select a representative to fill Seat 13;
and
- b. the Non-Contracted Party House shall select a representative to fill Seat
14

Election procedures are defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

7. The GNSO (Generic Names Supporting Organization) Council shall select the GNSO (Generic Names Supporting Organization) Chair for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. Each House (as described in Section 3.8 of this Article) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO (Generic Names Supporting Organization) Council, for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO (Generic Names Supporting Organization) Operating Procedures. In the event that the GNSO (Generic Names Supporting Organization) Council has not elected a GNSO (Generic Names Supporting Organization) Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO (Generic Names Supporting Organization) Co-Chairs until a successful election can be held.

8. Except as otherwise required in these Bylaws, for voting purposes, the GNSO (Generic Names Supporting Organization) Council (see Section 3(1) of this Article) shall be organized into a bicameral House structure as described below:

- a. the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee for a total of seven voting members; and
- b. the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House

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

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

- a. Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
- b. Initiate a Policy Development Process ("PDP (Policy Development Process)") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- c. Initiate a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of GNSO (Generic Names Supporting Organization) Supermajority.
- d. Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- e. Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.
- f. Changes to an Approved PDP (Policy Development Process) Team Charter: For any PDP (Policy Development Process) Team Charter approved under d. or e. above, the GNSO (Generic Names Supporting Organization) Council may approve an amendment to the Charter through a simple majority vote of each House.
- g. Terminate a PDP (Policy Development Process): Once initiated, and prior to the publication of a Final Report, the GNSO (Generic Names Supporting Organization) Council may terminate a PDP (Policy Development Process) only for significant cause, upon a motion that passes with a GNSO (Generic Names Supporting Organization) Supermajority Vote in favor of termination.
- h. Approve a PDP (Policy Development Process) Recommendation Without a GNSO (Generic Names Supporting Organization)

Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO (Generic Names Supporting Organization) Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

i. Approve a PDP (Policy Development Process) Recommendation With a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority,

j. Approve a PDP (Policy Development Process) Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

k. Modification of Approved PDP (Policy Development Process) Recommendation: Prior to Final Approval by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, an Approved PDP (Policy Development Process) Recommendation may be modified or amended by the GNSO (Generic Names Supporting Organization) Council with a GNSO (Generic Names Supporting Organization) Supermajority vote.

l. A "GNSO (Generic Names Supporting Organization) Supermajority" shall mean: (a) two-thirds (2/3) of the Council members of each House, or (b) three-fourths (3/4) of one House and a majority of the other House."

Section 4. STAFF SUPPORT AND FUNDING

1. A member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager (Staff Manager).

2. ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting Organization) participants for travel to any meeting of the GNSO

Supporting Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose. ICANN (Internet Corporation for Assigned Names and Numbers) may, at its discretion, fund travel expenses for GNSO (Generic Names Supporting Organization) participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 5. STAKEHOLDER GROUPS

1. The following Stakeholder Groups are hereby recognized as representative of a specific group of one or more Constituencies or interest groups and subject to the provisions of the Transition Article XX, Section 5 of these Bylaws:

- a. Registries Stakeholder Group representing all gTLD (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers);
- b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers);
- c. Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet; and
- d. Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

2. Each Stakeholder Group is assigned a specific number of Council seats in accordance with Section 3(1) of this Article.

3. Each Stakeholder Group identified in paragraph 1 of this Section and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

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

- a. A detailed explanation of why the addition of such a Constituency will

improve the ability of the GNSO (Generic Names Supporting Organization) to carry out its policy-development responsibilities;

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

c. A recommendation for organizational placement within a particular Stakeholder Group; and

d. A proposed charter that adheres to the principles and procedures contained in these Bylaws.

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

5. The Board may create new Constituencies as described in Section 5(3) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN (Internet Corporation for Assigned Names and Numbers). In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO (Generic Names Supporting Organization) Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO (Generic Names Supporting Organization) shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 3(4) of this Article.

ARTICLE XI: ADVISORY COMMITTEES

Section 1. GENERAL

The Board may create one or more Advisory Committees (Advisory Committees) in addition to those set forth in this Article. Advisory Committee (Advisory Committee) membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees (Advisory Committees) shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees (Advisory Committees):

1. Governmental Advisory Committee (Advisory Committee)

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

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

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

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

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

f. The Governmental Advisory Committee (Advisory Committee) shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

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

h. The Board shall notify the Chair of the Governmental Advisory Committee (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of ICANN (Internet Corporation for Assigned Names and Numbers)'s supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

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

j. The advice of the Governmental Advisory Committee (Advisory Committee) on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN (Internet Corporation for Assigned Names and Numbers) Board determines to take an action that is not consistent with the Governmental Advisory Committee (Advisory Committee) advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee (Advisory Committee) and the ICANN (Internet Corporation for Assigned Names and Numbers) Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

k. If no such solution can be found, the ICANN (Internet Corporation for Assigned Names and Numbers) Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

2. Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

a. The role of the Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) ("SSAC (Security and Stability Advisory Committee)") is to advise the ICANN (Internet Corporation for Assigned

Committee) is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS (Domain Name System) infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS (Domain Name System) and address allocation and those engaged in operations planning.
2. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS (Domain Name System) and address allocation security in relation to identified risks and threats.
3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities and inform the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on their progress, as appropriate.
4. To report periodically to the Board on its activities.
5. To make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The SSAC (Security and Stability Advisory Committee)'s chair and members shall be appointed by the Board. SSAC (Security and Stability Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed and there

31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC (Security and Stability Advisory Committee) chair may provide recommendations to the Board regarding appointments to the SSAC (Security and Stability Advisory Committee). The SSAC (Security and Stability Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC (Security and Stability Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have to power to remove SSAC (Security and Stability Advisory Committee) appointees as recommended by or in consultation with the SSAC (Security and Stability Advisory Committee). (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC (Security and Stability Advisory Committee) shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC (Security and Stability Advisory Committee) chair shall recommend the re-appointment of all current SSAC (Security and Stability Advisory Committee) members to full or partial terms as appropriate to implement the provisions of this paragraph.)

c. The SSAC (Security and Stability Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

3. Root Server System Advisory Committee (Advisory Committee)

a. The role of the Root Server System Advisory Committee (Advisory Committee) ("RSSAC (Root Server System Advisory Committee)") is 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 Internet's Root Server System. It shall have the following responsibilities:

1. Communicate on matters relating to the operation of the Root Servers (Root Servers) and their multiple instances with the Internet technical community and the ICANN (Internet Corporation for Assigned Names and Numbers) community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS (Domain Name System) servers.

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

3. Engage in ongoing threat assessment and risk analysis of the

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

4. Respond to requests for information or opinions from the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors.

5. Report periodically to the Board on its activities.

6. Make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The RSSAC (Root Server System Advisory Committee) shall be led by two co-chairs. The RSSAC (Root Server System Advisory Committee)'s chairs and members shall be appointed by the Board.

1. RSSAC (Root Server System Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC (Root Server System Advisory Committee) chairs shall provide recommendations to the Board regarding appointments to the RSSAC (Root Server System Advisory Committee). If the board declines to appoint a person nominated by the RSSAC (Root Server System Advisory Committee) then it will provide the rationale for its decision. The RSSAC (Root Server System Advisory Committee) chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC (Root Server System Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have to power to remove RSSAC (Root Server System Advisory Committee) appointees as recommended by or in consultation with the RSSAC (Root Server System Advisory Committee). (Note: The first term under this paragraph shall commence on 1 July 2013 and end on 31 December 2015, and shall be considered a full term for all purposes. All other full terms under this paragraph shall begin on 1 January of the corresponding year. Prior to 1 July 2013, the RSSAC (Root Server System Advisory Committee) shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC (Root Server System Advisory Committee) chairs shall recommend the re-appointment of all current RSSAC (Root Server System Advisory Committee) members to full or partial terms as appropriate to implement the provisions of this paragraph.)

2. The RSSAC (Root Server System Advisory Committee) shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC (Root Server System Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

4. At-Large Advisory Committee (Advisory Committee)

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

b. The ALAC (At-Large Advisory Committee) shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 5 of Article VI.

c. Subject to the provisions of the Transition Article of these Bylaws, the regular terms of members of the ALAC (At-Large Advisory Committee) shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an even-numbered year.

2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an odd-numbered year.

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

4. The regular term of each member shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

d. The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee) pursuant to procedures adopted by the Committee.

e. The ALAC (At-Large Advisory Committee) shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to [Section 5 of Article VI \(/en/general/bylaws.htm#VI-5\)](#)) to the Nominating Committee.

f. Subject to the provisions of the [Transition Article of these Bylaws](#), the At-Large Advisory Committee (Advisory Committee) may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) Council.

g. There shall be one RALO for each Geographic Region established according to [Section 5 of Article VI](#). Each RALO shall serve as the main forum and coordination point for public input to ICANN (Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.

h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the

within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) according to paragraph 4(i) of this Section. If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO for each Geographic Region.
2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in Section 5 of Article VI (/en/general/bylaws.htm#VI-5)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.
3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.
4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.
5. Once the criteria and standards have been established as provided in this Clause i, the ALAC (At-Large Advisory Committee), with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.
6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC (At-Large Advisory Committee) in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS (At-Large Structure) applications shall be subject to review by the RALOs and by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.
 8. On an ongoing basis, the ALAC (At-Large Advisory Committee) may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.
- j. The ALAC (At-Large Advisory Committee) is also responsible, working in conjunction with the RALOs, for coordinating the following activities:
1. Making a selection by the At-Large Community to fill Seat 15 on the Board. Notification of the At-Large Community's selection shall be given by the ALAC (At-Large Advisory Committee) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).
 2. Keeping the community of individual Internet users informed about the significant news from ICANN (Internet Corporation for Assigned Names and Numbers);
 3. Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) policy-development process;
 4. Promoting outreach activities in the community of individual Internet users;
 5. Developing and maintaining on-going information and education programs, regarding ICANN (Internet Corporation for Assigned Names and Numbers) and its work;
 6. Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Region;
 7. Participating in the ICANN (Internet Corporation for Assigned Names and Numbers) policy development processes and providing input and advice that accurately reflects the views of individual Internet users;
 8. Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'s proposed policies and its decisions and their (potential) regional impact and (potential) effect

decisions and their (potential) regional impact and (potential) effect on individuals in the region;

9. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and

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

Section 3. PROCEDURES

Each Advisory Committee (Advisory Committee) shall determine its own rules of procedure and quorum requirements.

Section 4. TERM OF OFFICE

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

Section 5. VACANCIES

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

Section 6. COMPENSATION

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

ARTICLE XI-A: OTHER ADVISORY MECHANISMS

Section 1. EXTERNAL EXPERT ADVICE

1. Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). In those cases where there are relevant public bodies with

expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

2. Types of Expert Advisory Panels.

a. On its own initiative or at the suggestion of any ICANN (Internet Corporation for Assigned Names and Numbers) body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 1(3)(b) of this Article shall apply.

b. In addition, in accordance with Section 1(3) of this Article, the Board may refer issues of public policy pertinent to matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission to a multinational governmental or treaty organization.

3. Process for Seeking Advice-Public Policy Matters.

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

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

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

4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 1(2)(a) of this Article shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

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

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

Section 2. TECHNICAL LIAISON GROUP

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

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

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

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

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

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

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

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

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to

Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

- a. The filling of vacancies on the Board or on any committee;
- b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
- c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- d. The appointment of committees of the Board or the members thereof;
- e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;
- f. The approval of the annual budget required by Article XVI; or
- g. The compensation of any officer described in Article XIII.

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

Section 3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership,

duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

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

Section 2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chairman of the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 3. REMOVAL OF OFFICERS

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

Section 4. PRESIDENT

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

Section 5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance

with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN (Internet Corporation for Assigned Names and Numbers). If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN (Internet Corporation for Assigned Names and Numbers). The CFO shall be responsible for ICANN (Internet Corporation for Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual budget. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN (Internet Corporation for Assigned Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. ADDITIONAL OFFICERS

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

Section 8. COMPENSATION AND EXPENSES

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

Section 9. CONFLICTS OF INTEREST

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

with all business and other activities that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

ICANN (Internet Corporation for Assigned Names and Numbers) shall, to maximum extent permitted by the CNPBC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN (Internet Corporation for Assigned Names and Numbers), provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet Corporation for Assigned Names and Numbers) (including a member of any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN (Internet Corporation for Assigned Names and Numbers) as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN (Internet Corporation for Assigned Names and Numbers) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN (Internet Corporation for Assigned Names and Numbers) would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE XV: GENERAL PROVISIONS

Section 1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN (Internet Corporation for Assigned Names and Numbers), and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN (Internet Corporation for Assigned Names and Numbers) or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers) not

otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for Assigned Names and Numbers) and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans shall be made by or to ICANN (Internet Corporation for Assigned Names and Numbers) and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments made by ICANN (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses). ICANN (Internet Corporation for Assigned Names and Numbers) shall cause the annual report and the annual statement of certain transactions as required by the CNPBC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one

hundred twenty (120) days after the close of ICANN (Internet Corporation for Assigned Names and Numbers)'s fiscal year.

Section 4. ANNUAL BUDGET

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board, a proposed annual budget of ICANN (Internet Corporation for Assigned Names and Numbers) for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

Section 5. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

ARTICLE XVII: MEMBERS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN (Internet Corporation for Assigned Names and Numbers) document, or in any action of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE XIX: AMENDMENTS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of ICANN (Internet Corporation for Assigned Names and Numbers) may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.

ARTICLE XX: TRANSITION ARTICLE

Section 1. PURPOSE

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm)"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws (/en/general/bylaws.htm)"). [Explanatory Note (dated 10 December 2009): For Section 5(3) of this Article, reference to the Old Bylaws refers to the Bylaws as amended and restated through to 20 March 2009.]

Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in paragraph 5 of this Section 2, the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of Article VI, Section 12 of the New Bylaws, vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by Article VI, Section 9 of the New Bylaws. The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.
2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.
3. The "New Board" is that Board described in Article VI, Section 2(1) of the New Bylaws.
4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in Article VII, Section 2 of the New Bylaws, with terms to end at the

conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in Article VI, Section 8(1)(a)-(c) of the New Bylaws, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of that selection.

5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN (Internet Corporation for Assigned Names and Numbers) in 2003 that begins not less than seven calendar days after the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors. Subject to Section 4 of this Article, the Directors (Article VI, Section 2(1)(a)-(d)) and non-voting liaisons (Article VI, Section 9) as to which the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received notice of selection shall, along with the President (Article VI, Section 2(1)(e)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary's receipt of notice of their selection.

6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.

7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.

8. In applying the term-limitation provision of Section 8(5) of Article VI, a Director's service on the Board before the Effective Date and Time of the New Board shall count as one term.

Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization (Supporting Organization) shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 (/aso/aso-mou-26aug99.htm) between ICANN (Internet Corporation for Assigned Names and Numbers) and a group of regional Internet

registries (RIRs), and amended in October 2000 (/aso/aso-mou-amend1-25sep00.htm), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization (Supporting Organization) shall make selections, and give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws; and
2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization (Supporting Organization), as called for in Article VII, Section 2(8)(f) of the New Bylaws.

With respect to the ICANN (Internet Corporation for Assigned Names and Numbers) Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization (Supporting Organization) may select those Directors from among the persons it previously selected as ICANN (Internet Corporation for Assigned Names and Numbers) Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization (Supporting Organization) does not provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization (Supporting Organization) shall be deemed to have selected for Seat 9 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2002.

Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

1. Upon the enrollment of thirty ccTLD (Country Code Top Level Domain) managers (with at least four within each Geographic Region) as members of the ccNSO (Country Code Names Supporting Organization), written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO (Country Code Names Supporting Organization) Council to be selected by the ccNSO (Country Code Names Supporting Organization) members shall be selected according to the procedures stated in Article IX, Section 4(8) and (9). Upon the completion of that selection process, a written notice that the ccNSO (Country Code Names Supporting Organization) Council has been constituted shall be posted on the Website. Three ccNSO (Country Code Names Supporting Organization) Council members shall be selected by the ccNSO (Country Code Names Supporting Organization) members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting

Numbers) annual meeting and the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. (The definition of "ccTLD (Country Code Top Level Domain) manager" stated in Article IX, Section 4(1) and the definitions stated in Article IX, Section 4(4) shall apply within this Section 4 of Article XX.)

2. After the adoption of Article IX of these Bylaws, the Nominating Committee shall select the three members of the ccNSO (Country Code Names Supporting Organization) Council described in Article IX, Section 3(1)(b). In selecting three individuals to serve on the ccNSO (Country Code Names Supporting Organization) Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. The three members of the ccNSO (Country Code Names Supporting Organization) Council selected by the Nominating Committee shall not take their seats before the ccNSO (Country Code Names Supporting Organization) Council is constituted.

3. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the At-Large Advisory Committee (Advisory Committee) and the Governmental Advisory Committee (Advisory Committee) may designate one liaison each to the ccNSO (Country Code Names Supporting Organization) Council, as provided by Article IX, Section 3(2)(a) and (b).

4. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the Council may designate Regional Organizations as provided in Article IX, Section 5. Upon its designation, a Regional Organization may appoint a liaison to the ccNSO (Country Code Names Supporting Organization) Council.

5. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO (Country Code Names Supporting Organization) Council is constituted, the ccNSO (Country Code Names Supporting Organization) shall, through the ccNSO (Country Code Names Supporting Organization) Council

through the ccNSO (Country Code Names Supporting Organization) Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term specified for each of those Seats in Article VI, Section 8(1)(d) and (f) of the New Bylaws, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

6. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO (Country Code Names Supporting Organization) shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD (Country Code Top Level Domain) community. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO (Country Code Names Supporting Organization) Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in Article VII, Section 2(8)(c) shall be made by the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)"), upon the adoption of this Transition Article, shall continue its operations; however, it shall be restructured into four new Stakeholder Groups which shall represent, organizationally, the former Constituencies of the GNSO (Generic Names Supporting Organization), subject to ICANN (Internet Corporation for Assigned Names and Numbers) Board approval of each individual Stakeholder Group Charter:

- a. The gTLD (generic Top Level Domain) Registries Constituency shall be assigned to the Registries Stakeholder Group;
- b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group;
- c. The Business Constituency shall be assigned to the Commercial Stakeholder Group;
- d. The Intellectual Property Constituency shall be assigned to the Commercial Stakeholder Group;

e. The Internet Services Providers Constituency shall be assigned to the Commercial Stakeholder Group; and

f. The Non-Commercial Users Constituency shall be assigned to the Non-Commercial Stakeholder Group.

2. Each GNSO (Generic Names Supporting Organization) Constituency described in paragraph 1 of this subsection shall continue operating substantially as before and no Constituency official, working group, or other activity shall be changed until further action of the Constituency, provided that each GNSO (Generic Names Supporting Organization) Constituency described in paragraph 1 (c-f) shall submit to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary a new or revised Charter inclusive of its operating procedures, adopted according to the Constituency's processes and consistent with these Bylaws Amendments, no later than the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date as the Board may designate by resolution.

3. Prior to the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date the Board may designate by resolution, the GNSO (Generic Names Supporting Organization) Council shall consist of its current Constituency structure and officers as described in [Article X, Section 3\(1\) of the Bylaws \(/en/general/archive-bylaws/bylaws-20mar09.htm#X-3.1\)](#) (as amended and restated on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO (Generic Names Supporting Organization) Council shall be as provided in these Bylaws, as they may be amended from time to time. All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO (Generic Names Supporting Organization) Council and in existence immediately before the adoption of this Transition Article shall continue in existence with the same charters, membership, and activities, subject to any change by action of the GNSO (Generic Names Supporting Organization) Council or ICANN (Internet Corporation for Assigned Names and Numbers) Board.

4. Beginning with the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date of the Transition"), the GNSO (Generic Names Supporting Organization) Council seats shall be assigned as follows:

a. The three seats currently assigned to the Registry Constituency shall be reassigned as three seats of the Registries Stakeholder Group;

b. The three seats currently assigned to the Registrar Constituency shall be reassigned as three seats of the Registrars Stakeholder Group;

- c. The three seats currently assigned to each of the Business Constituency, the Intellectual Property Constituency, and the Internet Services Provider Constituency (nine total) shall be decreased to be six seats of the Commercial Stakeholder Group;
- d. The three seats currently assigned to the Non-Commercial Users Constituency shall be increased to be six seats of the Non-Commercial Stakeholder Group;
- e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member to the Contracted Party House, one voting member to the Non-Contracted Party House, and one non-voting member assigned to the GNSO (Generic Names Supporting Organization) Council at large.

Representatives on the GNSO (Generic Names Supporting Organization) Council shall be appointed or elected consistent with the provisions in each applicable Stakeholder Group Charter, approved by the Board, and sufficiently in advance of the October 2009 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO (Generic Names Supporting Organization) Council, as part of its Restructure Implementation Plan, will document: (a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO (Generic Names Supporting Organization) Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.

6. As soon as practical after the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date the Board may designate by resolution, the GNSO (Generic Names

Supporting Organization) Council shall, in accordance with Article X, Section 3(7) and its GNSO (Generic Names Supporting Organization) Operating Procedures, elect officers and give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The Protocol (Protocol) Supporting Organization (Supporting Organization) referred to in the Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm#VI-C) is

discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee (Advisory Committee) may designate liaisons to serve with other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as contemplated by the New Bylaws by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2 of the New Bylaws.

2. The organizations designated as members of the Technical Liaison Group under Article XI-A, Section 2(2) of the New Bylaws shall each designate the two individual technical experts described in Article XI-A, Section 2(6) of the New Bylaws, by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to Article XI-A, Section 2(7) of the New Bylaws.

3. Upon the adoption of the New Bylaws, the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(4) of the New Bylaws.

4. Upon the adoption of the New Bylaws, the Root Server System Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(3) of the New Bylaws.

5. At-Large Advisory Committee (Advisory Committee)

a. There shall exist an Interim At-Large Advisory Committee (Advisory Committee) until such time as ICANN (Internet Corporation for Assigned Names and Numbers) recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in Article XI, Section 2(4) of the New Bylaws. The Interim At-Large Advisory Committee (Advisory Committee) shall be composed of (i) ten individuals (two from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in Article VII, Section 5 of the New Bylaws. The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2005.

b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the At-Large Advisory Committee (Advisory Committee) established by Article XI, Section 2(4) of the New Bylaws. Upon the entity's written notification to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee (Advisory Committee) members previously selected by the Board from the RALO's region.

c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee (Advisory Committee) shall become the At-Large Advisory Committee (Advisory Committee), as established by Article XI, Section 2(4) of the New Bylaws. The five individuals selected to the Interim At-Large Advisory Committee (Advisory Committee) by the Nominating Committee shall become members of the At-Large Advisory Committee (Advisory Committee) for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in Article VII, Section 2(6) of the New Bylaws.

Section 8. OFFICERS

ICANN (Internet Corporation for Assigned Names and Numbers) officers (as defined in Article XIII of the New Bylaws) shall be elected by the then-existing Board of ICANN (Internet Corporation for Assigned Names and Numbers) at the annual meeting in 2002 to serve until the annual meeting in 2003.

Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) President shall continue unchanged in membership, scope, and operation until changes are made by the President.

Section 10. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("PDP (Policy Development Process)") until such time as modifications are recommended to and approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board"). The role of the GNSO (Generic Names Supporting Organization) is outlined in Article X of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities

that are not intended to result in a Consensus (Consensus) Policy, the Council may act through other processes.

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus (Consensus) Policies as defined within ICANN (Internet Corporation for Assigned Names and Numbers) contracts, and any other policies for which the GNSO (Generic Names Supporting Organization) Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO (Generic Names

Supporting Organization) Council ("Council") or Advisory Committee (Advisory Committee), which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party is affected by the issue;

b. Formal initiation of the Policy Development Process by the Council;

c. Formation of a Working Group or other designated work method;

d. Initial Report produced by a Working Group or other designated work method;

e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;

f. Council approval of PDP (Policy Development Process) Recommendations contained in the Final Report, by the required thresholds;

g. PDP (Policy Development Process) Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]; and

h. Board approval of PDP (Policy Development Process) Recommendations.

Section 2. Policy Development Process Manual

The GNSO (Generic Names Supporting Organization) shall maintain a Policy Development Process Manual (PDP (Policy Development Process) Manual) within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The PDP (Policy Development Process) Manual shall contain specific additional guidance on completion of all elements of a PDP (Policy Development Process), including those elements that are not otherwise defined in these Bylaws. The PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.6.

Section 3. Requesting an Issue Report

Board Request. The Board may request an Issue Report by instructing the GNSO (Generic Names Supporting Organization) Council ("Council") to begin the process outlined the PDP (Policy Development Process) Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO (Generic Names Supporting Organization) Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee (Advisory Committee) Request. An Advisory Committee (Advisory Committee) may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (Generic Names Supporting Organization) Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO (Generic Names Supporting Organization) Council; or (iii) a properly supported motion from an Advisory Committee (Advisory Committee), the Staff Manager will create a report (a "Preliminary Issue Report"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a) The proposed issue raised for consideration;
- b) The identity of the party submitting the request for the Issue Report;
- c) How that party is affected by the issue, if known;
- d) Support for the issue to initiate the PDP (Policy Development Process), if known;
- e) The opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization) as set forth in the Bylaws.
- f) The opinion of ICANN (Internet Corporation for Assigned Names and Numbers) Staff as to whether the Council should initiate the PDP (Policy Development Process) on the issue

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the

report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO (Generic Names Supporting Organization) Council for consideration for initiation of a PDP (Policy Development Process).

Section 5. Initiation of the PDP (Policy Development Process)

The Council may initiate the PDP (Policy Development Process) as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP (Policy Development Process) Manual, shall initiate a PDP (Policy Development Process). No vote is required for such action.

GNSO (Generic Names Supporting Organization) Council or Advisory Committee (Advisory Committee) Requests: The Council may only initiate the PDP (Policy Development Process) by a vote of the Council. Initiation of a PDP (Policy Development Process) requires a vote as set forth in Article X, Section 3, paragraph 9(b) and (c) in favor of initiating the PDP (Policy Development Process).

Section 6. Reports

An Initial Report should be delivered to the GNSO (Generic Names Supporting Organization) Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), which time may be extended in accordance with the PDP (Policy Development Process) Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. Council Deliberation

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

The Council approval process is set forth in Article X, Section 3, paragraph 9(d) through (g), as supplemented by the PDP (Policy Development Process) Manual.

Section 8. Preparation of the Board Report

If the PDP (Policy Development Process) recommendations contained in the Final Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Section 9. Board Approval Processes

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP (Policy Development Process) Recommendations contained within the Recommendations Report shall proceed as follows:

a. 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). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO (Generic Names Supporting Organization) Supermajority Vote or less than a GNSO (Generic Names Supporting Organization) Supermajority vote 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 Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority

vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 10. Implementation of Approved Policies

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO (Generic Names Supporting Organization) Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. Maintenance of Records

Throughout the PDP (Policy Development Process), from policy suggestion to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue. Such status page will outline the completed and upcoming steps in the PDP (Policy Development Process) process, and contain links to key resources (e.g. Reports, Comments Fora, WG (Working Group) Discussions, etc.).

Section 12. Additional Definitions

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO (Generic Names Supporting Organization) Council.

"Staff Manager" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development Process).

"GNSO (Generic Names Supporting Organization) Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. Applicability

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the

procedures set forth in this Annex A for all remaining steps within the PDP (Policy Development Process). If the Council determines that any ongoing PDP (Policy Development Process) cannot be feasibly transitioned to these updated procedures, the PDP (Policy Development Process) shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("PDP (Policy Development Process)").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

- a. *Council.* The ccNSO (Country Code Names Supporting Organization) Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board.* The ICANN (Internet Corporation for Assigned Names and Numbers) Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee).* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committee (Advisory Committee) may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO (Country Code Names Supporting Organization).* The members of the ccNSO (Country Code Names Supporting Organization) may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO (Country Code Names Supporting Organization) present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon

which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP (Policy Development Process);
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:
 - 1) The issue is within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission statement;
 - 2) Analysis of the relevant factors according to Article IX, Section 6(2) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO (Country Code Names Supporting Organization);

In the event that the General Counsel reaches an opinion in the affirmative with

in the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN (Internet Corporation for Assigned Names and Numbers) policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN (Internet Corporation for Assigned Names and Numbers) and the ccNSO (Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO (Country Code Names Supporting Organization) Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the ccNSO (Country Code Names Supporting Organization) Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP (Policy Development Process) including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein (PDP (Policy Development Process) Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a

vote on whether to initiate the PDP (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP (Policy Development Process). Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.
- b. A vote of ten or more Council members in favor of initiating the PDP (Policy Development Process) shall be required to initiate the PDP (Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) mission statement and the ccNSO (Country Code Names Supporting Organization) Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP (Policy Development Process) has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

- a. In favor of convening a task force, it shall do so in accordance with Item 7 below.
- b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP (Policy Development Process) Time Lineset out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see [Article IX, Section 6](#)) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO (Country Code Names Supporting Organization) and, following formal request for

GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (Advisory Committee) to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO (Country Code Names Supporting Organization) members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP (Policy Development Process) Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP (Policy Development Process);
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Article IX, Section 3(14) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP (Policy Development Process) Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO (Country Code Names Supporting Organization) members in that region that are not members of the Regional Organization. regarding the

issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP (Policy Development Process) Time Line. Every Regional Statement shall include at least the following:

- (i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;
- (ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;
- (iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- (iv) A statement of the position on the issue of any ccNSO (Country Code Names Supporting Organization) members that are not members of the Regional Organization;
- (v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and
- (vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP (Policy Development Process) Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP (Policy Development Process) Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting,

the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (Policy Development Process) Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.
- c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report,

and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP (Policy Development Process) Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

a. A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.

b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP (Policy Development Process) Time Line.

10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP (Policy Development Process) Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as

coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP (Policy Development Process) must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation;
- b. The Final Report submitted to the Council; and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes in the first round

of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO (Country Code Names Supporting Organization) members, will be employed if at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO (Country Code Names Supporting Organization) recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO (Country Code Names Supporting Organization) Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).
 1. In the event that the Board determines not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The

Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO (Country Code Names Supporting Organization) Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").

5. In the event the Board determines not to accept a ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO (Country Code Names Supporting Organization) shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO (Country Code Names Supporting Organization) Recommendation or ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the policy.

17. Maintenance of Records

17. maintenance of records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;
- b. PDP (Policy Development Process) Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN (Internet Corporation for Assigned Names and Numbers) shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO (Country Code Names Supporting Organization)

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role. As provided in Article IX, Section 6(2) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO (Country Code Names Supporting Organization)'s authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a TLD (Top Level Domain) two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database (Data Entry Function) and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Top Level Domain) (Name Server Function).

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers) and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

(a) under which data will be collected and entered into a database or data changed (at the TLD (Top Level Domain) level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.

(b) for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF (National Science Foundation (USA)))

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD (Country Code Top Level Domain) level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy;
and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is limited to the policy role of the ccNSO (Country Code Names Supporting Organization) policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers

Policy role: IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))

Executive role: Root Server System Operators

Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers)), (US DoC-ICANN (Internet Corporation for Assigned Names and Numbers) MoU (Memorandum of Understanding))

Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability

Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized

Executive role: ccTLD (Country Code Top Level Domain) Manager

Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government

Level 3: User's Name Servers

Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))

Engineering Task Force) (RFC (request for comments))

Executive role: Registrant (Registrant)

Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry

Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers))

Executive role: ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority))

Accountability role: ICANN (Internet Corporation for Assigned Names and Numbers) community, ccTLD (Country Code Top Level Domain) Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD (Country Code Top Level Domain) Registry

Policy role: Local Internet Community, including local government, and/or ccTLD (Country Code Top Level Domain) Manager according to local structure

Executive role: ccTLD (Country Code Top Level Domain) Manager

Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels

Policy role: Registrant (Registrant)

Executive role: Registrant (Registrant)

Accountability role: Registrant (Registrant), users of lower-level domain names



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EXHIBIT 5

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Resources

▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

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Reconsideration and Independent Review | *ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws Article IV Accountability and Review*

The "Transparency & Accountability" webpage ([/en/news/in-focus/accountability](#)) contains an overview of ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability and transparency frameworks and mechanisms, as well as status reports on recent accountability and transparency efforts. ICANN (Internet Corporation for Assigned Names and Numbers)'s commitment to transparency and accountability is emphasized in its foundational documents, such as its [Bylaws \(/en/about/governance/bylaws#III\)](#), and delineated in the "[Accountability and Transparency Frameworks and Principles \(/en/accountability/frameworks-principles/contents-overview.htm\)](#)" adopted by ICANN (Internet Corporation for Assigned Names and Numbers)'s Board in 2008. Our commitment also is regularly reinforced in ICANN (Internet Corporation for Assigned Names and Numbers)'s [strategic and operational plans \(/en/about/planning\)](#) and in targeted efforts to periodically [review and improve \(/en/groups/reviews\)](#) ICANN (Internet Corporation for Assigned Names and Numbers)'s structures and processes.

In order to reinforce its transparency and accountability mechanisms, ICANN (Internet Corporation for Assigned Names and Numbers) has established processes for reconsideration and independent review of ICANN (Internet Corporation for Assigned Names and Numbers) actions. ICANN (Internet Corporation for Assigned Names and Numbers) has also established the Office of the Ombudsman to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers).

Ombudsman

For more information about ICANN (Internet Corporation for Assigned Names and Numbers)'s Ombudsman, please visit <http://www.icann.org/ombudsman/> ([/ombudsman/](#)).

Operational Metrics
(/resources/pages/metrics-gdd-2015-01-30-en)

If you have a dispute you want the Ombudsman to investigate, or to contact the Ombudsman, please visit <http://www.icann.org/ombudsman/contact.htm> (/ombudsman/contact.htm).

- ▶ Identifier Systems Security, Stability (Security, Stability and Resiliency) and Resiliency (IS-SSR) (/resources/pages/is-ssr-2014-11-24-en)

Reconsideration

A suggested Reconsideration Request form, an explanatory timeline for the Reconsideration Process and Reconsideration Request documents are available [here](#) (/en/groups/board/governance/reconsideration-requests) (/en/groups/board/governance/reconsideration-requests)

- ▶ ccTLDs (/resources/pages/cctlds-21-2012-02-25-en)

ICANN (Internet Corporation for Assigned Names and Numbers)'s Board Governance Committee is responsible for receiving requests from any person or entity that has been materially affected by any ICANN (Internet Corporation for Assigned Names and Numbers) staff action or inaction if such affected person or entity believes the action contradicts established ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s reconsideration process, please visit <http://www.icann.org/en/about/governance/bylaws#IV> (/en/about/governance/bylaws#IV) and <http://www.icann.org/en/groups/board/governance> (/en/groups/board/governance).

- ▶ Internationalized Domain Names (/resources/pages/idn-2012-02-25-en)

- ▶ Universal Acceptance Initiative (/resources/pages/universal-acceptance-2012-02-25-en)

- ▶ Policy (/resources/pages/policy-01-2012-02-25-en)

Independent Review

- ▶ Public Comment (/public-comments)

In addition to the Office of the Ombudsman and its reconsideration process, ICANN (Internet Corporation for Assigned Names and Numbers) has also established a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws. For additional information about the independent review process, please refer to ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws Article IV, Section 3

- ▶ Technical Functions (/resources/pages/technical-functions-2015-10-15-en)

(/en/about/governance/bylaws#IV-3). The Bylaws provide that requests for independent review will be referred to an Independent Review Panel ("IRP"). ICANN (Internet Corporation for Assigned Names and Numbers) has designated the International Centre for Dispute Resolution to operate the independent review process. To initiate a request for Independent Review, please complete the ICDR form which can be found [here](https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTAGE2014402&RevisionSelectionMethod=LatestF) (https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTAGE2014402&RevisionSelectionMethod=LatestF [PDF, 146 KB]). ICDR will then contact you to discuss the process in more detail. For more information on the ICDR's International Arbitration rules and procedures, click [here](http://www.icdr.org/icdr/faces/icdrservices/icann/irpp) (http://www.icdr.org/icdr/faces/icdrservices/icann/irpp). Details of the supplemental rules for the ICANN (Internet Corporation for Assigned Names and Numbers) process can be found [here](https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTAGE2014403&RevisionSelectionMethod=LatestF) (https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTAGE2014403&RevisionSelectionMethod=LatestF [DOCX, 30 KB]). IRP documents can be found [here](#) (/en/news/irp).

- ▶ Contact (/resources/pages/contact-2012-02-06-en)

- ▶ Help (/resources/pages/help-2012-02-03-en)

The Cooperative Engagement Process for requests for independent review is available [here](#) (/en/news/irp/cep-11apr13-en.pdf) [PDF, 49 KB].

Answers to recurring questions regarding the IRP are located [here](#) (/en/help/irp/irp-questions-19jun10-en.htm).



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[Newsletter \(/en/news/newsletter\)](/en/news/newsletter)

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[Responsibility \(https://www.icann.org/development-and-public-responsibility\)](https://www.icann.org/development-and-public-responsibility)

Contact Us

[Offices \(https://forms.icann.org/en/contact\)](https://forms.icann.org/en/contact)

[Global Support \(/resources/pages/customer-support-2015-06-22-en\)](/resources/pages/customer-support-2015-06-22-en)

[Security Team \(/about/staff/security\)](/about/staff/security)

[PGP Keys \(/en/contact/pgp-keys\)](/en/contact/pgp-keys)

[Certificate Authority \(/contact/certificate-authority\)](/contact/certificate-authority)

[Registry Liaison \(/resources/pages/contact-f2-2012-02-25-en\)](/resources/pages/contact-f2-2012-02-25-en)

[AOC Review \(http://forms.icann.org/en/about/aoc-review/contact\)](http://forms.icann.org/en/about/aoc-review/contact)

[Reviews \(http://forms.icann.org/en/groups/reviews/contact\)](http://forms.icann.org/en/groups/reviews/contact)

[Request a Speaker \(http://forms.icann.org/en/contact/speakers\)](http://forms.icann.org/en/contact/speakers)

[For Journalists \(https://www.icann.org/development/press\)](https://www.icann.org/development/press)

Accountability & Transparency

[Accountability \(/en/about/accountability\)](/en/about/accountability)

[Mechanisms \(/en/news/in-focus/accountability/mechanisms\)](/en/news/in-focus/accountability/mechanisms)

[Independent Review Process \(/resources/pages/irp-2012-02-25-en\)](/resources/pages/irp-2012-02-25-en)

[Request for Reconsideration \(/groups/board/governance/financial\)](/groups/board/governance/financial)

[Ombudsman \(/help/ombudsman\)](/help/ombudsman)

Governance

[Documents \(/en/about/governance\)](/en/about/governance)

[Agreements \(/en/about/agreements\)](/en/about/agreements)

[AOC Review \(/en/about/aoc-review\)](/en/about/aoc-review)

[Annual Report \(/about/annual-report\)](/about/annual-report)

[Financials \(/en/about/financials\)](/en/about/financials)

[Document Disclosure \(/en/about/transparency\)](/en/about/transparency)

[Planning \(/en/about/planning\)](/en/about/planning)

[Dashboard Beta \(https://www.icann.org/dashboard\)](https://www.icann.org/dashboard)

[RFPs \(/en/news/rfps\)](/en/news/rfps)

[Litigation \(/en/news/litigation\)](/en/news/litigation)

[Correspondence \(/en/news/correspondence\)](/en/news/correspondence)

Help

[Dispute Resolution \(/en/help/dispute-resolution\)](/en/help/dispute-resolution)

[Domain Name Dispute Resolution \(/en/help/dndr\)](/en/help/dndr)

[Name Collision \(/en/help/name-collision\)](/en/help/name-collision)

[Registrar Problems \(/en/news/announcements/announcement-06mar07-en.html\)](/en/news/announcements/announcement-06mar07-en.html)

[WHOIS \(http://whois.icann.org/\)](http://whois.icann.org/)

EXHIBIT 6



AFRICAN UNION COMMISSION
Chairperson

BC/Y/727/08.09

Addis Ababa, 27 August 2009

Dear Ms. Bekele,

Sub: Endorsement of the DotAfrica (.africa) Initiative

African Union Authority in its capacity as a continental organization would like to express support for the "dotafrica" initiative, through which your organization is applying for delegation of a regional identifier top level domain – '.africa' from the Internet Corporation for Assigned Names and Numbers (ICANN) and then make it available to the Pan-African community. Dot Africa ".africa" expects to reinvest surpluses in socio-technological advancement initiatives relevant and to operate a viable not-for-profit initiative that is a technically advanced, TLD registry for the Pan-Africa and African community under the sponsorship of DotConnectAfrica organization.

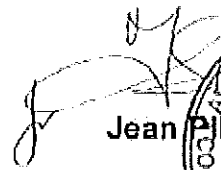
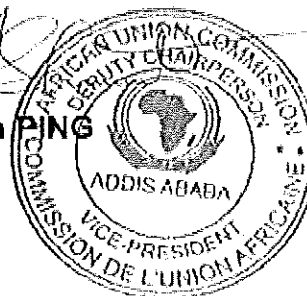
This will mean that the African continent will follow upon the experience of the European Union and their '.eu' domain, and the Asian continent with their '.asia' domain.

The African Union Authority considers introducing the ".africa" domain will be a valuable attribute for entities, professionals and corporations active in Africa, empowering those stakeholders who see value in a regional online identity.

In this regard, should your Initiative require it, the African Union Authority is willing to offer assistance in the coordination of your initiative with African Ministers and Governments.

Based on the above, the African Union Authority expresses its endorsement of the DotAfrica ".africa" initiative wishing you success in all the endeavors.

With best regards.


Jean PING


Sophia Bekele
Executive Director
The DotAfrica (.africa) project
DotConnectAfrica.org
www.dotconnectafrica.org
Fax (925) 935-1589, USA
Fax: (251-11) 662-59-09, Addis Ababa

EXHIBIT 7



AFRICAN UNION COMMISSION
Deputy Chairperson

DCP/OUT.223.10

16th April 2010

Dear Madam,

Referring to my letter **BC/Y/727/08.09** sent to you on the 27th of August 2009 related to the above subject, I would like to inform you that following consultations with relevant stakeholders, the African Union Commission has reconsidered its approach in implementing the subject Internet Domain Name (DotAfrica) and no longer endorses individual initiatives in this matter related to continental resource.

In coordination with the Member States and with relevant international organization such as ICANN, the Commission will go through open process that certainly will involve the private sector.

Please accept, Ms. Bekele, the assurances of my best consideration.

Erastus J.O. Mwencha
Deputy Chairperson
African Union Commission

To:
Sophia Bekele
United States of America
Fax: (925) 935 1589,
(251 11) 662 5909

Copy:
Internet Corporation for Assigned Names and Numbers (ICANN)
Marina del Rey, CA, USA
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
United States of America
Fax: +1.310.823.8649

EXHIBIT 8



UNITED NATIONS
ECONOMIC COMMISSION FOR AFRICA

ABDOULIE JANNEH
Executive Secretary

Date: 8 August 2008

Dear Ms. Bekele,

I write to express my support and that of the Economic Commission for Africa (ECA) for the "dotafrika" initiative through which your organization is applying to the Internet Corporation for Assigned Names and Numbers (ICANN) for the delegation of the regional identifier top level domain - "afrika" which will then be made available to the pan-African community.

This is a worthwhile initiative that will contribute substantially to helping Africa bridge the digital divide. It will certainly help the continent to derive similar benefits from the successful experience of the European Union which has the ".eu" domain and that of Asia with its "asia" domain.

Introducing the "afrika" domain will certainly be a valuable attribute for individuals, corporations, professionals and entities active in the continent. It will also empower stakeholders in Africa's progress who would know the value of having a regional online identity.

I look forward with anticipation to the successful implementation of the "dotafrika" initiative.

Abdoulie Janneh

Yours sincerely,

Abdoulie Janneh



Ms. Sophia Bekele
Executive Director
The Dot.Africa Project Initiative
www.dotconnectafrica.org

EXHIBIT 9

Grace Githaiga Contact Information Redacted

To Contact Information Redacted

CC KICTANet ICT Policy Discussions

03/23/14 at 2:05 AM

FYI

- > Date: Sun, 23 Mar 2014 07:03:16 +0000
- > Subject: Dot Africa contract signing ceremony
- > From: Contact Information Redacted
- > To: Contact Information Redacted
- > CC: Contact Information Redacted
- >
- > Dear Colleagues,
- >
- > Apologies for cross posting.
- >
- >
- > The AUC/ZACR Dot Africa contract signing ceremony will take place during
- > the ICANN meeting in Singapore.
- >
- > For those present, please see below details
- >
- > When: Wednesday 26 at
- > Time: 18.30
- > Venue: CANNING room
- >
- > There will be video coverage and live streaming for this historic moment.
- >
- >
- > Thank you and best regards
- > Alice

kictanet mailing list

kictanet@lists.kictanet.or.ke

<https://lists.kictanet.or.ke/mailman/listinfo/kictanet>

Unsubscribe or change your options at

<https://lists.kictanet.or.ke/mailman/options/kictanet/sophiabekele%40yahoo.com>

The Kenya ICT Action Network (KICTANet) is a multi-stakeholder platform for people and institutions interested and involved in ICT policy and regulation. The network aims to act as a catalyst for reform in the ICT sector in support of the national aim of ICT enabled growth and development.

KICTANetiquette : Adhere to the same standards of acceptable behaviors online that you follow in real life: respect people's times and bandwidth, share knowledge, don't flame or abuse or personalize, respect privacy, do not spam, do not market your wares or qualifications.

Reply Reply to All Forward More

Nnenna Nwakanma Contact Information Redacted

To Discussion List on African Internet Governance Forum Contact Information Redacted
Contact Information Redacted > Governance

03/23/14 at 1:46 AM

Thanks, Alice.. sharing at the same time to the larger networks

On Sun, Mar 23, 2014 at 8:33 AM, Alice Munyua <Contact Information Redacted> wrote:

Dear Colleagues,

Apologies for cross posting.

The AUC/ZACR Dot Africa contract signing ceremony will take place during the ICANN meeting in Singapore.

For those present, please see below details

When: Wednesday 26 at
Time: 18.30
Venue: CANNING room

There will be video coverage and live streaming for this historic moment.

You received this message as a subscriber on the list:

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To be removed from the list, visit:

<http://www.igcaucus.org/unsubscribing>

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<http://lists.igcaucus.org/info/governance>

To edit your profile and to find the IGC's charter, see:

<http://www.igcaucus.org/>

Translate this email: http://translate.google.com/translate_t

EXHIBIT 10



Date: 21 September 2015
Ref: OES/15/09/0157

Dear Dr. Ibrahim

Re: Request for Support to Dot Africa Project

I am writing in connection with the request made to the Executive Secretary, Dr. Lopes for his support to the African Union's (AU") efforts in getting the regional identifier top level domain "dotAfrica" delegated to ZA Central Registry ("ZACR"), the entity we understand is authorized by the AU to apply for and administer the DotAfrica top level domain.

I understand from your letter that, in addition to ZACR, another competing entity, DotConnectAfrica ("DCA") has submitted an application to obtain the same delegation as ZACR, and that DCA is purporting to use a letter of support obtained from ECA in 2008 as an endorsement from ECA for its application.

We also note that in September 2011, ECA wrote to you in response to a letter you sent regarding the setting up of the structure and modalities for the implementation of the DotAfrica project and in that letter, ECA reaffirmed its continued commitment and support to the AU in the management of Internet-based resources in Africa.

As you are aware, one of ICANN's requirement for the application for delegation for geographic Top Level Domain ("gTLD") as detailed in ICANN's 2012 Applicant Guidebook, is a minimum of 60% support from *relevant governments or public authorities*, with no more than one government objection from any country from the region.

ECA as a United Nations entity is neither a government nor a public authority and therefore is not qualified to issue a letter of support for a prospective applicant in support of their application. In addition, ECA does not have a mandate to represent the views or convey the support or otherwise of African governments in matters relating to application for delegation of the gTLD.

Dr. Elham M.A. Ibrahim
Commissioner
Infrastructure and Energy
African Union
Addis Ababa



United Nations
Economic Commission for Africa

In this regard, the August 2008 letter referenced above is merely an expression of a view in relation to the entity's initiatives and efforts regarding internet governance, including efforts to obtain gTLD for Africa. It is ECA's position that the August 2008 letter to Ms Bekele cannot be properly considered as a "letter of support or endorsement" within the context of ICANN's requirements and cannot be used as such.

I hope this clarifies ECA's position on the mater. Please feel free to contact me if you need any further clarification on tel: Contact Information Redacted

Yours sincerely,

A handwritten signature in black ink that reads "Sandra Baffoe-Bonnie".

Sandra Baffoe-Bonnie
Secretary of the Commission and Legal Advisor

Cc: Ms Sophia Bekele, DotConnectAfrica

EXHIBIT 11

INTERNATIONALIZED DOMAIN RESOLUTION UNION

idru.org

5 December 2010

Ms. Sophia Bekele
Executive Director
DotConnectAfrica Organization
Reg. IDCT8710DCA90

The dot.Africa project
Fax: (230) 208-9033, Mauritius
Fax: (925) 939-0142, USA
www.dotconnectafrica.org

Dear Ms. Bekele,

Subject: Endorsement of the DotAfrica (.africa) Initiative

The Internationalized Domain Resolution Union (IDRU) endorses, with a broad-based majority amongst its members, your efforts for the "dotafrica" initiative. DotConnectAfrica is applying for delegation of a regional identifier top level domain – '.africa' – from the Internet Corporation for Assigned Names and Numbers (ICANN). Then .africa will be made available to the Pan-African community.

Ms. Bekele, as a former gNSO advisor to ICANN, you have worked hard and long to champion Internationalized Domain Names (IDNs). You have made the case within ICANN for a policy development process that will see IDNs in service of the world community. And you have done so successfully.

IDRU stands ready to assist DotConnectAfrica in its gTLD application for '.africa' in regard to the various African languages that it would support. At the international level, these include Arabic and French and Portuguese; at the local level also – for example – Amharic and Swahili.

IDRU brings a group of operators and inventors of IDN who have practical expertise installing IDN capabilities and running IDN registries, for numerous years prior to ICANN's current interest in IDNs. IDRU aims to make the Internet accessible in all the world's many script writing systems. Then the world's citizens will be able to access the Internet in their native languages.

Very truly yours, David Allen, Executive Director
316 Heaths Bridge Road
Concord, MA 01742, USA
Contact Information Redacted

For over ten years, my former predecessor efforts have been delivering IDNs so that all peoples can access the web.

Now IDRU is former.
EXHIBIT 11 - Pg 0560

EXHIBIT 12



Promoting trade and investment between the United States and Africa

November 17, 2010

Sophia Bekele
Executive Director
DotConnectAfrica Organization
Reg. IDCT8710DCA90
The dot.Africa project
Fax: (230) 208-9033, Mauritius
Fax (925) 939-0142, USA

Dear Ms. Bekele,

I write to express my support and that of the Corporate Council for Africa for the "dot.africa" initiative, through which your organization is applying for delegation of a regional identifier top level domain ".africa" from the Internet Corporation for Assigned Names and Numbers (ICANN) and then make it available to the Pan-African community.

This will mean that the African continent will follow upon the experience of the European Union and their ".eu" domain, and the Asian continent with their ".asia" domain.

Corporate Council for Africa considers introducing the ".africa" domain will be a valuable attribute for entities, professionals and corporations active in Africa, empowering those stakeholders who see value in a regional online identity.

We understand the mission of DotConnectAfrica is to sponsor, establish and operate a regional internet namespace with global recognition and regional significance, dedicated to the needs of the Pan-African and African community. DotConnectAfrica expects to reinvest surpluses in socio-technological advancement initiatives relevant and to operate a viable not-for-profit initiative that is a technically advanced, world-class TLD registry for the Pan-African and African community. www.dotconnectafrica.org

The Corporate Council on Africa (CCA), established in 1992, is at the forefront of strengthening and facilitating the commercial relationship between the United States and the African continent. CCA works closely with governments, multilateral groups and business to improve the African continent's trade and investment climate, and to raise the profile of Africa in the US business community. CCA members believe that Africa's future success depends upon the ability of its entrepreneurs and business people to create and retain wealth through private enterprise. American corporations and private individuals can contribute most effectively by building partnership and reaching out to the African private sector in the areas that America knows best: private enterprise, investment capital, technology transfer and management.

EXHIBIT 13

REPUBLIC OF KENYA



MINISTRY OF INFORMATION AND COMMUNICATIONS
Office of the Minister

Telephone: 020-4920000
Telegrams:
Fax: 316004
When replying please quote

Teliposta Towers
P.O. Box 30025
NAIROBI
KENYA

Ref: MIC/11/05

Date: 7th August, 2012

Ms. Sophie Bekele
Executive Director
The DotAfrica (.africa) project
DotConnectAfrica.org
www.dotconnectAfrica.org
Fax (925) 935-1589, USA
Fax: (251-11) 662-59-09, Addis Ababa

Dear

Sophie

RE: ENDORSEMENT OF THE DOTAFRICA (.africa) Initiative

I would like to express the support of my government for the "dotafrica" initiative, through which your organization is applying for delegation of a regional identifier top level domain – '.africa' from the Internet Corporation for Assigned Names and Numbers (ICANN) and then make it available to the African and Pan-African community.

DotAfrica ".africa" expects to reinvest surpluses in relevant socio-technological advancement initiatives and to operate a viable not-for-profit initiative that is a technically advanced, Top Level Domain (TLD) registry for the Pan-Africa and African community under the sponsorship of DotConnectAfrica organization.

This will mean that the African continent will follow upon the experience of the European Union and their '.eu' domain, and the Asian continent with their '.asia' domain.

The ICT Ministry of Kenya considers introducing the “.africa” Pan African domain will be a valuable attribute for entities, professionals and corporations active in Africa, empowering those stakeholders who see value in a regional online identity.

Based on the above, the Ministry of Kenya expresses its endorsement of the DotAfrica “.africa” initiative wishing you success in all the endeavors.

Yours

Sincerely,

Samuel Poghisio

HON. SAMUEL L. POGHISIO, E.G.H, M.P.,
MINISTER FOR INFORMATION & COMMUNICATIONS

EXHIBIT 14



The Internet Corporation for Assigned Names and Numbers

ICANN

8 March 2012

Elham M.A. Ibrahim
Commissioner, Infrastructure and Energy Commission
African Union Commission
P. O. Box 3241
Addis Ababa
Ethiopia

Re: Communiqué of 21 October 2011 from ICT Ministers attending the African Union Commission Round-Table in Dakar

Your Excellency,

Thank you for the commitments to ICANN, including the expression of support of the African Union Commission for ICANN's work and the multi-stakeholder model, expressed in the 21 October 2011 Communiqué of the African ICT Ministerial Round-Table on the 42nd Meeting of ICANN, Dakar, Senegal.

The meeting of the African ICT Ministers in preparation for the ICANN meeting in Dakar serves as a model for regional engagement in ICANN. Your communiqué and presentation to our Board were instrumental in encouraging progress on a number of areas of mutual benefit and interest to our organizations. We look forward to continuing the productive communications arising out of the Round-Table.

You will recall that the ICANN Board recognized the work of the African ICT Ministers through a resolution at the Dakar meeting [ICANN Resolution 2011.10.28.35]. As resolved, ICANN now provides you with a response to each of the 12 requests presented within the Communiqué. Please contact us if you require additional information. We remain available for further feedback and any questions you may have.

We welcome this opportunity for enhanced engagement and look forward to continued dialogue on the work of ICANN and related Internet governance matters.

Signed,

Dr. Stephen D. Crocker
Chairman of ICANN Board

cc: Moustapha Guirassy,
Minister of Communication Telecommunications and ICT, Republic of Senegal

Rod Beckstrom,
President and Chief Executive Officer, ICANN

Washington, DC	1101 New York Avenue NW, Suite 930	Washington, DC 20005	USA	T +1 202 570 7240	F +1 202 789 0104
Brussels	6 Rond Point Schuman, Bl. 5	B-1040 Brussels	BELGIUM	T +32 2 234 7070	F +32 2 234 7848
Marina del Rey	4676 Admiralty Way, Suite 330	Marina del Rey, CA 90292	USA	T +1 310 823 9358	F +1 310 823 8649
Sydney	Level 2, 48 Hunter Street	Sydney NSW 2000	AUSTRALIA	T +61 2 8236 7900	F +61 2 8236 7913

Response to Requests in the Communiqué of 21 October 2011 from ICT Ministers at the African Union
Commission Round-Table in Dakar

Request 1: Include (*Africa, Afrique, Afrika*, افریقيا), and its representation in any other language on the Reserved Names List in order to enjoy the level of special legislative protection, so to be managed and operated by the structure that is selected and identified by the African Union.

Response to Request 1:

ICANN understands and acknowledges the strong interest expressed by the African Union and a number of its member states requesting special treatment for variations of a top-level domain name string representing Africa. ICANN is not able to take actions that would go outside of the community-established and documented guidelines of the program to provide the special treatment you have requested. ICANN does wish to explain, however, that protections exist that will allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings.

The requirements and procedures ICANN will follow in the evaluation of geographical names are described in the gTLD Applicant Guidebook in Module 2, sections 2.2.1.4 *et seq.* All applied-for gTLD strings will be reviewed according to the requirements of those sections, regardless of whether the application indicates it is for a geographic name. A broad set of protections is available for geographical names. For example, applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names.¹

A string listed as a UNESCO region²; or appearing on the United Nations' "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list³ is considered a geographic name. "Africa" – at least in the official languages of the United Nations – qualifies under both of these criteria.

In the case of an application for a string representing a geographic name documentation of support will be required from at least 60% of the respective national governments in that region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or from public authorities associated with the continent or the region.

Over the course of the six years of development of the New gTLD Program, ICANN – along with the international ICANN community – have developed additional procedures that will allow the African Union and others the opportunity to view all requested strings and consider whether there is grounds for objection to any of the strings.

For example, the New gTLD Program allows ICANN's Governmental Advisory Committee, comprised of representatives of over 120 governments, to inform ICANN that there are concerns with an application via a "GAC Early Warning" notice. There are also four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider. Among these is a Community Objection process, for cases where there exists substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

¹ The African Union's request asks that the identified strings be placed on a reserved name list. It is important to consider that placement on a reserved list would result in no entity – not even an entity supported by the AU – being allowed to apply for a string

² See <http://www.unesco.org/new/en/unesco/worldwide/>.

³ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

In short, while ICANN is not able to offer the specific relief requested in the Communiqué, the robust protections built into the New gTLD Program afford the African Union (and its individual member states), through the Governmental Advisory Committee, the opportunity to raise concerns that an applicant is seen as potentially sensitive or problematic, or provide direct advice to the Board. In addition, the African Union (and its individual member states) can avail itself of any of the appropriate objection processes mentioned above in the event an application is received for any string – even those beyond representations of .Africa – that may raise concern.

Request 2. *Provide more fellowship to support government and other stakeholders from least developed countries in Africa to increase their participation in the various meetings of GAC and ICANN*

Response to Request 2

The ICANN Fellowship program seeks to create a broadening base of knowledgeable constituents and build capacity within the ICANN community of volunteers by reaching out to the less developed regions of the world. Since the inception of the fellowship program in June 2007, ICANN has identified 66 fellowship recipients from Africa. At each of ICANN's three public meetings per year, ICANN strives to have fellows representing each of its five geographic regions.

Participation in the program encourages individuals to apply their expertise and explore areas of interest across the broad scope of the work of the ICANN community. The program also seeks to enhance the diversity of voices and experiences that are brought to bear upon the work of ICANN, seeking input from all geographic regions. Many former participants of the program go on to become representatives or advisors to the Governmental Advisory Committee, and members of the Supporting Organizations and additional Advisory Committees.

Recently, ICANN has also significantly increased the level of travel support provided to members of the Governmental Advisory Committee. ICANN has committed to provide travel support for up to 20 individuals per ICANN public meeting, and the GAC then determines who among its members will fill those 20 spaces. This recent advancement in funding allows for increased participation of GAC members who may not otherwise have funding sufficient to allow for meeting participation. In addition, in the past couple of years, ICANN has made great strides in its remote participation tools, including providing streamed translation of meetings, to encourage participation of community members wherever they happen to be.

ICANN continually reviews its support programs with an aim toward enabling ever-increasing participation. We are pleased to count participants from least developed countries in Africa among those who benefit from these programs. Their participation enriches and strengthens the work of the ICANN community.

Request 3. *Support and implement the opening of an ICANN Africa Office like in other regions, to be closer to African stakeholders to provide direct advice on Africa's participation to ICANN and outreach, and also to facilitate ICANN's mission.*

Response to Request 3:

ICANN is an organization of fewer than 150 employees coordinating the work of an international multi-stakeholder community. Consistent with the practice of Internet organizations working within a dynamic and innovative field, however, ICANN is perhaps the foremost example of a seamless, cross-border collaboration among the various constituents of the Internet community. ICANN also recognizes the importance of establishing closer relations with regional communities.

In pursuit of this goal, ICANN has begun appointing regional Vice Presidents throughout the world and is in the process of identifying candidates for the position of ICANN Vice President, Africa, to be based in Africa. The regional Vice Presidents have as their mission to strengthen relationships with civil society, the private sector, and (in coordination with representatives of the Governmental Advisory Committee at ICANN) senior levels of government.

ICANN is already ably represented by regional relationship managers, who are part of the Global and Strategic Partnerships team, and these regional relationship managers will work closely with the regional Vice Presidents. Each member of these regional teams already engages in rigorous levels of outreach, travel and communications, and ICANN is committed to further extending and deepening multi-stakeholder engagement in all regions. ICANN currently has a regional relationship manager for Africa who travels continually throughout the region and maintains a base of operations in Niamey, Niger.

ICANN's number of physical offices is limited, but growing. More crucial to the current work of ICANN, however, is maintaining and growing the geographic distribution and global coordination among its staff, the diverse global composition of its Board of Directors and the work of the diffuse community. ICANN's representation in Africa will continue to increase through staffing and engagement efforts, and the establishment of a physical office in the African region will be considered in the course of ICANN's regular review of its overall strategic plan and internationalization strategy.

Request 4. *Support the integration of an ethics charter for board and staff at ICANN to prevent conflict of interests not addressed at the moment. This should be done as soon as possible and as independently as possible from the organization itself.*

Response to Request 4:

ICANN maintains a strong policy regarding the identification and handling of Board member conflicts of interest, as well as a Code of Conduct setting out the ethical standards to which Board members are required to adhere. In addition to the strong existing protections, on 8 December 2011, the ICANN Board voluntarily adopted heightened conflict of interest rules regarding Board consideration of new gTLD applications. These rules preclude directors from taking positions with new gTLD applicants within 12 months after a director voted to approve the application, as well as restricting access to materials for applications that may relate to applicants with whom a director or liaison has an existing relationship. Prior to the June 2011 approval of the New gTLD Program, ICANN's President and CBO noted that the era of New gTLDs requires ICANN to be even more vigilant in addressing conflict of interest issues.

Additional work is underway towards strengthening and continual improvement of conflicts and ethics practices. This work includes: (1) review of Conflicts of Interest Policy and Code of Conduct by one of ICANN's main outside counsel, to identify proposed revisions; (2) a review of ICANN's Conflicts of Interest Policy, Code of Conduct and other governance documents by new counsel who are expert in governance issues; and (3) compiling a panel of international ethics experts to recommend enhancements to ICANN's ethical culture after a review of standards from similar organizations from around the world.⁴

All ICANN Board and staff members are bound by a conflicts of interest policy. In addition, all are subject to restrictions regarding contact with potential new gTLD applicants. They are prohibited from accepting any gifts, meals or entertainment from potential New gTLD applicants.

The Board, staff and executive leadership of ICANN are committed to continued improvement and the establishment of world-class best practices in these areas.

Request 5. *Support ICANN's efforts to ensure that all ICANN documents, meetings and training sessions are open and conducted in all the UN languages, especially in French, given that it is the official language of many African countries.*

⁴ This work was described in detail during the Dakar Meeting and is reflected in the Rationale for Resolutions 2011.10.28.29 and 2011.10.28.30, reflecting the ICANN's commitment to this work.

Response to Request 5:

ICANN has long aspired to be an organization that is capable of communicating comfortably in a variety of languages and to encourage dialogue amongst the diverse participants in ICANN's global multi-stakeholder process. While English will remain the internal operating language of ICANN for business consultations and legal purposes, ICANN is continually expanding the availability of translation and interpretation services.

In 2008, ICANN adopted translation principles that set out commitments for the production of timely and accurate translations to encourage real dialogue, the translation of core strategic and business documentation, and providing transcriptions for major sessions at ICANN meetings to assist those who do not have English as a first language, among other items. ICANN is now translating hundreds of documents a year to facilitate community discussion. French, as one of the six UN languages, is one of the most frequently requested languages. At its public meetings, ICANN provides real-time interpretation services for many of the sessions, to allow for contemporaneous participation across differing language skills. ICANN has also started providing real-time interpretation services for GAC meetings held at the ICANN Public Meetings, to facilitate participation and discussion among GAC members.

To meet the recommendations of the Accountability and Transparency Review Team, ICANN is now working to finalize a Translation Policy that will soon be available for public comment, which will provide further commitment on the scope of translation of materials. Your request for French translations will be considered as that policy is formulated. Further, in 2011 ICANN began providing translations of all Board resolutions and minutes, as well as the ICANN Bylaws, to keep the broad ICANN community apprised of the actions of the organization.

ICANN is placing a priority on multi-lingualism within its staff, to broaden the ability of staff to communicate with the ICANN community in their native languages. Among the newer, multilingual members of the ICANN executive team, the Chief Financial Officer and the Chief Operating Officer are native speakers of French and Arabic, respectively.

Request 6. Strengthen the Internationalization of ICANN by introducing the principle of geographical rotation in line with other international bodies in their management (Board of Directors and Management).

Response to Request 6:

ICANN's Bylaws, at Article VI, Section 2.2, in fact require the consideration of geographic diversity in the appointment of members of the ICANN Board, as well as the appointment of leadership within ICANN's Supporting Organizations and Advisory Committees. Within the ICANN Board, the Nominating Committee is charged with assuring that no more than five of the voting members are from any single geographic area, as well as assuring that the Board is comprised of voting members representing all geographic regions.

ICANN has been determined and successful in broadening the geographic diversity and language skills among the staff, including the executive team. Although the laws under which ICANN operates preclude hiring on the basis of national origin, there are in place strict requirements that all newly engaged personnel possess international experience and are proficient in multiple languages. Current senior executives come from a wide variety of countries, including Mexico, the People's Republic of China, Lebanon, and France. A currently open Vice President for Africa position, when filled, will likely further complement this diversity.

Request 7. Support the US Government draft "statement of work" in the recent Notice of Inquiry On the IANA contract, and also ICANN's own bylaws. To the greatest degree possible, decisions about ccTLDs (including what strings are utilized, who operates the registry and what policies the registry should follow besides those set out by ICANN) should be made by the responsible public authority and the local Internet community concerned and not by the IANA contractor.

Response to Request 7

ICANN agrees that it is important to respect national sovereignty, the legitimate interests of governments, the local Internet communities, and the primacy of national laws. ICANN continues to execute administration of ccTLD root zone management and delegation requests based on RFC 1591⁵, "Domain Name System Structure and Delegation", ICP-1⁶, and the International Organization for Standardization (ISO) Standard 3166-1 for two letter country codes. Reliance on those standards means that delegation and root zone management requests by ccTLDs are evaluated based upon local Internet community support, in-country oversight of the ccTLD, and independent standards.

With regard to Internationalized Domain names (IDNs), delegation requests for IDN ccTLDs may be considered after successful completion of the Fast Track Implementation Plan, which was designed in consultation with GAC and ccNSO members to allow ICANN to be responsive to the needs of the world-wide Internet community and allow for the swift and secure introduction of ccTLDs in native scripts. Evaluations are based upon community support for the new TLD and also upon the findings of an independent technical panel.

The ICANN community is currently engaged in a review of the policies and procedures related to the delegation and re-delegation of ccTLDs. Following the publication of the Final Report from the Delegation and Re-delegation Working Group⁷, a new "Framework of Interpretation Working Group," was recently created. It is comprised of members of the Governmental Advisory Committee (GAC) and ccTLD operators. Its stated objective is "to develop and propose a "Framework of Interpretation" for the delegation and re-delegation of ccTLDs."⁸

Request 8. *Impart an early warning period to all applicants whether a proposed string would be considered controversial or to raise sensitivities, including geographical, cultural and community names. This will provide opportunity to governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or would raise national sensitivities.*

Response to Request 8:

The *Applicant Guidebook* incorporates a "GAC Early Warning" period that will operate concurrently with the 60-day comment period after the posting of the information on applied-for strings. Using the Early Warning system, the Governmental Advisory Committee may issue a notice concerning an application, which will provide an indication that the application is seen as potentially sensitive or problematic by one or more governments.

To initiate the GAC Early Warning notice, one or more governments may provide notice to the GAC that an application might be problematic. That notice is sufficient for the GAC to provide an Early Warning Notice. The GAC Early Warning notice may then be sent from the GAC to the Board, and the applicant will be notified. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments. Applicants may withdraw their application, or may elect to continue with the application (which may include meeting with representatives from the relevant government(s) to address the concerns. More details on the GAC Early Warning process are available in Module 1, section 1.1.2.4 of the Applicant Guidebook.

⁵ RFC stands for Request For Comments. These documents are produced by the Internet Engineering Task Force (IETF) containing technical and policy specifications about the Internet. RFC 1591 describes the DNS system structure and the delegation of top-level domains within that structure. The text of RFC 1591 is available at <http://www.ietf.org/rfc/rfc1591.txt>.

⁶ ICANN published ICP-1 (Internet Coordination Policy) in May 1999 to summarize current practices in administering RFC 1591. ICP-1 is available at <http://www.icann.org/en/resources/cctlds/delegation>.

⁷ See <http://ccnso.icann.org/workinggroups/drldwg.htm>.

⁸ See <http://ccnso.icann.org/workinggroups/foiwg.htm>

In addition to the GAC Early Warning system, the GAC can provide formal GAC Advice to the Board on any individual application. The Early Warning and GAC Advice systems are outcomes of the consultation between the GAC and the ICANN Board on the New gTLD Program. This is in addition to the objection processes described in the Response to Request 1.

Request 9. *Support Africa to have root servers in countries in order to minimize the connectivity exchanges and for better utilization of the available bandwidth.*

Response to Request 9:

ICANN works together with eleven other organizations to operate the infrastructure supporting the Root Server System. The twelve organizations have distributed root servers widely around the Internet and they collaborate on operational matters. An increasing number of root servers are based in Africa. Information on their locations is available publicly.⁹

The specific Root Server operated by ICANN is known as L-Root. ICANN launched a pilot program to provide local instances of L-root server infrastructure for geographically remote parts of the Internet protecting the local DNS environment against failures in external network connectivity. The design of the pilot is to deploy root server infrastructure within Internet Service Provider networks or at Internet exchange points supported by exchange point route servers. Some of the locations where L-root nodes have been deployed are Nairobi, Cairo, Johannesburg and Cape Town. An L-root node was deployed most recently in Dakar, Senegal. The project has been pursued with the active participation of local organizations.

ICANN is actively exploring opportunities to expand the number of L-root deployments in a number of locations, including in locations on the African Continent that meet the requirements profile.

Request 10. *Adopt the final report of "Joint Applicant Support" Working Group and also urge to proceed to the establishment of the related implementation plan to be ready for the upcoming application round.*

Response to Request 10:

On 8 December 2011, the ICANN Board considered the final report of the Joint Applicant Working Group and approved an Applicant Support Program. The Applicant Support Program is available to applicants in this first round, which opened on 12 January 2012. The Applicant Support Program will allow meaningful assistance to be given to qualifying applicants, particularly those from developing economies.

One part of the Applicant Support Program is embodied in the New gTLD Financial Assistance Handbook, which was released on January 11, 2012, and details the criteria for applying for financial assistance. Under this program, there are multiple types of assistance available: (1) a reduction in application fee to \$47,000, reduced from \$185,000; (2) allowing an applicant to pay the \$185,000 according to a payment plan, instead of requiring full payment at the time of application; (3) non-financial support such as translation services, and (4) a directory that matches potential donors with applications requiring assistance. In accordance with the criteria developed by the Joint Applicant Support Working Group, those who qualify for financial support will have to meet demonstrated thresholds, including that the proposed TLD will operate in the public interest, as well as demonstrating financial need and the financial capability to operate a registry. Operation in developing economies is one of the criteria that gain an applicant priority in demonstrating eligibility for applicant support. The evaluation of Financial Assistance applications will be performed by an independent Support Application Review Panel (SARP) that is being comprised.

ICANN has committed \$2 million to a seed fund for applicant support, and is evaluating how additional funding could be contributed to expand the size of this fund.

⁹ More information on the operations and locations of root servers can be found at <http://www.root-servers.org/>.

Another part of the Applicant Support Program intended to reduce costs for potential applicants is the Applicant Support Directory, an online workspace created to connect potential applicants who wish to establish a new public interest gTLD registry in their community with organizations who wish to offer either financial or non-financial assistance.

Request 11. *Make the best use of the available resources for Outreach and Education toward the expected African new gTLD applicants by proposing innovative and effleent programs for all African regions.*

Response to Request 11

While ICANN does not specifically target applicants with its outreach efforts, ICANN has been using innovative methods throughout its campaign to raise awareness of new generic top-level domains, and the potential benefits and challenges of the New gTLD Program.

ICANN has placed a strong focus on both social and traditional media outreach. Given Africa's size, as well as its cultural and language diversity, it is sometimes a challenge to accurately determine message penetration. Through the use of social media sites such as Twitter, ICANN has seen tremendous growth in followers across the African continent. For example, the number of ICANN followers on Twitter has jumped seven-fold in Kenya alone, with new followers also seen in Morocco, Senegal, Cote d'Ivoire, Ghana, Nigeria, South Africa, Zimbabwe, Mozambique, Tanzania and Uganda. ICANN also has engaged with the South Africa-based *Highway Africa News Agency* - a partnership between Rhodes University and the *South African Broadcasting Corporation (SABC)*, which has reached across Africa to deliver new gTLD information. Online advertising throughout Africa has surpassed expected returns. For example, more than 230,000 digital ads have been displayed across the continent on Google search pages with a "click through rate" more than double Google's average.

ICANN's October meeting in Dakar produced a high level of interest among the media. More than 40 journalists from Africa's news outlets participated in the main press conference, and that interest has continued. *Agence-FrancePresse*, a major news source for French-speaking Africa, has run numerous new gTLD-related stories. In addition, ICANN's engagement with newly-emerging African news agency *PanaPress*, with over five million registered users, has resulted in syndicated stories across the continent. One particular focus of the stories has been of the resources available to support new gTLD applicants from developing nations.

Request 12. *Speed up the process of resolving and finding resolutions to the outstanding substantive issues on the last version of the Draft Applicant guidebook before the launch of the new gTLD application process.*

Response to Request 12:

ICANN has crafted the New gTLD Program with deliberation, intent upon taking into account the views of the broad ICANN community. Drafts of new positions are published and publicly discussed to ensure full vetting. The New gTLD Program has been refined through ten independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1400 pages of comment summary and analysis. All comments were listened to and taken into account across eight versions of the *Applicant Guidebook*. Work proceeds with vigor but not undue haste.

On 11 January 2012, ICANN published a New gTLD Applicant Guidebook that incorporated operational clarifications in response to questions that have been received. The posting of the Applicant Guidebook was accompanied by a chart setting out the summary of changes between the 9 September 2011 and 11 January 2012 versions of the book.¹⁰ The newest version incorporates updates to reflect the work approved by the ICANN Board, such as the Applicant Support Program, a clarification of the Early Warning system, further information

¹⁰ The summary of Guidebook updates is available at <http://newgtlds.icann.org/en/applicants/agg/summary-changes-applicant-guidebook-11jan12-en.pdf>

on the processing of applications if substantially more than 500 are received in the application round, an affirmative statement that ICANN is committed to opening subsequent application rounds, and more.

All of the overarching substantive issues raised earlier in the New gTLD Program development process were resolved prior to the Board's 20 June 2011 approval of the launch of the New gTLD Program. As seen above, there were specific operational items that required further attention. In addition, ICANN is working according to a project plan for the implementation of the rights protection mechanisms that were designed through the consensus-based work to form the New gTLD Program. Those design decisions are complete. Because the protection mechanisms must be operational by early 2013, service providers are now being recruited and the specific rules by which they operate are being written.

ICANN's work is not done with the opening of the 12 January 2012 application window. ICANN has committed to review the impacts of the rollout of the New gTLD Program in accordance with the Affirmation of Commitments, as well as undertaking a post-delegation economic study on the results of the first set of new gTLDs, and a post-launch study on the effectiveness of the new trademark protections and any effects on root zone operations. These reviews may result in additional changes within future application rounds.

08 March 2012

EXHIBIT 15

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EXHIBIT 16



New gTLD Program
Initial Evaluation Report
 Report Date: 13 October 2015

Update: This report has been updated as of the date above.

Application ID:	1-1165-42560
Applied-for String:	AFRICA
Priority Number:	1005
Applicant Name:	DotConnectAfrica Trust

Overall Initial Evaluation Summary

Initial Evaluation Result	Eligible for Extended Evaluation
Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application and the responses to Clarification Question(s), the Evaluation Panel(s) determined that there was not sufficient information to award a passing score. Your application is eligible for Extended Evaluation as defined in Section 2.3 of the Applicant Guidebook.	

Background Screening Summary

Background Screening	Eligible
Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.	

Panel Summary

String Similarity	Pass - Contention
The String Similarity Panel has determined that your applied-for string is visually similar to another applied-for gTLD string, creating a probability of user confusion. Based on this finding and per Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, your application was placed in a string contention set.	
DNS Stability	Pass
The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.	
Geographic Names	Geographic Name - Eligible for Extended Evaluation
The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. However, the required documentation of support or non-objection was either not provided or did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook. As per Section 2.3.1 of the Applicant Guidebook, your application is eligible for Extended Evaluation.	
Registry Services	Pass
The Registry Services Panel has determined that the proposed registry services do not require further review.	
Technical & Operational Capability	Pass
The Technical & Operational Capability Panel determined that: Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.	
Question	Score
24: SRS	1
25: EPP	1
26: Whois	1
27: Registration Life Cycle	1
28: Abuse Prevention and Mitigation	1
29: Rights Protection Mechanism	1
30: Security Policy	1
31: Technical Overview of Registry	1
32: Architecture	2

33: Database Capabilities	2
34: Geographic Diversity	2
35: DNS Service	1
36: IPv6 Reachability	1
37: Data Backup Policies & Procedures	1
38: Data Escrow	1
39: Registry Continuity	2
40: Registry Transition	1
41: Fallback Testing	1
42: Monitoring and Fault Escalation	2
43: DNSSEC	1
44: IDNs (Optional)	1
Total	26
Minimum Required Total Score to Pass*	22

*No zero score allowed except on optional Q44

Financial Capability	Pass
-----------------------------	-------------

The Financial Capability Panel determined that:

Your application meets the Financial Capability criteria specified in the Applicant Guidebook.

Question	Score
45: Financial Statements	1
46: Projections Template	1
47: Costs and Capital Expenditures	2
48: Funding and Revenue	1
49: Contingency Planning	2
50: Funding Critical Registry Functions	3
Total	10
Minimum Required Total Score to Pass**	8

**No zero score allowed on any question

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. 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>.

EXHIBIT 17

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EXHIBIT 18



New gTLD Program
Extended Evaluation Report
Report Date: 17 February 2016

Application ID:	1-1165-42560
Applied-for String:	AFRICA
Priority Number:	1005
Applicant Name:	DotConnect Africa Trust

Overall Extended Evaluation Summary

Extended Evaluation Result	Ineligible for Further Review
<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 any responses to Clarification Question(s), the Evaluation Panel(s) determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application is ineligible for further review under the New gTLD Program.</p>	

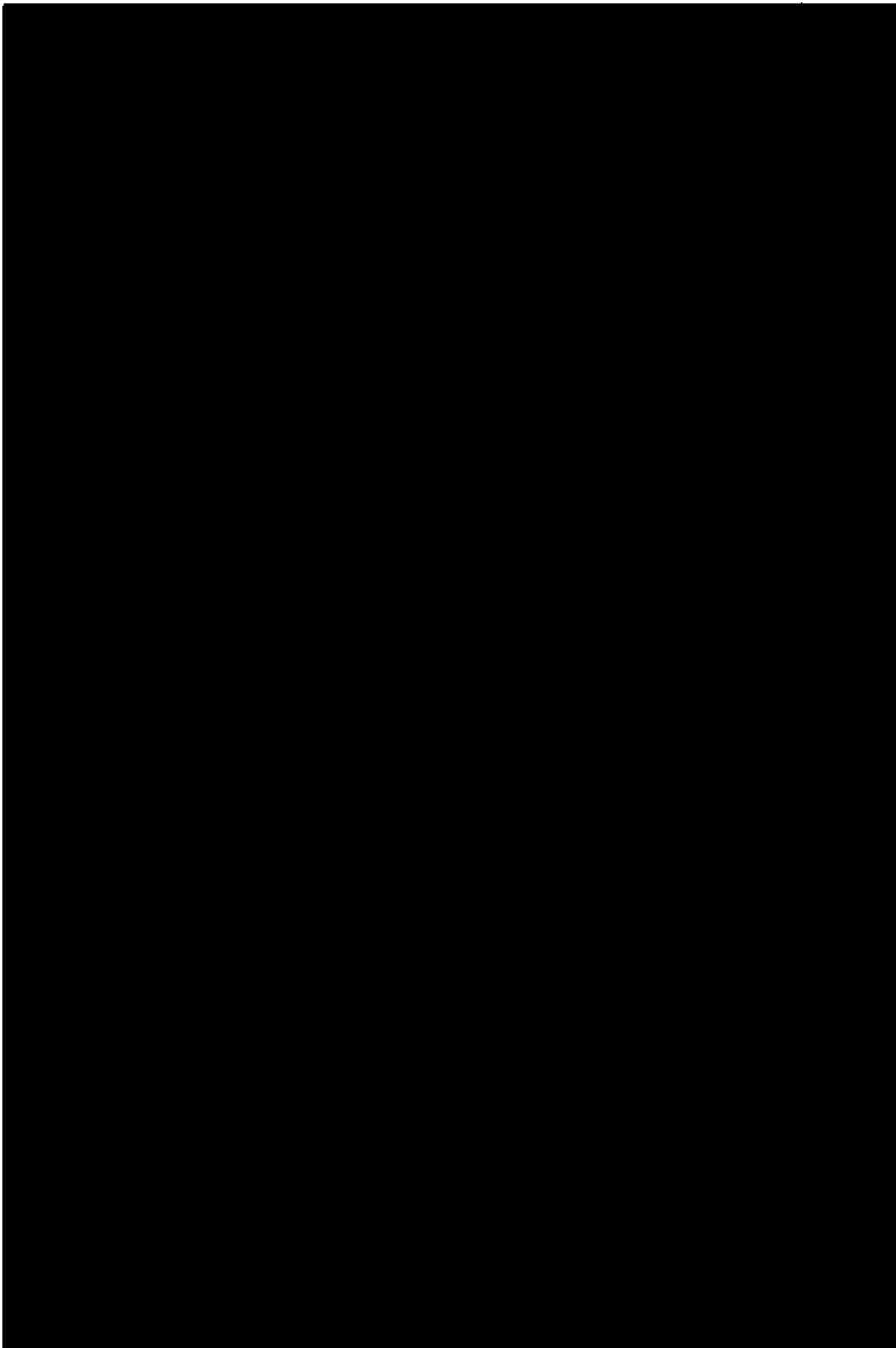
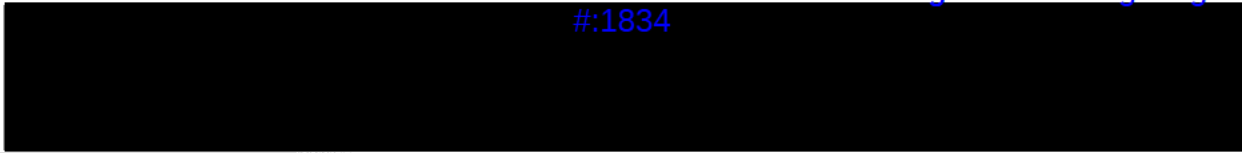
Panel Summary

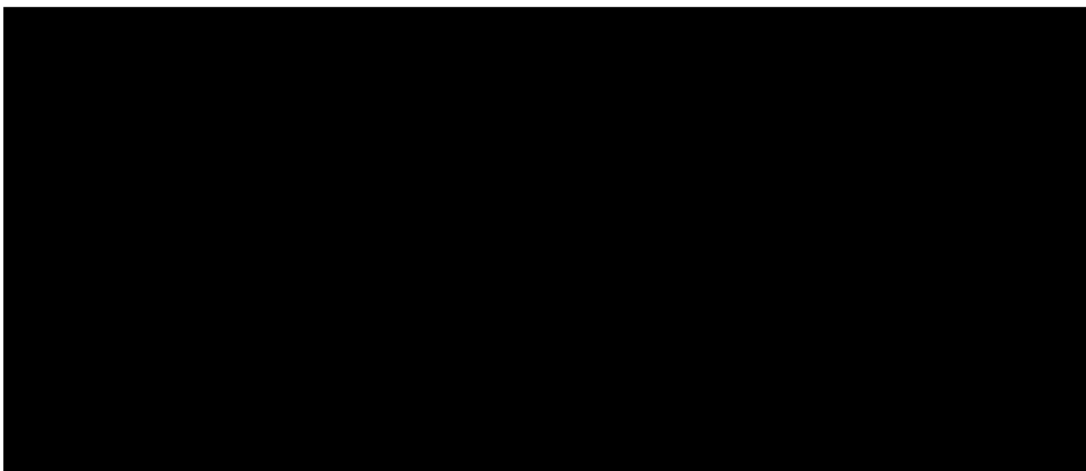
Geographic Names	Geographic Name - Ineligible for Further Review
<p>The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. However, the required documentation of support or non-objection was either not provided or did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook. Your application is ineligible for further review.</p>	

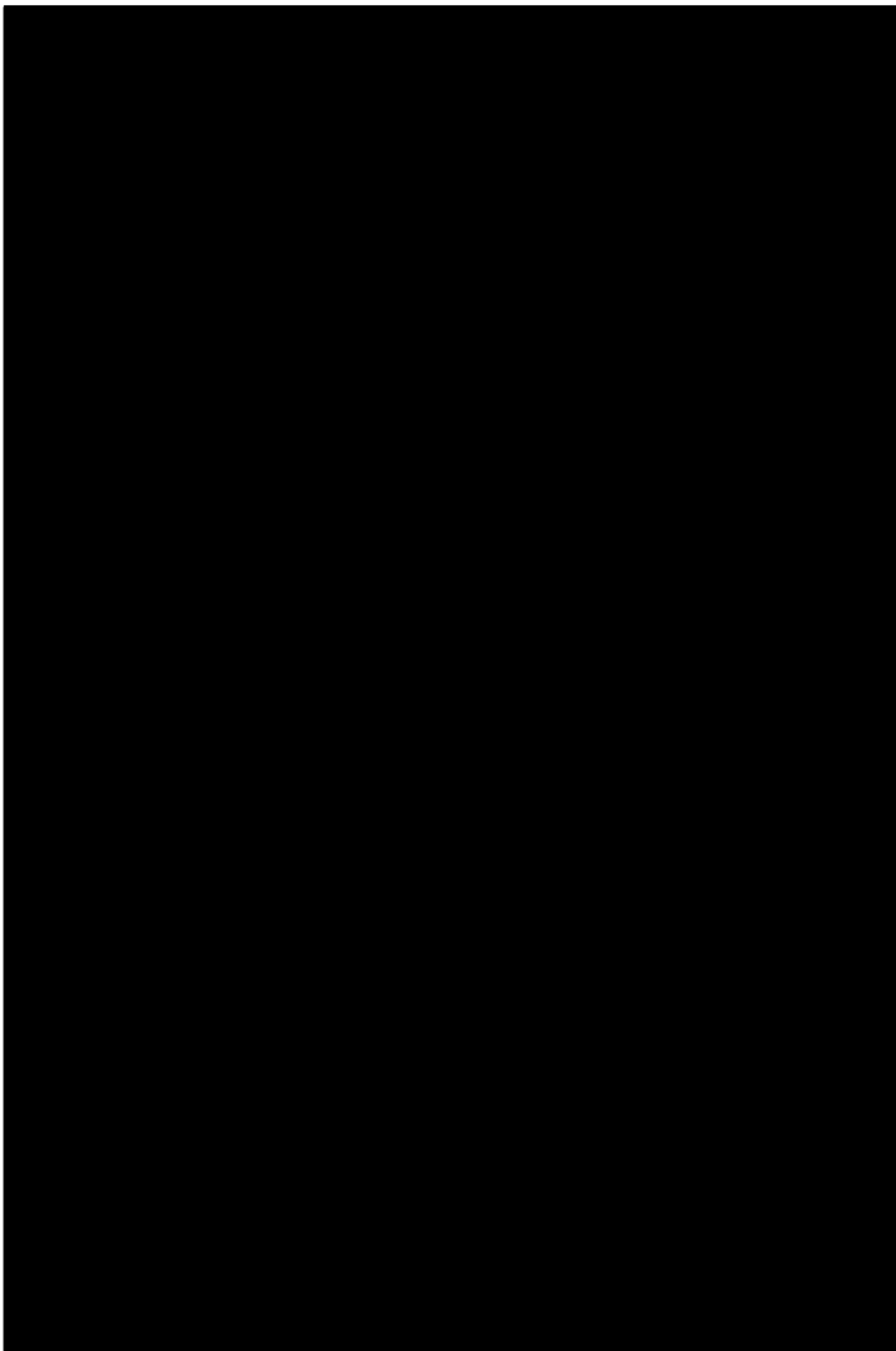
Disclaimer: Please note that these Extended Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. 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>.

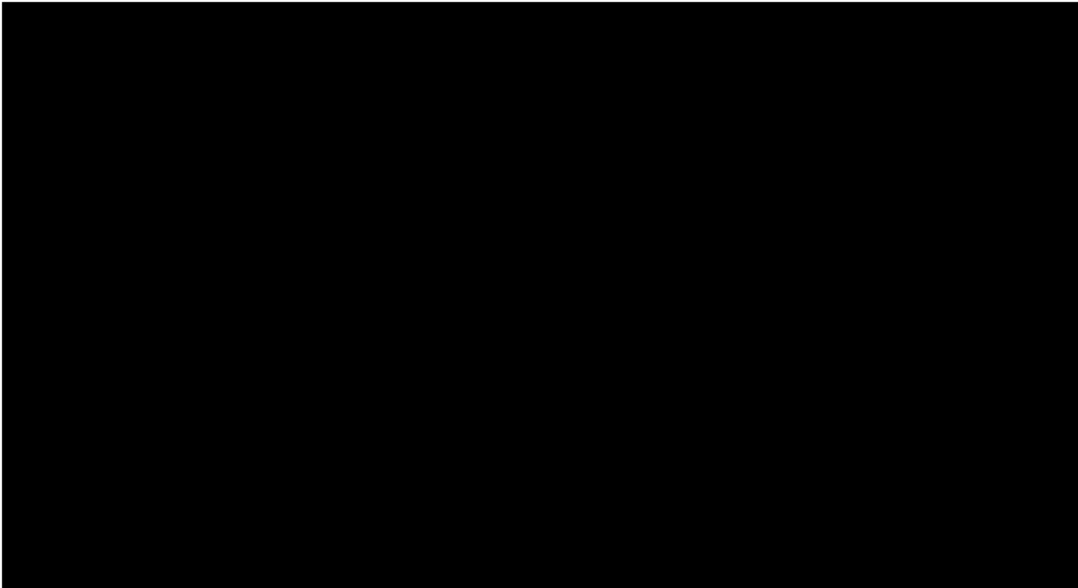
EXHIBIT 19











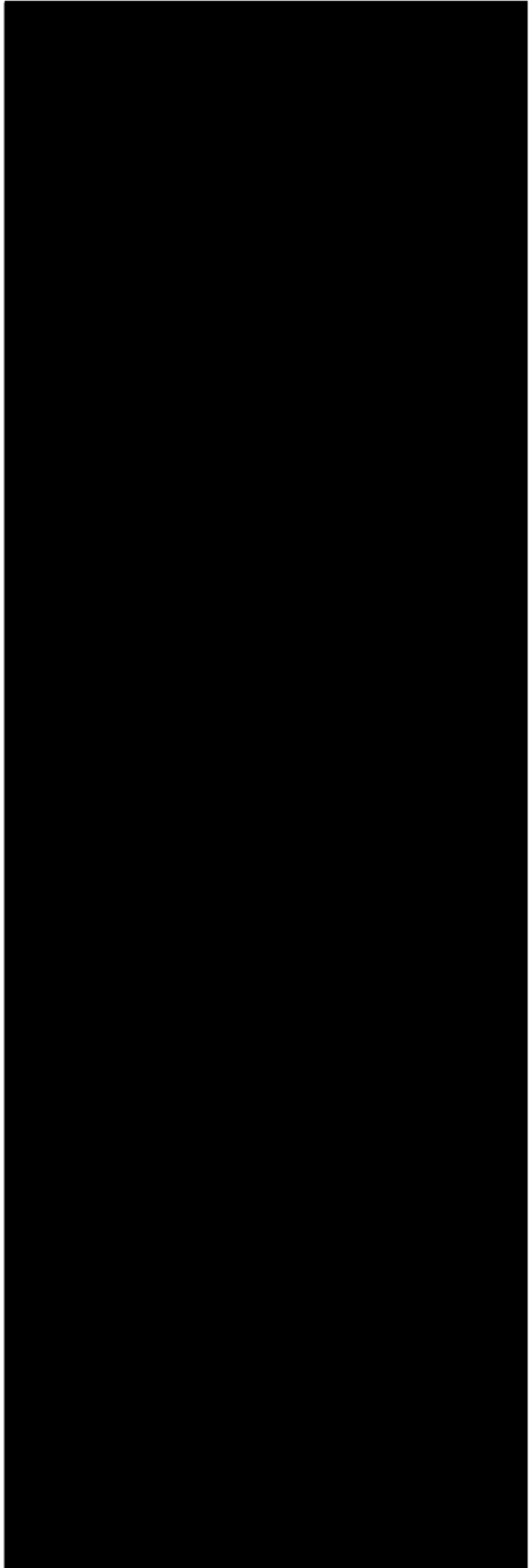


EXHIBIT 20



New gTLD Application Submitted to ICANN by: ZA Central Registry NPC trading as Registry.Africa

Application Downloaded On: 17 Feb 2014

String: africa

Application ID: 1-1243-89583

Applicant Information

1. Full legal name

ZA Central Registry NPC trading as Registry.Africa

2. Address of the principal place of business

Contact Information Redacted

3. Phone number

Contact Information Redacted

4. Fax number

Contact Information Redacted

5. If applicable, website or URL

<http://www.AfricaInOneSpace.org>

Primary Contact

6(a). Name

Neil Dundas

6(b). Title

Director

6(c). Address

#:1841

6(d). Phone Number

Contact Information Redacted

6(e). Fax Number

Contact Information Redacted

6(f). Email Address

Contact Information Redacted

Secondary Contact

7(a). Name

Simla Budhu

7(b). Title

Manager - Legal & Policy

7(c). Address

7(d). Phone Number

Contact Information Redacted

7(e). Fax Number

Contact Information Redacted

7(f). Email Address

Contact Information Redacted

Proof of Legal Establishment

8(a). Legal form of the Applicant

Not for Profit Company (NPC)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Initially incorporated as a Section 21 Company (Not for Gain), under the Companies Act of 1973, with the Registrar of Companies (Companies and Intellectual Property Registry Office - CIPRO) In terms of the new Companies Act of 2008, has been reclassified as a Not for Profit Company, registered with the South African Companies and Intellectual Property Commission (CIPC)

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

Not applicable

9(c). If the applying entity is a joint venture, list all joint venture partners.

Applicant Background

11(a). Name(s) and position(s) of all directors

Name	Position
BROWNE, Calvin Scott	Director
DUNDAS, Neil Duncan	Director
ELKINS, Mark James	Director
KRAMER, Theodorus	Director
WALLACE, Fiona Jean	Director

11(b). Name(s) and position(s) of all officers and partners

Name	Position
BUDHU, Simla Rathilal	Legal & Policy Manager
ELS, Lizette	Administration Manager
MAASDORP, Sedrick Marco	Human Resoruces Manager

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility

Name	Position
EL BASHIR, Mohamed	Chairperson: dotAfrica Steering Committee

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

14A. If applying for an IDN, provide the A-label (beginning with "xn--").

14B. 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.

14C1. If an IDN, provide the language of the label (in English).

14C2. If an IDN, provide the language of the label (as referenced by ISO-639-1).

14D1. If an IDN, provide the script of the label (in English).

14D2. If an IDN, provide the script of the label (as referenced by ISO 15924).

14E. If an IDN, list all code points contained in the U-label according to Unicode form.

15A. If an IDN, upload IDN tables for the proposed registry. An IDN table must include:

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.
- Submission of IDN tables in a standards-based format is encouraged.
-

15B. Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15C. List any variants to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

There are no known issues, specific operational or rendering problems with the applied for string. It is a Latin alphabet based string that conforms to the specifications laid out in RFC 1035.

As with all new TLDs there is the potential for legacy applications to fail to recognize the new TLD string. Some older applications may have hardcoded lists of "valid" TLDs or, worse case, assume anything that is not ".com", ".net" or ".org" to be invalid. There are existing initiatives, including The Public Suffix List operated by the Mozilla Foundation, which the Applicant will work with to help educate the broader Internet Community.

17. OPTIONAL.

Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

18A. Describe the mission/purpose of your proposed gTLD.

Introduction: Mission, Vision and Purpose:

ZA Central Registry NPC is a non-profit company incorporated in South Africa and trading as the .ZA Central Registry ("ZACR"). The African Union Commission (AUC) has, on behalf of its member states, officially appointed ZA Central Registry NPC to apply for and launch the dotAfrica TLD.

In this application and any supporting documentation relating thereto, the Applicant may be referred to as ZA Central Registry NPC, UniForum SA, Registry.Africa, the ZA Central Registry and/or simply ZACR. Although it is the intention of the Applicant to

conduct its business under the Registry.Africa banner in the event that its application is successful, the evaluating team should, for purposes of this application, consider any reference to ZA Central Registry, UniForum SA, Registry.Africa, ZA Central Registry and/or ZACR as interchangeable and synonymous with the Applicant.

The ZACR and its partners in Africa, representing governments, ccTLD administrators, the technical and user communities, share a collective vision of establishing and running a successful, African-based registry operation for the benefit and pride of Africa.

Our primary objective and mission can therefore be summarised as follows: “To establish a world class domain name registry operation for the dotAfrica Top Level Domain (TLD) by engaging and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups”.

Our mission is to establish the dotAfrica TLD as a proud identifier of Africa’s online identity, fairly reflecting the continent’s rich cultural, social and economic diversity and potential. In essence we will strive to develop and position the dotAfrica TLD as the preferred option for individuals and businesses either based in Africa or with strong associations with the continent and its people.

The dotAfrica TLD represents a unique opportunity for Africa to develop and enhance its domain name and Internet eco-systems and communities by collaborating with each other to:

- identify, engage and develop African-based specialist skills and resources;
- share knowledge and develop DNS thought-leadership; and
- implement world class registry standards and contribute towards their continued development.

18B. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

By Africa, for Africa:

The dotAfrica TLD is a collaborative, public-private, African initiative, supported by African governments through the African Union and administered through the expertise and resources of the private sector. Shortly after its appointment in terms of the African Union RFP process, the Applicant, in consultation with Internet community representatives from all over Africa, at a meeting held in Johannesburg, established a Steering Committee to exercise moral and ethical oversight over the dotAfrica project.

Representatives of the broader African Internet community are currently participating in the project through the SteerCom, which comprises African Internet experts, country code managers, registrars and others volunteers. For a list of the SteerCom members refer to www.AfricaInOneSpace.org.

The SteerCom is engaged under formal Terms of Reference, which include, amongst others, a mandate to identify the criteria and processes for the incorporation of a new non-profit organisation, namely the dotAfrica Foundation. The SteerCom is therefore the precursor to the dotAfrica Foundation, which will work closely with the Applicant in assuming the moral and ethical oversight of the dotAfrica TLD and the development of policy issues. The SteerCom will be dissolved once the Foundation is incorporated and established.

Benefitting the African and Global Internet Communities:

Reinvestment into Africa:

Funds generated through the administration of the dotAfrica TLD will benefit Africans and the African continent through various skills development and capacity-building initiatives relating to the local domain name and Internet sectors. By investing in the development and enhancement of critical Internet infrastructure and resources, end-users will receive more efficient and reliable services, which will have a follow-on enabling effect on socio-economic growth and investment in the region.

Upon delegation of the dotAfrica TLD the Applicant will establish a Development Fund, which will comprise surplus operational funds generated through the administration of the dotAfrica gTLD. This Fund will be transferred to and administered by the dotAfrica Foundation, to be applied to development projects and initiatives in Africa. These include:

(A) The Development of African ccTLDs:

ccTLDs provide important Internet infrastructure that promote and support local economic growth, education and communication. The Development Fund must support the role of existing organisations such as AfTLD and strengthen and develop new African ccTLDs. Primary objectives of this development initiative are to:

(i) make available and/or share technical resources and know-how, developed and maintained in Africa;

(ii) develop and harmonise African ccTLD strategy and policy to make it more attractive and accessible to local and international markets;

(iii) harness and optimise the business potential that ccTLDs present, and to develop domestic strategies and partnerships to facilitate the dissemination of benefits down the domain name value chain; and

(iv) establish collaborative centres of excellence throughout Africa through which new

(B) The Development of the African Registrar Market:

Of the over 900 ICANN-accredited registrars in the world, more than 500 are based in the United States, whilst Africa has only 5. Of these only 4 are operational. Africa is clearly lagging behind its international counterparts and a solution must be found from within Africa.

The Development Fund must support and facilitate the expansion of the African Registrar market. Some of the broad objectives of this development initiative are to:

(i) promote awareness of (and engage with) the registrar model as a mechanism for domestic and regional enterprise and skills development;

(ii) develop and implement industry best practices and consumer (registrant) protection mechanisms;

(iii) develop and provide shared, cost-effective resources and services;

(iv) collectively address associated business challenges, including billing and banking issues;

(v) provide a mechanism for registrars to enter the market and to nurture their businesses into becoming globally competitive and viable; and

(vi) harness the business potential of a competitive and vibrant registrar market for the benefit of African registrants and ccTLDs.

(C) The Development of African Online Content:

The dotAfrica project is a fantastic opportunity to drive content development focusing specifically on Africa. In order to kick-start this process and achieve some level of critical mass, the Applicant will reserve certain high-search value names and then utilise these, either on its own or through strategic partnerships with content providers, to develop online content and services. The Development Fund must support and facilitate the origination, development and maintenance of African-related online content and services.

Some of the broad objectives of this development initiative are to:

(i) Encourage existing African content and service providers to associate their content with the dotAfrica TLD in order to better engage with this user community. This is specifically relevant to African online content and service providers who utilise gTLDs instead of African ccTLDs. Potential targets for this initiative include African governments and agencies, large multi-national and parastatal organisations.

(ii) Develop strategic partnerships and associations with existing, well-established international online content and related services providers, to encourage and assist them to develop and customise their products and services specifically for the African market. Potential targets for this initiative include social media platforms, search engines providers, and leisure and business service providers.

(iii) Establish partnerships and associations with African service providers and businesses with the potential and capacity to develop sound business models for developing and driving online content and services; and assist them by making available high-search value names, start-up funding, technical support and mentoring, etcetera.

(D) The Support of Socio-Economic Development Projects and Initiatives:

The Applicant, through its administration of the successful CO.ZA domain name space in South Africa over the past 16 years, has already demonstrated its ability to establish and maintain a highly successful and sustainable social development initiative through its 'CoZa Cares' division. By 2011, this division, in collaboration with its strategic partners, had channelled over ZAR40mill (USD5,5M) towards the establishment of ICT infrastructure in over 250 schools, in 7 South African provinces.

The Development Fund must support and facilitate various African socio-economic development initiatives and projects relating to the ICT sector. Supporting ICT skills development and capacity-building initiatives, from primary school to tertiary level, is critical to develop the African thought leaders of tomorrow.

The broad objectives of this development initiative are to:

- (i) facilitate the coordination of various ICT-related social-economic development initiatives in Africa, in order for the various participants to learn and benefit from each others' experiences and, where possible, to pool resources and expertise in order to address developmental challenges faced by Africa more effectively; and
- (ii) identify and support worthy ICT-development projects and initiatives throughout Africa in order to ensure their sustainability.

Although the above development initiatives and projects undertaken by the dotAfrica Project partners are almost exclusively focused on the African community, we believe that there is a compelling benefit for the rest of the world. Africa comprises nearly 1 billion people, based in 54 countries with a wide diversity of language and culture. A successful dotAfrica TLD, supported by an empowered and vibrant African community, presents significant business, social and leisure opportunities for the world. Success in Africa means success for the world.

In addition to the development projects and initiatives administered through the dotAfrica Foundation, the Applicant will endeavour, as part of its registry operations, to establish a Centre of Excellence, in terms of which African specialist skills and expertise, relating to the DNS environment, will be identified and developed. Specialist DNS expertise is a critical success factor in order to benefit the dotAfrica registry operation and African ccTLDs. The development of African DNS thought leadership and technical innovation is needed in order to sustain the empowerment of African ccTLDs.

Building a Global Brand with a Focus on Africa:

Africa, the Cradle of Humankind:

"Africa is the world's second-largest and second-most-populous continent, after Asia. Africa, particularly central Eastern Africa, is widely regarded within the scientific community to be the origin of humans and the Hominidae clade , as evidenced by the discovery of the earliest hominids and their ancestors, as well as later ones that have been dated to around seven million years ago." (wikipedia)

Africa, the Economic Opportunity:

"The economies of the fastest growing African nations experienced growth significantly above the global average rates. Many international agencies are gaining increasing interest in investing emerging African economies, especially as Africa continues to maintain high economic growth despite the current global economic recession. The rate of return on investment in Africa is currently the highest in the developing world."

Differentiation of dotAfrica from other new gTLDs:

There will be many arguments raised by registries in differentiating their new gTLDs from others. As a geographic indicator, the dotAfrica TLD, which is unique in essence, will automatically assume the reputation and goodwill of the region it represents. Africa represents a unique part of the world, with unique people, challenges and prospects. dotAfrica, therefore presents an opportunity to engage with the region and its people, thereby potentially unlocking the economic and social potential of a vast and diverse continent.

Whilst there are 54 ccTLDs that could potentially serve the needs of the African Internet community, not a single one of these is ideally positioned to provide a collective identity to the continent as a whole. With many of these ccTLDs in turmoil or unable to provide reliable services, dotAfrica will offer a secure, stable, and open TLD that will be recognized in Africa as well around the world.

Marketing, Communication and Public Relations

The marketing of the dotAfrica domain name brand will occur in terms of a defined strategy to create competitive advantages to governments, businesses and individuals within Africa and abroad. The entire African continent has unique needs, cultures, and political realities, market requirements and socio-economic conditions, which are influenced by internal and external forces. These variables need to be taken into account in our marketing and communication strategy with our various stakeholders.

Multiple media tools must be used in the dotAfrica marketing strategy. Radio remains a major source of information throughout Africa, but mobile penetration must also be used to dotAfrica's advantage. Broadband penetration outside of a very small number of countries has been limited, but Internet access via mobile telephone is on the rise. Digital and pay-for-service television access is on the rise. The vast target market needs to be segmented, in order to develop key messaging for each market sector. Each dotAfrica registration will help fund the dotAfrica Foundation that has the core mandate to promote digital inclusion, social development, and technical development of the Internet in the region.

A dotAfrica domain name is the perfect platform for global branding, marketing, and visibility with a focus on customers and markets in Africa which can help increase tourism, build and enhance international business relationships with Africa, and boost economic benefits. The marketing and communication campaign for dotAfrica is already using a number of communication platforms to create awareness and communicate with the various stakeholders, including: Facebook & Twitter and; dotAfrica website (africainonespace.org); and dotAfrica mailing lists. Traditional media such as newspapers, and radio and modern digital media have been used to spread the dotAfrica message. An African multi-stakeholder committee comprising of diverse skills has been established to focus on activities and strategy required for a successful PR campaign.

Registry Operations:

From a technical/operational perspective the dotAfrica TLD registry will operate on the Extensible Provisioning Protocol platform, which is an internationally accepted standard for registry functions across the world and which has the flexibility to incorporate extensions such as DNSSEC and extensions pertaining to domain specific policy requirements. The dotAfrica registry platform is wholly developed, maintained and hosted in Africa.

The applicant has a highly experienced team of experts dedicated to the on going development, maintenance, administration and training of the core registry services. The dotAfrica registry platform, which has been developed, implemented and maintained on the back of over 17 years registry experience by the Applicant, also provides WHOIS services, Secure EPP Message Handling, DNS and DNSSEC services. A key point of the registry system is the flexible Policy Integration and configuration independent of the core development team.

As part of the global DNS environment, the dotAfrica registry platform also integrates with specialist 3rd party DNS related systems and services, which when viewed collectively, provides a mature comprehensive, well-balanced world-class registry solution for dotAfrica. External systems and services compliant with industry best practises and ICANN requirements include: Data Escrow services; Anycast and Unicast services; and Off-site Hot Standby Failover Hosting.

We envisage that the investment by the Applicant into the development of the African ccTLD and Registrar communities will encourage the adoption and implementation of unified standards and policies across the Africa region. This should in turn facilitate the growth of a competitive and sustainable registry/registrar market and cost savings and efficiencies for registries that collaborate on the implementation of shared services and systems.

Preliminary steps have already been taken to create awareness and engage with the African registrar and registry communities on the subject of the proposed dotAfrica registry system. A wiki site which highlights the Applicant's EPP functionality and provides a walkthrough for current and potential registrars has been created at <http://registry.net.za>

Apart from providing a platform for growth of the cctLD and registrar communities, the dotAfrica registry solution allows registrars access to a number of key services including an automated Registrar Accreditation Process, reporting and tracking, a Registry Notification Portal, and a secure flexible interface for retrieving financial statements and invoices. This allows for the registration and maintenance of domain names by registrars and results in ease of domain registration for registrants.

More importantly it provides a registry platform that promotes simple, accessible, secure, accurate and abuse free domain registration by registrars and ultimately the end user. The dotAfrica TLD registry function will be managed in a way that is service driven, secure and stable.

Registration Policy:

The dotAfrica registration policy will be established, implemented and maintained through a multi-stakeholder Policy Committee established by the Applicant in partnership with the Steering Committee or the Foundation. The registration policy will set out the technical and administrative procedures and criteria used by the registry with regards to domain name registrations or requests for such registrations, cancellations, transfers, suspensions and revocations. The policy will be informed and guided by those developed through the ICANN multi-stakeholder process.

Although a comprehensive final registration policy must still be approved, the broad parameters of the registration policy will include:

- (i) following the Sunrise and Land Rush periods, registrations will be delegated on a "first-come-first-served" basis;
- (ii) registrations will be open to anyone;
- (iii) access to the registry will be available only through an ICANN-Accredited Registrar who has executed a suitable accreditation agreement with the registry;
- (iv) registration periods will range from 1 - 10 years.

Similar criteria will apply to the establishment, implementation and maintenance of a privacy policy for the dotAfrica TLD that is based on international best practices as well as local and international standards. The registry will strive to protect the rights and privacy of all individuals or companies associated with dotAfrica TLD names.

Financial Aspects:

The Applicant, over 17 years of administering the successful CO.ZA domain in South Africa, has demonstrated an ability and capacity to manage and administer its financial affairs in a professional and transparent manner. The Applicant has maintained highly competitive fees charged to registrars within reasonable international parameters. Simultaneously it has generated reasonable surplus funds, not only to provide a suitable operating buffer for the efficient and effective operation of the registry, but also to fund social development initiatives and projects.

The Applicant will, under the scrutiny and oversight of the SteerCom or Foundation, apply similar financial disciplines and procedure to the administration of the dotAfrica TLD. As outlined above, the operating revenues generated through the administration of the dotAfrica TLD will be accounted for in accordance with internationally-accepted accounting practices. All surplus funds will be channelled into a Development Fund to be administered by the dotAfrica Foundation.

Although the financial parameters and policies must still be finalised and approved by the Policy Committee, the following are of importance concerning the application and launch of the dotAfrica TLD. The Applicant has made available up to US\$1,300,000 to apply for and launch the dotAfrica TLD. The above funds have been committed to a dedicated dotAfrica bank account that will be used exclusively for the dotAfrica project.

The Applicant has provided a Continual Performance Guarantee to ICANN of US\$140,000 with ABSA Bank, a subsidiary of Barclays Plc to secure the provision of critical registry services for the dotAfrica TLD for up to 6 years. Initial registration fees are estimated to be in the region of US\$18 per year. Due to its considerable investment into its technical registry capacity for .ZA, including the procurement and development of technical skills and resources, the Applicant is able to leverage this against the provision of critical registry services for dotAfrica in the event that the TLD is commercially unsustainable in its own right.

18C. 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?

Rights Protection:

- Reserved Name Lists (Pre-Sunrise)
- Sunrise
- Post Delegation Dispute Resolution

The ZACR is committed to protecting the rights of governments, registrars, end users and the greater Internet community against fraudulent, deceptive and unfair business practices that may arise within the dotAfrica TLD. Abusive practices will be minimized through the following initiatives:

(A) Pre-Sunrise:

A pre-sunrise process will take place prior to the full-scale implementation of the Sunrise and Land-rush Policy applicable to the dotAfrica TLD. This is significant as it will provide African governments and government organisations, such as the African Union Commission (AUC), a window of opportunity to compile and submit a list of names that must be reserved or blocked from registration. These names may touch on sensitive territorial or political issues; hold special meaning in Africa (such as country names, city names, cultural sites or groups); or are simply offensive in Africa.

The Pre-Sunrise process will be done in coordination with the AUC on the terms and conditions agreed to between the AUC and the ZACR in their agreement signed on 1 March 2012 and will also be subject to all reservations prescribed by ICANN (included but not limited to reservations regarding the label 'example', two character labels, tagged domain names, prescribed registry operation names, country and territory names, etc.) as well as the GAC principles regarding new TLDS.

Names placed on the Reserve Lists will only be available to pre-defined Applicants who will be expected to apply for the names within a period of time prescribed by the dotAfrica Policy Committee.

(B) Sunrise:

A phase-based Sunrise procedure, with associated auction processes, will be implemented to allow established brands and trademark holders to register their corresponding domains within the dotAfrica TLD. Although the Policy Committee must still approve a final Sunrise Policy, a draft policy has already been developed and is currently under review. This policy caters for two Sunrise periods, namely:

- Sunrise 1, which provides priority for eligible owners of trademarks registered in Africa to obtain corresponding domains names.
- Sunrise 2, which allows eligible owners of trademarks to obtain corresponding domains names.

The ZACR will appoint an independent entity or entities to provide certain rights protection services which may include inter alia verification, validation, and dispute resolution services related to the eligibility of trademarks. In this regard the ZACR will endeavour to engage the services of African providers and institutions and has in the past

worked closely with the South African Institute of Intellectual Property Law (www.SAIPL.org.za) concerning the establishment and implementation of alternate dispute resolution mechanisms in ZA.

The final Sunrise Policy will also provide further details and clarity on Sunrise Eligibility Requirements (SERs) and a dedicated dispute resolution policy and mechanism for this phase.

(C) Land Rush

Just as in the Sunrise period, Land Rush will be implemented over several phases and will be administered through the Applicant's Registrar Web Portal. Although the Policy Committee must still approve a final Land Rush Policy, a draft policy has already been developed and is currently under review. This policy caters for three Land Rush phases, namely:

- The first phase is the "Introductory Land Rush Period" and will see premium domain names made available for purchase for certain periods at time at a certain minimum prices which will decrease as the periods progress. Where there is more than one party interested in the same domain name, that domain name will be referred to auction.
- The second phase is the "Initiation Land Rush Period". This period will last for an estimated 14 days and will also be administered through the Registrar Web Portal. A minimum fee (roughly \$300 - \$500) will apply to registrations during this period. Multiple applications for the same domain name during this period will also be resolved using an auction process. Undisputed applications will be allocated at the end of the period.
- Depending on the decision made by the Policy Committee, the ZACR may elect to implement a "Limited Availability Operational Phase", following on from the Initiation Land Rush period. This mechanism, which will endure for a limited time (0-14 days) will be to place any newly requested domain name (application) in a reserved queue for a short period. If any additional applications for the same domain name are received during this period then the domain will enter a Land Rush auction for a maximum predetermined period. At the end of the period the bids will be collected and the winner determined. This process, or a process similar to this, may also be introduced by the ZACR on an adhoc basis to mitigate the effects of multiple applications for the same name following domain release as well as spontaneous applications due to international events or announcements

(D) All Rights Protection Mechanisms prescribed by ICANN will be implemented. In particular, the Uniform Rapid Suspension System (URS) will be adopted. Initially, Examiners accredited by ICANN appointed Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to make findings in URS applications, but the Registry hopes to arrange for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

In the case where a Post Delegation Dispute Resolution Procedure (PDDRP) is initiated following allegations that the Registry profited from a bad faith registration, the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD. Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will initially be requested to stand as Providers in PDDRP applications, but the Registry hopes to arrange for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

Provision will also be made to file initial complaints that the Registry has not complied with registry restrictions through a Whois Data Problem Report System (WDPRS) through InterNIC.net at a nominal, non-refundable fee. If a complainant is not satisfied that the Registry has complied with its requirements, the matter may be escalated using the RRDRP.

In the case of Registry Restrictions Dispute Resolutions Procedures (RRDRP), the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD. Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will initially be requested to stand as Providers in RRDRP applications, but the Registry hopes to arrange

for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

A dedicated online advisory / complaints portal will be created and end-users will have access to email, telephone and fax contact details of an appointed Complaints Officer who will attend to complaints directly or escalate them to the relevant divisions within the registry for resolution. A comprehensive Complaints Handling Policy, that sets out inter alia the scope and ambit of complaints that will be dealt with; the process that must be followed to deal with domain related complaints; and the course of action that the registry may take to deal with complaints depending on their nature, will also be drafted in consultation with the dotAfrica Policy Committee.

(E) The Policy Committee (PC), which is a multi-stakeholder consultative mechanism, will play a determining role in defining policy and determining pricing mechanisms within the dotAfrica TLD. The scope and mandate of the PC will include the review and authorisation of various pricing models, including multi-year (1 - 10 years) pricing, bulk discounts and prices changes. The PC will consider the input and comments of the Registry Operator, the Foundation, Registrars, the broader Internet community and other factors concerning the affordability and competitiveness of the TLD in determining policy, prices and/or or price changes.

The PC will, after due consideration and where circumstances reasonably allow, first publish a proposed policy or price update schedule for public comment on the Registry's website and will also circulate this to the Registrar mailing lists. The proposed update schedule will also include a description of the implementation roadmap for these changes to come into effect and prescribe a deadline for further comments and objections to be submitted for consideration.

Upon final review, taking into account the input provided and objections raised during the public inspection period, the PC will provide a final policy to the Registry Operator for implementation in the manner prescribed. The Registry Provider will then publish the policy on its website and duly inform all accredited Registrars and ICANN of the policy change. The Registry Operator will then ensure that the policy is implemented as published.

PARAGRAPH ON IMPLEMENTATION OF IDN WITHIN THE DOTAFRICA gTLD REGISTRY FUNCTION

Some of Africa's languages are non-Latin scripts for example Arabic and Amharic and also many African languages are written with extended Latin scrip. Africa has diverse cultural, religious and language groups so the impetus to facilitate IDN integration within the dotAfrica gTLD framework clearly exists. The ZACR has the technical knowledge and the specialized skills needed to add IDN capability within the dotAfrica gTLD registry function but believes that it would be premature to implement IDN integration without fully understanding the technical, legal and policy ramifications that this may have in Africa and elsewhere.

Whilst the implementation of IDN is not a new phenomenon internationally, its implementation in the African context will definitely be new. Associated to this is the fact that the African internet/domain name community has to be developed in terms of the beneficiation model described earlier in this submission so that it matures in terms of infrastructure, policies and human potential to a stage where the incorporation of IDN becomes axiomatic. Given the diversity and uniqueness of the management model of the dotAfrica gTLD domain name registry and the sensitivities surrounding language issues, the ZACR believes that it would be wise to reserve this issue for future research, discussion, debate and policy development under the guidance of a Policy Oversight Committee.

The ZACR intends to engage with those registries that have implemented IDN capability within its registry function to learn from their experience. More especially the ZACR plans to engage/consult with the broader African internet community, involving representatives from governments, registries, registrars as well as other experts and end users to investigate and resolve the challenges that IDN integration may present to Africa

19. Is the application for a community-based TLD?

No

20A. 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.

20B. Explain the applicant's relationship to the community identified in 20(a).

20C. Provide a description of the community-based purpose of the applied-for gTLD.

20D. Explain the relationship between the applied- for gTLD string and the community identified in 20(a).

20E. 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.

20F. 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.

21A. Is the application for a geographic name?

Yes

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.

The ZACR is aware of the GAC advice on this issue and will take it into consideration in their management of second level domain name registrations and further confirms that it will comply with Specification 5 of the Registry Agreement.

Specification 5 of the New gTLD Registry Agreement initially reserves at the 2nd and all other levels within the TLD:

- Country and territory names contained on the ISO 3166-1 list
- UN Group of Experts on Geographical Names, Technical Reference Manual for the Standardisation of Geographical Names, Part II Names of Countries of the World, and
- The list of UN member states in 6 official UN languages prepared by the Working Group on Country Names of the UN Conference on the Standardization of Geographical Names

In accordance with the provisos contained in Specification 5, such names may be released if the Registry Operator reaches agreement with the applicable government and/or the Registry Operator proposes release of the reserved name(s) subject to review by GAC and approved by ICANN.

The Registry will work cooperatively with ICANN to ensure that the 2nd and subsequent levels of the proposed TLD comply with expressed public policies and goals and in particular the following:

1. It is worth noting, as documented by ICANN, that rights of governments or public authorities in relation to the rights of the sovereign state or territory which they represent cannot be limited or made conditional by any procedures that ICANN introduces to new gTLDs. The ZACR will follow the GAC public process relating to geographic names
2. The ZACR will use existing recognised international lists as prescribed by ICANN. The lists will be reserved at the second level at no cost to the governments of the dotAfrica TLD. It will be the prerogative of the relevant governments to adopt procedures that allow for applicants to register names from any of the reserve lists.
3. The AUC shall within three months into force of the agreement with the ZACR, allow member states to submit to the AUC and other member states a limited list of broadly recognised names with regard to geographical and/or geopolitical concepts which affect their political or territorial organisation that may either:
 - not be registered or
 - be registered only under a second level domain according to the public policy rules
4. The African Union Commission (AUC) will furnish the list of notified names to which such criteria apply, and the AUC shall also publish the list at the same time as it notifies the ZACR
5. Where a member state or the AUC within 30 days of publication raises an objection to an item included in the notified list, the ZACR will take measures to remedy the situation
6. Before starting the registration operations, the ZACR will adopt the initial registration policy for the dotAfrica TLD in consultation with the AUC and other interested parties. The ZACR will implement in the registration policy the public policy rules pursuant to the agreement between the AUC and the ZACR taking into account the exception lists and the GAC process as prescribed in the principles regarding new gTLDs.
7. It should be noted that the AUC shall retain all rights relating to the dotAfrica TLD, including in particular, intellectual property and other rights to the registry databases required to ensure the implementation of the agreement between the AUC and the ZACR, and the right to re-designate the registry function.

23. 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.

The following registry services are customary services offered by a registry operator:

- 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). The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Additional proposed registry services that are unique to the registry must also be described.

1 Synopsis

This chapter provides a description of the registry services provided by the ZA Central Registry including domain provisioning services, domain and contact publishing services, zone publishing services, and services for interacting with accredited registrars, (Registrars), oversight bodies and statutory bodies such as the judiciary and accredited dispute resolution providers.

2 ZA Central Registry Details

Registry Name:- ZA Central Registry NPC trading as the ZA Central Registry.

Registry Address:- PO Box 4620, Halfway House, 1685, South Africa.

Registry Contact Number:- +27113140077

Registry Fax Number:- +27113140077

Registry eMail:- gtld@registry.net.za

Registry URL:- <http://www.coza.net.za> and <http://registry.net.za>

non- ZA Central Registry NPC, trading as the ZA Central Registry, was established as a

profit organisation in 1988 by a group of end users, developers, and vendors who got together to form a professional association that would promote and exchange information on open systems. It was handed the responsibility of administering the CO.ZA domain name space in 1995 because it was seen as not only having the technical skills to do so but also seen as committed to neutrality and unity of purpose.

At startup the co.za zone contained around 400 entries. Today, with over 760000 domains in the co.za zone amounting to over 95 % of the total registrations in the .ZA top level domain are to be found in the co.za domain and within the top 20 registries world wide.

Over the years ZA Central Registry NPC played active roles in the internet industry including, but not limited to, the following

- establishing the alternate dispute resolution process for adjudicating domain name disputes in the co.za domain.

- translating the CO.ZA registry web site into all 11 official languages of South Africa as far back as 2001.

- cooperating with a range of other industry bodies to drive the growth of the South African Internet. We joined the South African Internet Service Providers Association (ISPA) in 1996, and have since worked with ISPA on a range of web and social responsibility projects.

- sponsoring and participating in the ISPA “Train the Teachers” initiative.
- by addressing and sponsoring learner education, educator development and the provision of IT infrastructure and curriculum development through the Mindset Computer Science Curriculum project, COZA Cares School of the Month project and ISPA Teacher Training initiatives.
- participating in important debates, for example, by making contributions to parliamentary discussions about important laws with wide-reaching consequences for South African Internet users such as the Electronic Communications and Transactions Bill, providing regular input to the ZADNA on domain related issues and providing regular DNS training to the South African Internet community at large.
- transitioning the CO.ZA registration into a world class EPP registry.
- collaborating with South African Domain Name Authority (ZADNA) in transitioning into the ZA Central Registry in order to administer all open second level domains including .org.za, .net.za, and .web.za as 2nd level domains in .ZA.

exists In summary, ZA Central Registry NPC has served as a non-profit organisation that

for the good of the South African Internet. We are proud to have remained true to the basic premise that surplus funds raised beyond covering our expenses are invested back into the greater Internet community. Although our role and the way forward might be changing, our principles and ideals have remained constant for more than 24 years and will endure into the future.

4 Registry Registrar Services and Operations

This section provides details on the technical operational services critical for the provisioning of domains, contacts and hosts as well as the services related to both publishing domain, host and contact information and the publishing of zone information as provided by the ZA Central Registry and as intended for use by the dotAfrica TLD.

4.1 Domain Registration Services

This section provides details on the receipt of data originating from Registrars concerning domain name, contact and nameserver (host) registration. All registration data from Registrars must be received over a secure TCP/IP connection conforming to the EPP protocol as defined by the IETF Standard 69, and in particular RFC5730 to RFC5734 as listed below.

Domain Mapping:- Data format for each EPP command must conform to RFC 5731 with each data unit conforming to section 4 of RFC 5734.

Host Mapping:- Data format for each EPP command must conform to RFC 5732 with each data unit conforming to section 4 of RFC 5734.

Contact Mapping:- Data format for each EPP command must conform to RFC 5733 with each data unit conforming to section 4 of RFC 5734.

4.2 Registry Zone Dissemination

The zone is published once every 15 minutes which may change from time to time depending on the policy for the dotAfrica TLD and the size of the zone.

4.3 Registry Zone Servers

The dotAfrica TLD will use nameserver infrastructure supplied by the ZA Central Registry including 2 anycast instances geographically dispersed including instances within the Africa continent, and 4 to 6 unicast instances geographically dispersed with at least 4 in Africa. The DNS infrastructure will be outsourced to reputable industry service providers demonstrating geographic diversity and the necessary expertise for managing anycast services. Unicast services will be managed both in-house, and optionally outsourced on a similar basis to the anycast services.

4.4 Zone Server Status Information

Zone Server status information relating to the zone servers of the dotAfrica TLD will be displayed on the Registrar portal and as detailed under Registrar Notifications in section 6.1. This includes the following

Primary Nameserver Zone Timestamp:- - The timestamp will be displayed in green should it be within expected limits according to the dotAfrica TLD policy, in orange if not, and a message in red indicating any critical error.

Secondary Nameserver Zone Timestamp:- - The timestamp for each secondary nameserver will be displayed in green should it be within expected limits according to the dotAfrica TLD policy, in orange if not, and a message in red indicating any critical error.

4.5 Registry Whois Services

This dissemination of contact and other information concerning domain name registrations in the dotAfrica TLD will be determined by the policy oversight committee of the dotAfrica TLD.

Whois Services offered by the ZA Central Registry for the dotAfrica TLD will include at least the following

Port 43 Whois:- Service in accordance with RFC3912.

Web Based Whois:- Service.

Typical information will include the following

domain:- The domain string

registrant:- The name of the registrant

registrant address:- The postal address of the registrant

registrant contact number:- The phone/fax number of the registrant

registrar:- The name of the sponsoring registrar
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registrar address:- The postal address of the registrar

registrar contact number:- The phone/fax number of the registrar

billing:- The name of the billing contact

billing address:- The postal address of the billing contact

billing contact number:- The phone/fax number of the billing contact

technical:- The name of the technical contact

technical address:- The postal address of the technical contact

technical contact number:- The phone/fax number of the technical contact

registration status:- Status information pertaining to the domain eg. registration period, registration date, renewal date, last update, and domain state where the state could be any of the following

- Pending Update
- Pending Delete
- Pending Transfer
- Inactive
- Client/Server Hold

Name Servers:- The nameservers for the domain

Whois services will be subject to abuse prevention based on industry best practises including, but not necessarily limited to, load balancing, rate limiting and black listing addresses from where attacks placing undue load on

4.6 Internationalised Domain Names

These will not be supported at the launch of dotAfrica TLD. Any decision to implement IDNs during the life time of dotAfrica TLD will be determined by industry best practises, ICANN recommendations and the dotAfrica TLD Policy Oversight Committee. Should such a decision be taken then the technical implementation for IDNs will conform to the draft standards as set out in RFC 5890, RFC 5891, and RFC 5892.

4.7 DNSSEC

The ZA Central Registry will provide full support for Domain Name System Security Extensions (DNSSEC) for the dotAfrica TLD zone. The ZA Central Registry complies with industry best practices for zone signing and key protection, including security requirements as defined by the dotAfrica Policy Oversight Committee, industry best practises and taking international standards such as ISO27001 into account.

5 Registry Services by Agreement

This section provides details on services and products offered by the dotAfrica TLD over and above the normal registration services as listed above. These services and products are as per intended agreements with oversight bodies and role players.

The following services are provisionally intended and will be ratified by the dotAfrica Policy Oversight Committee prior to opening up registrations including the sunrise and landrush periods.

Reserved List:- This list provides a service that will allow strings to be reserved to particular groups or entities as determined by the dotAfrica Foundation. This list may also include abusive names as determined by the Policy Oversight Committee.

Management Information System:- The MIS service provides stakeholders and oversight bodies such as the African Union and the dotAfrica Policy Oversight Committee with an interface to determine registry performance, uptime, registration statistics and other information relating to registry service level agreements.

6 Additional Registry Services

Additional registry services for the dotAfrica TLD include services provided as business services provided to Registrars as required for their day to day operations.

6.1 Additional Registrar Services

Services listed here are intended to facilitate Registrar interaction with the Registry and are typically accessible via the Registrar portal as provided by the ZA Central Registry.

Registrar Accreditation Process:- This service provides an automated step by step process for accrediting prospective Registrars including both legal and technical phases of the process.

Registrar Payment Gateway:- This service provides a secure authenticated interface for topping up Registrar domain registration funds.

Registrar Key Management:- This service provides a secure authenticated interface for inserting and updating the Registrar public keys as used to ensure secure communication using the Transport Layer Security (TLS) protocol over TCP with the dotAfrica EPP based domain registration service.

Registrar Issue Tracker:- This service provides an interface allowing accredited Registrars to log and track technical issues with the Registry.

Registrar Financial Information:- This service provides a secure authenticated interface allowing Registrars to obtain financial information pertinent to their domain provisioning transactions including invoices, statements, and credit notes.

Registrar Management Information:- This service provides a secure authenticated interface allowing Registrars to obtain domain provisioning statistics and trends including comparative information allowing Registrars to see how they compare to others.

Registrar News Portal:- This service provides an interface where all Registry news items relating to Registrars are published.

Registrar Notifications:- This service provides details on various Registry news items including Registry infrastructural issues such as Registry Maintenance Times, Whois Maintenance Times and Zone Server Status.

24. Shared Registration System (SRS) Performance: describe

- 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).
- A complete answer should include, but is not limited to:
- 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).

1 Synopsis

This chapter provides details on the technical and operational capabilities of the ZA Central Registry, and as will be used for the dotAfrica TLD. This covers the operational plans include system and human resourcing to run the dotAfrica TLD according to the requirements of ICANN, the TLD Registrars and industry best practices.

A high level architectural diagram and description of the services as provided by the ZA Central Registry are included as well as the resourcing model for operating the technical services for the dotAfrica TLD.

2 Shared Registry Ability

The ZA Central Registry has operated the co.za 2nd level domain registry since September 1995. This registry has grown from around 400 domains at startup to over 750000 domains and with an average growth of over 15000 domains per month over the past year. Currently the ZA Central Registry is in further negotiations with the South African Domain Name

Authority (ZADNA) to take over administration of further 2nd level domains including org.za which consists of around 4000 domains.

The ZA Central Registry has maintained service levels comparable to specification 10 of the ICANN registry agreement during the time of administering co.za zone and will commit the necessary resources necessary to comply fully. The ZA Central Registry anticipates no issues with compliance to ICANN service level requirements.

3 High Level Shared Registry System Description

The ZA Central Registry system architecture ensures the necessary scalability allowing for anticipated growth of the registry. The components illustrated in diagram DNS-ShareRegistry-Diagram.pdf provide an overview of the ZA Central Registry Shared Registry System (SRS) as provided by the ZA Central Registry and as intended for use by the dotAfrica TLD.

The SRS for the dotAfrica TLD will comply to and keep current with all relevant IETF RFCs in accordance with specification 6 section 1.2 and specification 10 of the ICANN registry agreement. These include the following

RFC 5730:- Extensible Provisioning Protocol (EPP).

RFC 5731:- EPP Domain Name Mapping.

RFC 5732:- EPP Host Mapping.

RFC 5733:- EPP Contact Mapping.

RFC 5734:- EPP TCP Transport.

RFC 3735:- Guidelines for Extending the Extensible Provisioning Protocol (EPP) should the dotAfrica TLD policy oversight committee implement policy that require extensions of the default EPP specification for domain, host, and contact objects.

4 Shared Registry Infrastructure

This section provides a high level description of the services, related infrastructure, human and system resources as provided by the ZA Central Registry and as will be utilised and expanded on for the dotAfrica TLD.

4.1 Message Handler

The Message System Handler (MSH) provides a secure, authenticating EPP messaging interface to accredited Registrars complying to IETF RFC 5734. The functions of the MSH include access control, registrar authentication, secure message handling between the registrars and the registry, registrar session management, sophisticated message tracking and EPP XML Message Schema validation in accordance with the EPP XML Schemas for domains, hosts and contacts as defined in IETF RFCs 5731 to 5733.

4.1.1 MSH Human Resources

The MSH is a critical front facing component for an SRS as it the gateway for all Registrar domain operations.

The ZA Central Registry has a complement of 3 MSH administrators and developers responsible for the day to day operational requirements fulfilling

the roles described in section 7.

4.1.2 MSH System Resources

The ZA Central Registry MSH implementation for the dotAfrica TLD will consist of 2 co-located servers hosted at the primary site with one acting as master server and the other as a hot swap standby server. A remote standby cluster of MSH servers will be located at the Johannesburg Internet Exchange JINX. The remote standby cluster will be configured as a replica of the local cluster.

4.2 Registry Engine

The ZA Central Registry Registry Engine (RE) provides the domain registration functionality of the dotAfrica TLD. The RE operates on the domain, contact and host objects in accordance with IETF RFCs 5730 to 5733 and the policies as required for the dotAfrica TLD. The RE returns responses for instructions received to the Registrars synchronously or asynchronously either via the MSH and/or using other out of band mechanisms such as e-mail. The RE provides sophisticated logging on all domain registration instructions. The RE ensures that all domain object financial transactions are posted to the appropriate financial accounts.

4.2.1 Registry Engine Human Resources

The ZA Central Registry has a complement of 6 RE administrators, developers, testers and support staff responsible for the development and day to day operational requirements fulfilling the roles described in section 7 of this document.

4.2.2 Registry Engine System Resources

The ZA Central Registry Registry Engine implementation for the dotAfrica TLD will consist of a cluster of 2 servers hosted at the primary site with one acting as master server and the other as a hot swap standby server. A remote standby cluster of Registry Engine servers will be located at the Johannesburg Internet Exchange JINX. The remote standby cluster will be configured as a replica of the local cluster.

4.3 Whois

The function of the Whois server provided by the ZA Central Registry is to provide domain registration information to the public at large and in accordance with the policies as dictated by applicable policies in accordance with industry best practises and high availability requirements. The Whois system provided by the ZA Central Registry, and as will be used for the dotAfrica TLD, consists of the following

Web Whois:- A web based whois providing domain, host and registrar and registrant contact details for the dotAfrica TLD.

Port 43 Whois:- A port 43 whois service providing domain, host and registrar and registrant contact details for the dotAfrica TLD.

4.3.1 Whois Human Resources

The ZA Central Registry has a complement of 4 Whois administrators, developers and testers responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.3.2 Whois System Resources

The ZA Central Registry Web Whois implementation for the dotAfrica TLD will consist of a cluster of 2 servers hosted at the primary site with one acting as master server and the other as a hot swop standby server.

The ZA Central Registry Port 43 Whois services for the dotAfrica TLD will be co-hosted on a single server and will be implemented as a cluster of 2 servers hosted at the primary site with one acting as master server and the other as a hot swap standby server.

A remote standby cluster of Whois servers will be located at the Johannesburg Internet Exchange JINX.

The remote standby cluster will be configured as a replica of the local cluster.

4.4 DNS System

The function of the Domain Name System, (DNS), is to provide the necessary publishing of zone records. The DNS system provided by the ZA Central Registry conforms to the relevant industry standards and is implemented and maintained according to industry best practises, security and high availability requirements.

The DNS system provided by the ZA Central Registry, and as will be utilised for the dotAfrica TLD, consists of 8 Nameserver services placed over a strategic geographical wide area. Two Nameservers will be configured as anycast dns servers, with the rest configured as unicast dns servers.

4.4.1 DNS Human Resources

The ZA Central Registry has a complement of 3 in house DNS administrators responsible for the day to day operational requirements and fulfilling the roles described in section 7 of this document.

4.4.2 DNS System Resources

The ZA Central Registry master DNS implementation for the dotAfrica TLD will consist of a server cluster hosted at the primary site.

A remote standby cluster of DNS servers will be located at the Johannesburg Internet Exchange JINX.

The remote standby cluster will be configured as a replica of the local cluster.

At least 6 unicast servers will be located at geographical diverse locations.

In addition 2 anycast dns services providers will be contracted to provide and maintain the geographically dispersed anycast instances.

4.5 Network Infrastructure

The network infrastructure and associated routing provided by the ZA Central Registry conforms to the relevant industry standards and is implemented and maintained according to industry best practises, security and high availability requirements.

4.5.1 Networking Human Resources

The ZA Central Registry has a complement of 3 inhouse network administrators responsible for the day to day operational requirements. fulfilling the roles described in section 7 of this document.

4.5.2 Network System Resources

The dotAfrica TLD initial system network will be co-hosted on the network of the ZA Central Registry.

4.6 Web Portal

The Web Portal provides the SRS with an interface to both the public and the accredited registrars with the following functionality

4.6.1 Public

The web portal provides a gateway for the domain registration public to the SRS. The functionality includes, but is not limited to, general TLD news, domain registration policy detail pertinent to the dotAfrica TLD, and an interface for reporting complaints and abuse related issues.

4.6.2 Accredited Registrars

The Registry portal provides accredited registrars with an authenticated secure interface into the registry enabling management of information pertinent to the Registrar. This including facilities for financial management, contact management and reporting of information relevant to the registrar and a notice board providing registry status information to the Registrars.

4.6.3 Web Portal Human Resources

The ZA Central Registry has a complement of 3 inhouse Web Portal developers and administrators fulfilling the roles described in section 7 of this document.

4.7 Management Information System

The Management Information System, (MIS), is responsible for providing the required domain registry statistics, trends and usage as required by oversight bodies including the dotAfrica TLD board and management, and ICANN.

The MIS will also provide Registrars with necessary service level registry information, and registration statistics within their mandate. The management information system will initially be co-hosted on the hardware of the Web Portal.

4.7.1 MIS Human Resources

The ZA Central Registry has a complement of 3 inhouse developers and administrators responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.8 Financial System

The Financial System, (FS), provided by the ZA Central Registry is based on OpenERP and provides the internal system for all financial and accounting responsibilities. This including Registrar invoicing, statements, and a realtime balance checking facility.

4.8.1 FS Human Resources

The ZA Central Registry has a complement of 5 inhouse FS developers, administrators and accounting clerks responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.9 Administration System

The Administration System provided by the ZA Central Registry provides the internal operational system for registry administration requirements including legal, administrative and technical functions. In addition to the above the Administration System also provides the necessary infrastructure to address the following

- * Uniform rapid suspension procedure requirements.
- * Post delegation dispute resolution policy requirements.

4.9.1 Administration System Human Resources

The ZA Central Registry has a complement of 3 inhouse developers and administrators, 3 technical support staff, 2 legal clerks and 5 administration clerks responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.10 Database

The Registry Database is the repository for various objects critical to the operation of an SRS. These including domain, contact and host objects. It is also the repository for all transactions on these objects, including all financial and statistical records. The database is based on a clustered model allowing full replication to standby backup infrastructure.

4.10.1 Database Technology

The ZA Central Registry will use PostgreSQL 9.1 for the dotAfrica TLD implementation based on several reasons but mainly for the ability of scalability and synchronous replication allowing flexible remote failover database replication which is critical in a generic top level domain (gTLD) implementation with the potential to grow significantly and as will be used on a global scale.

4.10.2 Database Human Resources

The ZA Central Registry Registry has been using the PostgreSQL database in it's co.za registry administration operations for the past 12 years and has built up considerable experience and expertise on this. PostgreSQL is a powerful, open source object-relational database system. The ZA Central Registry has a complement of 5 database administrators and developers responsible for the day to day operational requirements around the database fulfilling the roles described in section 7.

4.10.3 Database System Resources

The ZA Central Registry database implementation for the dotAfrica TLD will consist of a cluster of 2 database servers hosted at the primary site with any one of the 2 servers acting as the master and with the second server acting as a hot standby server using synchronous replication on a transaction by transaction basis. A remote backup cluster of the database servers will be located at the Johannesburg Internet Exchange JINX. These database servers will be configured as backup standby servers with data replicated asynchronously from the master database server.

5 Shared Registry Interconnectivity

The dotAfrica TLD will share the multi-homed internet connectivity as used by the ZA Central Registry for the co.za zone and as illustrated in diagram DNS-NetworkDiagram.pdf.

6 Shared Registry Synchronisation

The SRS for the dotAfrica TLD will be replicated to co-located standby servers and the remote backup site co-located at the Johannesburg Internet Exchange, JINX.

All dynamic data as contained in the database will be synchronously replicated between the master system and co-located standby servers.

In addition all dynamic data as contained in the database will also be asynchronously replicated between the master site and the remote backup standby site.

All system software and system configuration will be asynchronously updated to both the co-located standby servers and the remote backup standby servers as and when changes occur on a schedule to be maintained by the system administration department.

7 Shared Registry Resourcing

The dotAfrica TLD development, deployment and operational responsibilities for the initial technical requirements will be staffed by members of the ZA Central Registry during start-up phase. The ZA Central Registry has a current complement as follows

Board of Directors:- 7

CEO:- 1

Financial Management:- 1

Management:- 3

Junior Management:- 4

Human Resources:- 1

Administration and Accounts:- 7

Technical Support:- 3

Housekeeping:- 2

Senior Development:- 3

Junior Development:- 3

System Administration:- 3

Registrar Liaison:- 1

Public Relations:- 1

African cctld Liaison:- 1
The roles being as follows

Development and Maintenance:- This responsibility covers the development and maintenance of the registry systems. This also includes keeping abreast with registry industry trends by participating in organisations such as the IETF and ICANN.

Data Modeling:- This responsibility covers the development of data models required for the current and ongoing database requirements of the business of the registry.

Documentation:- This responsibility covers the documentation requirements.

System Testing:- This responsibility covers regression testing for all new releases, as well as providing Registrar documentation and notices regarding any issues that may crop up from time to time.

System Administration:- This responsibility covers administration of the registry systems including system installation and configuration, Registrar connectivity management, message management, security management covering Registrar public key management, operating system installation and configuration, etc.

System Monitoring:- This responsibility covers monitoring of the software and hardware dedicated to the registry services including uptime, performance, security and abuse monitoring, and general network, hardware and operating system health. This responsibility also covers performance monitoring, reporting, statistics gathering, etc.

Network Administration:- This responsibility covers administration of the network services including installation, routing configuration, and maintaining the networking hardware.

Backups:- This responsibility covers all backup related activities include hot backups to standby servers and cold backups (tape), including management of off-site backups as well as backup recovery procedures.

Security:- This responsibility covers all registry security related responsibilities including data security, hardware security, system services security (software) and network security.

Once the dotAfrica TLD becomes operational the plan is to deploy dedicated staff as follows

General Manager:- 1 person responsible for the day to day management including any legal responsibilities and keeping up to date with international registry/registrar policy standards and best practises.

Financial Manager:- 1 staff member responsible for the financial system implementation and the day to day financial policies and procedures.

Registrar Liaison:- 1 person responsible for the day to day registrar related issues, as well as for building the registrar base.

Public Relations:- 1 person.

Clerical Staff:- 4 staff members responsible for the administrative and support tasks.

Technical Manager:- 1 staff member responsible for all technical related issues including keeping up to date with international standards and best practises.

System Administration:- 2 staff members responsible for the day to day system administration, network administration and system monitoring.

25. 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.

If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.

Describe resourcing plans (number and description of personnel roles allocated to this area). 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.

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE “ < ” and “ > ” CHARACTERS), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE FULL ANSWER TO THIS QUESTION IS ATTACHED AS PDF FILES dotAfrica-q25.pdf AND dotAfrica-q25-rfc.pdf, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

1 Synopsis

This chapter provides details on the ZA Central Registry Shared Registry System Extensible Provisioning Protocol EPP functionality as will be used by the dotAfrica TLD.

2 Overview

The functionality of the ZA Central Registry Shared Registry System allows registrars to interface using the EPP protocol and commands as defined in the following RFCs and as referenced in this document:

RFC 3735:- Guidelines for Extending the EPP.

RFC 5730:- EPP Description.

RFC 5731:- EPP Domain Name Mapping.

RFC 5732:- EPP Host Mapping.

RFC 5733:- EPP Contact Mapping.

RFC 5734:- EPP TCP Transport.

RFC 5910:- EPP DNSSEC.

The ZA Central Registry Shared Registry System also conforms to the above-mentioned RFCs.

The ZA Central Registry does not provide support for Domain Registry Grace Period Mapping as per RFC 3915.

The ZA Central Registry will not be supporting International Domain Names at startup.

3 Registrar Interface

The dotAfrica implementation listens for incoming TCP connection requests. Once a client has issued an EPP <login> command on the listening port, the server responds, creating the required session and sending back an EPP <greeting> to the client.

To end a session, a client may close the connection by issuing EPP <logout> command or an active close call.

The dotAfrica implementation automatically closes a session once the session has idled for 24 hours.

A total of 2 concurrent sessions per client are allowed.

A Registrar can only establish a TCP connection to the server if they have been technically accredited, provided the ZA Central Registry with their public key and the public key has been successfully installed.

Exchanging of messages between client and server conforms to the requirements outlined in RFC 5734, and follows the general client-server message exchange as outlined in Figure 1 of RFC 5734 Section 3.

Pipelining commands is possible. The server supports command pipelining to a maximum limit of the connection buffer of 16384 bytes.

The dotAfrica implementation returns a message from the server to the client for every command performed. If a message is lost due to connection failure, the result code can only be retrieved if the client issues the same command using the same client transaction identifier <clTRID> .

The dotAfrica implementation uses SSL/TLS as well as IP based Access Control Lists. A session is started on login only if an SSL handshake is established and the client IP Address is listed on the Access Control List. Further security measures include authentication through use of usernames and passwords. A session is terminated upon logout. A session is valid for 24 hours.

The dotAfrica handling and interpretation of the EPP Data Units conforms to RFC 5734 Section 4, whereby the format of any EPP data unit will contain the 32-bit header describing the total length of the data unit, and the EPP XML Instance.

Length and calculation of data units conform with requirements outlined in RFC 5734 .

Changes in the implementation can be made and will have to be decided by the dotAfrica Policy Oversight Committee .

4 Extensible Provisioning Protocol (EPP)

This section describes the capability of the ZA Central Registry Shared Registry System EPP and compliance with RFC 5730

4.1 Protocol Description

EPP is an XML based protocol used for provisioning domains and their associated objects. The dotAfrica EPP implementation supports all commands as defined in RFC 5730.

4.2 Protocol Commands

A command is any action performed on an object. Commands are grouped into session, query and object transformation commands as follows in the list below:

Protocol:-

- login
- logout

Query:-

- Check
- Info
- Poll
- Transfer

Transform:-

- Create
- Delete
- Renew
- Transfer
- Update

4.3 EPP <login> Protocol Command

The dotAfrica implementation of the EPP <login> command conforms to the requirements outlined in RFC 5730 Section 2.9.1.1.

4.4 EPP <logout> Protocol Command

The dotAfrica implementation of the EPP <logout> command conforms to the requirements outlined in RFC 5730 Section 2.9.1.2 .

4.5 EPP <poll> Protocol Command

The dotAfrica implementation of the EPP <poll> command conforms to the requirements outlined in RFC 5730 Section 2.9.2.3 .

4.6 Command Response

For each EPP command that is issued by the client to the server, a corresponding response will be returned to the client by the server. Every response will contain a result code. The result code indicates command success or failure. The dotAfrica implementation conforms to the theory of result codes outlined in RFC 5321 Section 4.2.1 and uses a fourth digit in its response codes.

5 EPP Domain Name Mapping

5.1 Overview

The following section provides details on how the ZA Central Registry

Shared Registry System maps its domain functionality. Any changes to the EPP Domain Name Mapping command set will be determined by the dotAfrica Policy Oversight Committee .

5.2 Relationship of Domain Objects and Host Objects

All created domain name objects require a minimum of 2 unique subordinate or delegated host objects.

5.3 Object Attributes

Domain and Host Names:- Only domain names conforming to standard ASCII will be used. Internationalized Domain Names (IDN)s must be provided in A-Label format.

Contact and Client Identifiers:- Client and contact identifiers will be represented through a clID element to create an association with a domain object.

Status Values:- The dotAfrica implementation supports server and client status interaction outlined in RFC 5731.

Dates and Times:- All dates and times conform to RFC 5731 and are represented using UTC.

Validity Periods:- The dotAfrica implementation supports validity periods in months and years, as well as a combination of both.

Authorisation Information:- The dotAfrica implementation supports domain name object authorisation through use of passwords as defined in RFC 5731. Passwords are stored in one-way hash format.

5.4 EPP <check> Command

The dotAfrica implementation of the EPP <check> command conforms to the requirements outlined in RFC 5731 . The Domain <check> command will be limited to 100 checks per command.

5.5 EPP <info> Command

The dotAfrica implementation of the EPP <info> command conforms to the requirements outlined in RFC 5731 Section 3.1.2. The <info> command response will be restricted based on the requester credentials. Expiry dates and other information will not be presented to unauthorized sources.

5.6 EPP <transfer> Command

The dotAfrica implementation of the EPP <transfer> command conforms to the requirements outlined in RFC 5731. The dotAfrica implementation supports the following EPP <transfer> operations which conform to RFC 5730 :

"query":- Allows a client to identify the current status of a transfer request on a domain name object.

"request":- Allows a client to request a transfer of a domain object from

one sponsor to another.

"cancel":- Allows a client to cancel their transfer request for a domain as long as the domain has not yet been transferred.

"approve":- Allows the current domain sponsor to approve a transfer request for the requested domain.

"reject":- Allows the current domain sponsor the reject a transfer request for the requested domain.

The dotAfrica implementation incorporates an e-mail voting system whereby a registrant is allowed to vote on the transfer of a domain. An EPP Poll message will be queued for the current sponsor for transfer vote notification.

5.7 EPP <create> Command

The dotAfrica implementation of the EPP <create> command restricts the use of the <period> element where the registry defines the registration period of a domain object.

5.8 EPP <delete> Command

The dotAfrica implementation of the EPP <delete> command conforms to the requirements outlined in RFC 5731 Section 3.2.2 . The dotAfrica implementation denotes that any domain that undergoes a <delete> command is checked to conform to subordinate host dependencies outlined in RFC 5731 . A deletion request on a domain object will be prohibited if the subordinate host objects are referenced by other domains belonging to the same registrar.

5.9 EPP <renew> Command

The dotAfrica implementation of the EPP <renew> command restricts the use of the <domain:period> element. The domain object can only be renewed to a maximum of one period.

5.10 EPP <update> Command

The dotAfrica implementation of the EPP <update> command conforms to the requirements outlined in RFC 5731 . The dotAfrica implementation utilises the <domain:contact> element to set "tech", "billing", "admin" contacts to domain name objects.

6 EPP Host Mapping

The following section provides details on how the ZA Central Registry Shared Registry System maps its host functionality. The dotAfrica implementation restricts the host creation and usage to the individual registrar. In other words each registrar controls and maintains their own set of hosts even if the names are duplicated with other registrars. Subordinate host glue publication is strictly controlled to prevent nameserver masquerading.

6.1 Relationship of Domain Objects and Host Objects

All created domain name objects require a minimum of 2 unique subordinate or delegated host objects.

6.2 Object Attributes

Host Names:- Only host names conforming to standard ASCII will be used.

Status Values:- The dotAfrica implementation supports server and client status interaction outlined in RFC 5732.

Dates and Times:- All dates and times conform to RFC 5732 and are represented using UTC.

Glue:- The dotAfrica implementation supports IPv4 and IPv6 addresses, conforming to the requirements outlined in RFC 0791 and RFC 4291 respectively.

6.3 EPP <check> Command

The dotAfrica implementation of the EPP <check> command conforms to the requirements outlined in RFC 5732 .

6.4 EPP <info> Command

The dotAfrica implementation of the EPP <info> command conforms to the requirements outlined in RFC 5732 .

6.5 EPP <create> Command

The dotAfrica implementation of the EPP <create> command conforms to the requirements outlined in RFC 5732. The use of the Host create command might be restricted in lieu of the Domain Host handling during Domain update and creation. The eventual Host create usage will be determined by the dotAfrica Policy Oversight Committee .

6.6 EPP <delete> Command

The dotAfrica Implementation of the EPP <delete> command conforms to the requirements outlined in RFC 5732.

The dotAfrica implementation denotes that any host that undergoes a <delete> command is checked for dependencies outlined in RFC 5731 .

6.7 EPP <update> Command

The dotAfrica implementation of the EPP <update> command conforms to the requirements outlined in RFC 5732.

The dotAfrica implementation dictates that the changing of a host object information is performed through the domain object mapping using the domain <update> command.

7 EPP Contact Mapping

7.1 Overview

The following section provides details on how the ZA Central Registry Shared Registry System maps its contact functionality. Any changes to the EPP Contact Mapping command set will be determined by the dotAfrica Policy Oversight Committee . In the dotAfrica implementation the Registrar objects are stored as standard EPP Contact objects, thus allowing a registrar to adjust contact information such as passwords or support addresses.

7.2 Object Attributes

Contact and Client Identifiers:- Client and contact identifiers will be represented through a clID element to create an association with a domain object.

Status Values:- The dotAfrica implementation supports server and client statuses outlined in RFC 5733. Status combination interactions conform to RFC 5733 .

Internationalized Postal Info:- The dotAfrica implementation supports postal information represented as a subset of UTF-8 encoding in 7-bit ASCII. All required and optional elements for a contact object are supported by the dotAfrica implementation.

Localized Postal Info:- The dotAfrica implementation also supports postal information represented in UTF-8 encoding. All required and optional elements for a contact object are supported by the dotAfrica implementation.

Telephone Numbers:- The dotAfrica implementation conforms to RFC 5733 by ensuring that all telephone numbers begin with a plus (“+”) sign followed by a country code as defined in ITU.E164.2005, followed by a dot (“.”), followed by a sequence of digits representing the telephone number.

E-mail Addresses:- The dotAfrica implementation conforms to the requirements for e-mail addresses as defined in RFC 5322.

Dates and Times: All dates and times conform to RFC 5733. The dotAfrica implementation supports time zone representation in UTC format.

Authorisation Information:- The dotAfrica implementation supports contact object authorisation through use of passwords, conforming to outlined requirements in RFC 5733. Passwords are stored in one-way hash format.

Disclosure of Contact Elements and Attributes:- The dotAfrica implementation supports disclosure of contact attributes and conforms to RFC 5730, by announcing its data collection policies. The dotAfrica implementation supports the disclosure elements outlined in RFC 5733.

7.3 EPP <check> Command

The dotAfrica implementation of the EPP <check> command conforms to the requirements outlined in RFC 5733 .

7.4 EPP <info> Command

The dotAfrica implementation of the EPP <info> command conforms to the

requirements outlined in RFC 5733. The disclosure of Contact information will obey the disclose options as provided for the Contact object.

7.5 EPP <transfer> Command

The dotAfrica implementation of the EPP <transfer> query command conforms to the requirements outlined in RFC 5733.

7.6 EPP <create> Command

The dotAfrica implementation of the EPP <create> command conforms to the requirements outlined in RFC 5733 .
The dotAfrica implementation supports the creation of a contact object with both <contact:postalInfo> types of "loc" and "int", conforming to the requirements outlined in RFC 5733 Section 3.2.1 .

7.7 EPP <delete> Command

Implementation of the EPP <delete> command conforms to the requirements outlined in RFC 5733 Section 3.2.2.

Current policy states that a contact object cannot be deleted if in any way it is associated with another object. If a contact object is still associated with a domain object, the contact object is not deleted until the association between contact and domain objects is removed.

7.8 EPP <update> Command

The dotAfrica implementation of the EPP <update> command conforms to the requirements outlined in RFC 5733 .
The dotAfrica implementation supports the updating of a contact object with both <contact:postalInfo> types of "loc" and "int", conforming to the requirements outlined in RFC 5733 Section 3.2.5 .

8 EPP Technical Plan

The Technical Layout will include the following:

- On-site Scalable Master Server with the following configuration:

Message Server:- The Message Server is responsible for handling session management, access control, user authentication EPP schema validation and Poll commands.

Registry Engine:- The Registry Engine is responsible for all object level query and transform commands.

Database:- The primary Registry Engine database.

- Scalable Standby Co-located Server with the following configuration:

Message Server:- A secondary Message Server used in the event that the Master Server fails.

Registry Engine:- A secondary registry engine used in the event that the Master Server fails.

Standby Database:- A secondary database that is used in the event that the primary database on the Master Server fails.

- Off-site Remote Standby Server with the following configuration:
The Remote Off-Site Server configuration is a mirror of the Master site.

From the Technical Layout above, the EPP Technical Plan is as follows:
The initial startup of the EPP System involves starting the Master server as well as a Standby server. The Standby server acts as a failover measure in the event that the Master server fails.

EPP traffic is received via the External Network Bus, flows to the Message Server. The Message Server handles all access control, SSL session management, authentication and EPP schema validation in accordance to RFC 5731 to 5733 and RFC 5910. The Registry Engine handles authentication of Registrars as well as processes all EPP commands in accordance with RFC 5730.

The Standby Server acts as a failover server in event that the Master Server fails. The Standby server is in a constant waiting state and is monitored for availability in the event that it needs to be used. In the event that the Master Server is overloaded, the Standby Server may be used for load balancing.

The Remote Standby System is an off-site server that is a complete duplication of the Master Server and the Standby Server. In the event that the Master Server and Standby Server fail, the Remote System will act as a failover and perform exactly as the Master and Standby Servers.

The Remote Off-Site Server will be located at the Johannesburg Internet Exchange (JINX). Both the primary site (hosting the Master Server and Standby Co-Located Server) and the backup site (hosting the Remote Off-Site Server) are highly redundant, state of the art data centers with multiple power supplies, on-site backup facilities, and offer protection from natural disasters.

Scalability for the EPP System covers hardware scalability related to system utilization. Additional servers and required hardware will be added for the Master Server as well as the Standby Co-Located Server as resource utilization nears 50%. Any scalability changes made to the Master Server and Secondary Co-Located server will also be duplicated to the Remote Off-Site Server.

9 DNSSEC

The dotAfrica implementation supports the DNSSEC and conforms to RFC 5910. The ZA Central Registry will be operating as a thick registry. A thick registry reflects on DNSSEC in the following way:

Only DNSKEYS will be supported. The Registry will generate the corresponding DS record.

The provided DS record is used for validation purposes only.

Removal of DS records will not be supported on the client side.

Removal of DNSKEYS will remove the associated DS record.

Any changes to the DNSSEC EPP Command Mapping will be determined by the dotAfrica Policy Oversight Committee .

10 EPP Resourcing

The following section provides a high level description of the related infrastructure, human and system resources as provided by the ZA Central Registry and as will be utilised and expanded on for the dotAfrica TLD.

10.1 SRS Human Resource

The ZA Central Registry has a compliment of 6 RE administrators, developers, testers and support staff responsible for the development and day to day operational requirements including the following roles

System Testing:- Responsibility covers regression testing for all new releases, as well as providing Registrar documentation and notices regarding any issues that may crop up from time to time.

System Administration:- Responsibility covers administration of the RE including installation, configuration, and operating system installation and configuration.

System Monitoring:- Responsibility covers monitoring of the hardware dedicated to the RE, RE uptime, RE performance, security and abuse monitoring, and general operating system health.

Backups:- Responsibility covers the backup requirements of the RE machines including total system backup and log backups.

Development and Maintenance:- Responsibility covers the development and maintenance of the RE system including registry policy updates as may be required from time to time as registry policy changes dictate, SRS performance monitoring, reporting, statistics gathering, etc.

10.2 Registrar Technical Support

The ZA Central Registry uses its human resources to provide technical support to Registrars beyond the day to day operational requirements, including:

Registry Online Portal:- Support covers the development and maintenance of the online Registry portal, updating EPP related frequently asked questions and the EPP Command wiki pages.

Registrar Technical Assistance:- The Registry portal incorporates an online contact mechanism where a Registrar can electronically ask a question and acquire technical support relating to their enquiry. Enquiries are tracked through a ticketing system, offering a platform for effectively monitoring and tracking Registrar enquiries.

Accreditation Support:- The ZA Central Registry offers online capability for Registrars to follow a policy aligned process for acquiring accreditation. The accreditation process is performed in 6 steps as listed below:

1. Providing Registrar contact information
2. Providing Company Registration Document
3. Providing contact information for a primary contact

4. Providing additional information including Registrar logo
5. Reviewing status of integration with the EPP system
6. Uploading of SLL Certificate and acquiring live system credentials

Support relating to accreditation comes in the form of answering accreditation process related queries, assigning test account credentials to newly applied Registrars, monitoring accreditation progress and providing live account credentials for accredited Registrars.

Key Management Support covers the safe acquisition of SSL Certificates from accredited Registrars. Accredited Registrars can safely request to change their current in-use key.

Any alterations to or removal of proprietary extensions will be determined by the dotAfrica Policy Oversight Committee .

11 Domain Extensions

The following section provides the domain name proprietary extensions implemented by the ZA Central Registry for the dotAfrica TLD. All proprietary extensions conform to the requirements outlined in RFC 3735, and are written in RFC format as below.

1 Abstract

This document describes an Extensible Provisioning Protocol (EPP) extension mapping for the provisioning and management of Domain Name extensions for domain objects stored in a shared central repository. Specified in XML, the mapping extends the EPP domain name mapping to provide additional features required for the control of the DNServices Registry Domain Objects.

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2 Introduction

This extension provides additional functionality to the Domain object as described in RFC 5731. The additional functionality is listed below:

1. Auto Renew
2. Cancel Pending Action

3 Conventions Used in This Document

The key words "MUST", "MUST NOT", "REQUIRED", "SHALL", "SHALL NOT", "SHOULD", "SHOULD NOT", "RECOMMENDED", "MAY", and "OPTIONAL" in this document are to be interpreted as described in BCP 14, RFC 2119.

In examples, "C:" represents lines sent by a protocol client, and "S:" represents lines returned by a protocol server. "/////" is used to note element values that have been shortened to better fit page boundaries. Indentation and white space in examples is provided only to illustrate element relationships and is not a mandatory feature of this protocol.

XML is case sensitive. Unless stated otherwise, XML specifications and examples provided in this document MUST be interpreted in the character case presented in order to develop a conforming implementation. gtldd is used as an abbreviation for <http://co.za/epp/extensions/gtlddomain-1-0>.

4 Object Attributes

This extension adds an Auto Renew attribute to a domain name object.

4.1 Auto Renew

The auto renew flag is a boolean flag used to control the renew functionality around a domain upon expiry. If the flag is set to TRUE then the domain will be automatically renewed in the Registry assuming:

1. There are sufficient funds
2. There are subordinate host dependencies on the domain

5 EPP Command Mapping

6 EPP Query Commands

6.1 EPP <check> Command

This extension does not add any elements to the EPP <check> command or <check> response described in the EPP domain mapping RFC 5731.

6.2 EPP <info> Command

This extension does not add any elements to the EPP <info> command described in the EPP domain mapping RFC 5731. However, additional elements are defined for the <info> response. When an <info> command has been processed successfully, the EPP <resData> element MUST contain child elements as described in the EPP domain mapping RFC 5731. In addition, the EPP <extension> element MAY contain a child <gtldd:infData> element that identifies the extension namespace if the domain object has data associated with this extension and based on server policy. The <gtldd:infData> element contains the following child elements:

- An OPTIONAL <gtldd:autoenew> element that indicates the domain object preference for automatic renewal

Example <info> Response for Auto Renew:

```
S: <epp:epp xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
S: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
S: xmlns:gtldd="http://co.za/epp/extensions/gtlddomain-1.0">
S: <epp:response>
S:   <epp:result code="1000">
S:     <epp:msg> Domain Info Command completed successfully </epp:msg>
S:   </epp:result>
S:   <epp:resData>
S:     <domain:infData>
S:       <domain:name> exampledomain.gtld </domain:name>
S:       <domain:roid> DOM_2W-COZA </domain:roid>
S:       <domain:status s="ok"> Domain Creation </domain:status>
S:       <domain:registrant> testCont </domain:registrant>
S:     </domain:ns>
S:
S:       3
S:       <domain:hostAttr>
S:         <domain:hostName> ns1.otherdomain.gtld </domain:hostName>
S:       </domain:hostAttr>
S:       <domain:hostAttr>
S:         <domain:hostName> ns2.otherdomain.gtld </domain:hostName>
S:       </domain:hostAttr>
S:     </domain:ns>
S:     <domain:clID> testrar1 </domain:clID>
S:     <domain:crID> testrar1 </domain:crID>
S:     <domain:crDate> 2011-02-23T14:43:12Z </domain:crDate>
S:     <domain:upID> testrar1 </domain:upID>
S:     <domain:upDate> 2011-02-23T14:46:18Z </domain:upDate>
S:     <domain:exDate> 2013-02-22T14:43:12Z </domain:exDate>
S:   </domain:infData>
S: </epp:resData>
S: <epp:extension>
S:   <gtldd:infData>
S:     <gtldd:autoenew> false </gtldd:autoenew>
S:   </gtldd:infData>
S: </epp:extension>
S: <epp:trID>
S:   <epp:clTRID> CLTRID-12984723857-97L2 </epp:clTRID>
S:   <epp:svTRID> DNS-EPP-12E52FC3CEB-A80EF </epp:svTRID>
S: </epp:trID>
S: </epp:response>
S: </epp:epp>
```

6.3 EPP <transfer> Command

This extension does not add any elements to the EPP <transfer> command or <transfer> response described in the EPP domain mapping RFC 5731.

7 EPP Transform Commands

7.1 EPP <create> Command

This extension defines additional elements for the EPP <create> command described in the EPP domain mapping RFC 5731. The additional auto renew elements are defined for the EPP <create> response as follows. The EPP <create> command provides a transform operation that allows a client to create a domain object. In addition to the EPP command elements

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described in the EPP domain mapping RFC 5731, the command MAY contain an <extension> element, and the <extension> element MAY contain a child <gtlidd:create> element that identifies the extension namespace if the client wants to associate data defined in this extension to the domain object.

The <gtlidd:create> element contains the following child elements:

- An OPTIONAL <gtlidd:autorenew> element that indicates a child's preference to automatically renew this domain object upon expiration.

Example <create> Command for autorenew false:

```
C: <epp:epp xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
C: xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
C: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
C: xmlns:gtlidd="http://co.za/epp/extensions/gtliddomain-1-0"
C: xsi:schemaLocation="urn:ietf:params:xml:ns:epp-1.0 epp-1.0.xsd">
C: <epp:command>
C:   <epp:create>
C:     <domain:create
C:       xsi:schemaLocation="urn:ietf:params:xml:ns:domain-1.0
C:       domain-1.0.xsd">
C:       <domain:name> exampledomain.gtld </domain:name>
C:       <domain:ns>
C:         <domain:hostAttr>
C:           <domain:hostName> ns1.exampledomain.gtld </domain:hostName>
C:           <domain:hostAddr ip="v4"> 160.124.24.57 </domain:hostAddr>
C:         </domain:hostAttr>
C:         <domain:hostAttr>
C:           <domain:hostName> ns2.exampledomain.gtld </domain:hostName>
C:           <domain:hostAddr ip="v4"> 160.124.24.58 </domain:hostAddr>
C:         </domain:hostAttr>
C:       </domain:ns>
C:       <domain:registrant> rant1 </domain:registrant>
C:       <domain:authInfo>
C:         <domain:pw> coza </domain:pw>
C:       </domain:authInfo>
C:     </domain:create>
C:   </epp:create>
C: </epp:extension>
```



```

C: <gtlidd:create>
C: <gtlidd:autorenew> false </gtlidd:autorenew>
C: </gtlidd:create>

```

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```

C: </epp:extension>
C: </epp:command>
C: </epp:epp>

```

When a <create> command has been processed successfully, the EPP response is as described in the EPP domain mapping RFC 5731 with the extension element as follows:

```

S: <epp:extension>
S: <gtlidd:gtldData>
S: <gtlidd:detail result="success">
S: AutoRenew 'False' successful
S: </gtlidd:detail>
S: </gtlidd:gtldData>
S: </epp:extension>

```

7.2 EPP <delete> Command

This extension does not add any elements to the EPP <delete> command or <delete> response described in the EPP domain mapping RFC 5731.

7.3 EPP <renew> Command

Although this extension does not add any elements to the EPP <renew> command or <renew> response described in the EPP domain mapping RFC 5731 it does extend the Registry's handling of the domain object upon expiry.

7.4 EPP <transfer> Command

This extension does not add any elements to the EPP <transfer> command or <transfer> response described in the EPP domain mapping RFC 5731.

7.5 EPP <update> Command

This extension defines additional elements for the EPP <update> command described in the EPP domain mapping RFC 5731. The additional elements and attributes are defined for the EPP <update> response as follows. The EPP <update> command provides a transform operation that allows a client to modify the attributes of a domain object. In addition to the EPP command elements described in the EPP domain mapping, the command MAY contain an <extension> element, and the <extension> element MAY

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contain a child <gtlidd:update> element that identifies the extension namespace if the client wants to update the domain object with data defined in this extension. The <gtlidd:update> element MAY contain a <gtlidd:chg> element. The <gtlidd:chg> element contains a <gtlidd:autorenew> element to adjust the automatic renewal status of a domain object. The <gtlidd:update> element also contains an OPTIONAL "cancelPendingAction" attribute that a client can use to ask the server operator to cancel a predefined action as provided by the Registry software. This attribute accepts XML token values meaning standard text without leading or trailing

whitespace.

The <gtlidd:update> element contains the following child elements:

- An OPTIONAL <gtlidd:chg> element that contains a <gtlidd:autorenew> element that is used to adjust the auto renew flag on the domain object.
- An OPTIONAL cancelPendingAction attribute that contains the predefined action name as provided by the server.

Example <update> Command for autorenew false:

```
C: <epp:epp xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
C: xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
C: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
C: xmlns:gtlidd="http://co.za/epp/extensions/gtlddomain-1-0"
C: xsi:schemaLocation="urn:ietf:params:xml:ns:epp-1.0 epp-1.0.xsd">
C: <epp:command>
C:   <epp:update>
C:     <domain:update
C:       xsi:schemaLocation="urn:ietf:params:xml:ns:domain-1.0
C:       domain-1.0.xsd">
C:       <domain:name> exampledomain.gtld </domain:name>
C:     </domain:update>
C:   </epp:update>
C: <epp:extension>
C:   <gtlidd:update>
C:     <gtlidd:chg>
C:       <gtlidd:autorenew> false </gtlidd:autorenew>
C:     </gtlidd:chg>
C:   </gtlidd:update>
C: </epp:extension>
C: </epp:command>
C: </epp:epp>
```

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When the <update> command has been processed successfully, the EPP response is as described in the EPP domain mapping RFC 5731 with the extension element as follows:

```
S: <epp:epp xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
S: xmlns:gtlidd="http://co.za/epp/extensions/gtlddomain-1-0">
S: <epp:response>
S:   <epp:result code="1001">
S:     <epp:msg> Domain action 'PendingUpdate' pending </epp:msg>
S:   </epp:result>
S:   <epp:extension>
S:     <gtlidd:gtldData>
S:       <gtlidd:detail result="success">
S:         AutoRenew 'False' successful
S:       </gtlidd:detail>
S:     </gtlidd:gtldData>
S:   </epp:extension>
S:   <epp:trID>
S:     <epp:clTRID> CLTRID-12984717630-F490 </epp:clTRID>
S:     <epp:svTRID> DNS-EPP-12E52F2BC78-8AC51 </epp:svTRID>
S:   </epp:trID>
S: </epp:response>
S: </epp:epp>
```

If a domain object enters a deletion process through expiry or command then the action MAY be cancelled.

Example <update> Command for cancelling a pending action:

```
C: <epp:epp xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
C: xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
C: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
C: xmlns:gtldd="http://co.za/epp/extensions/gtlddomain-1-0"
C: xsi:schemaLocation="urn:ietf:params:xml:ns:epp-1.0 epp-1.0.xsd">
C: <epp:command>
C:   <epp:update>
C:     <domain:update
C:       xsi:schemaLocation="urn:ietf:params:xml:ns:domain-1.0
C:       domain-1.0.xsd">
C:       <domain:name> exampledomain.gtld </domain:name>
C:     </domain:update>
C:   </epp:update>
C: <epp:extension>
C:   <gtldd:update cancelPendingAction="PendingDeletion"/>
```

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```
C: </epp:extension>
C: </epp:command>
C: </epp:epp>
```

When the <update> command has been processed successfully, the EPP response is as described in the EPP domain mapping RFC 5731. However the action that was specified MUST be cancelled and any status effects on that domain object removed. If the action is not pending or does not exist then an appropriate message is returned to the client.

8 Formal Syntax

An EPP object mapping is specified in XML Schema notation. The formal syntax presented here is a complete schema representation of the object mapping suitable for automated validation of EPP XML instances. The BEGIN and END tags are not part of the schema; they are used to note the beginning and ending of the schema for URI registration purposes.

BEGIN

```
<?xml version="1.0" encoding="UTF-8"?>
<schema targetNamespace="http://co.za/epp/extensions/gtlddomain-1-0"
  xmlns:gtldd="http://co.za/epp/extensions/gtlddomain-1-0"
  xmlns="http://www.w3.org/2001/XMLSchema"
  elementFormDefault="qualified">

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0 domain command extension ////
      schema for gTLD required extensions </documentation>
    </annotation>

    <element name="create" type="gtldd:createType"/>
    <element name="update" type="gtldd:updateType"/>
    <element name="infData" type="gtldd:infoResponseType"/>
    <element name="gtldData" type="gtldd:gtldDataType"/>

    <complexType name="chgType">
      <sequence>
```

```
          <element name="autorenew" type="gtld:autoRenewType" minOccurs="0"/>
        </sequence>
    </complexType>
```

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```
<complexType name="updateType">
  <sequence>
    <element name="chg" type="gtld:chgType" minOccurs="0"/>
  </sequence>
  <attribute name="cancelPendingAction" type="string" use="optional"/>
</complexType>

<complexType name="createType">
  <sequence>
    <element name="autorenew" type="gtld:autoRenewType" minOccurs="0"/>
  </sequence>
</complexType>

<complexType name="infoResponseType">
  <sequence>
    <element name="autorenew" type="gtld:autoRenewType" minOccurs="0"/>
  </sequence>
</complexType>

<complexType name="gtldDataType">
  <sequence>
    <element name="detail">
      <complexType>
        <simpleContent>
          <extension base="string">
            <attribute name="result" type="gtld:resultType" use="required"/>
          </extension>
        </simpleContent>
      </complexType>
    </element>
  </sequence>
</complexType>

<simpleType name="resultType">
  <restriction base="NMTOKEN">
    <enumeration value="success"/>
    <enumeration value="failure"/>
  </restriction>
</simpleType>

<simpleType name="autoRenewType">
  <restriction base="boolean">
  </restriction>
</simpleType>
</schema>
END
```

- 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).

A complete answer should include, but is not limited to:

- 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.

To be eligible for a score of 2, answers must also include:

- 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

A complete answer is expected to be no more than 5 pages.

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE “ < ” and “ > ” CHARACTERS), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE FULL ANSWER TO THIS QUESTION IS ATTACHED AS PDF FILE dotAfrica-q26.pdf, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

1 System Description

The ZA Central Registry whois system supports both RFC 3912 port 43 whois and a web based system. The system is designed for high performance and high availability by ensuring that the system is scalable, redundant and geographically dispersed. Diagram DNS-DetailedWhoisVM.pdf provides an overview of the dotAfrica TLD initial whois service implementation

1.1 Master Site Implementation

The hardware in use at the master site at startup phase will consist the following servers:

Port 43 whois servers

HTTP based query servers

Rate limiting servers

Query cache servers

Database servers

The master whois server cluster is replicated onto a co-hosted hot standby server cluster with incoming queries across the primary server and the standby server shared.

The system fully complies with the requirements of Specification 4 of the Registry Agreement.

1.2 Redundant Site Implementation

At the startup phase there will be a single redundant site with an identical server configuration to the primary site. Queries between the redundant site and the primary site are shared by means of an anycast address setup. Additional geographically dispersed redundant sites will be added as whois query volume demand grows.

2 Synchronisation

Both the port 43 and the Web based whois services are considered critical infrastructure.

The whois system is replicated synchronously to the onsite standby system and is up to date to the point of the last transaction.

The whois system is replicated asynchronously to a remote standby site.

Changes are replicated continuously and are well within the limits allowed by specification 10 of the registry agreement.

Geographical fail-over between the sites is achieved using any-cast IP addresses such that if one site becomes unreachable whois queries will continue un-effected.

3 Data Object Specifications

Objects returned by the whois system comply with specification 4 of the registry agreement. All data returned is in plain text format in key-value pairs. Additional formats may be provided at a later date as requested by the community or specified by ICANN.

Sample data returned by the port 43 service for the domain example.africa

Domain Name: example.africa
Domain ID: DOM_1S2XW-AFRICA
WHOIS Server: whois.AFRICA
Referral URL: http://www.africa/
Updated Date: 2012-01-22T19:36:00Z
Creation Date: 2012-01-22T19:36:00Z
Registry Expiry Date: 2013-01-22T19:36:00Z
Sponsoring Registrar: EXAMPLE AFRICA REGISTRAR
Sponsoring Registrar IANA ID: 0000
Domain Status: clientTransferProhibited
Registrant ID: coza1buye1494cc2
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET

Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Billing ID: EXAMPLE12345
Billing Name: ACCOUNTS
Billing Organization: EXAMPLE ACCOUNTS
Billing Address: 22 EXAMPLE STREET
Billing City: SOME CITY
Billing State/Province:CA
Billing Country/Economy:US
Billing Postal Code: 1234
Billing Phone: +1.234567890
Billing FAX: +1.234567890
Billing FAX Ext.:
Billing E-mail: billing@example.com

Name Server: NS01.AFRICARAR.AFRICA
Name Server: NS01.AFRICARAR.AFRICA

==--==

This WHOIS information is provided for free by the ZA central registry for .za domain names. This information and the .za WHOIS are:

Copyright ZA Central Registry 2012.

This port 43 whois facility is made available "as is," and we do not guarantee its accuracy or uninterrupted availability. By submitting a port 43 whois query, you agree that you will not use this facility to enable high volume, automated, electronic processes that unduly stress or load the whois database system. The commercial compilation, repackaging, dissemination or other use of the data you obtain from this facility is expressly prohibited without prior written consent from us.

We reserve the right to modify these terms at any time. By submitting this query, you agree to abide by these terms.

4 Lookups

4.1 Search Capabilities

The RFC 3912 system only allows domain name lookups. The web based whois tool is a full feature system. Two types of users are catered for:

Unauthenticated users. I.e the average anonymous Internet user.

RFC 5731:- Authenticated Registrars or nominated authenticated users.

4.1.1 Unauthenticated Users

The user may search for domain names only. Information returned is identical to as returned by the port 43 whois system other than being formatted for web browsers. Information is returned when the query exactly matches the domain.

The user may use wild card queries. Eg: examp*.africa. In this case a list of the matching domains are returned. The user may then click on the domain to view its details. To prevent data-mining abuse only a subset of the matches are returned.

4.1.2 Authenticated Users

Authenticated users have access to a full featured system offering partial match capabilities on at least the following fields:

1. Domain name
2. Registrant's name
3. All sub-fields described in EPP (e.g., street, city, state or province, contact numbers etc.)
4. Registrant and or billing, registrar or other contact ids,

Exact match search will be offered on the following:

1. Registrar id
2. EPP host objects (server names).
3. Glue records (IP addresses)

The system will allow for Boolean combinations of fields using the standard AND, OR and NOT operators.

Returned results will always include the domain names as per the specification. Objects owned by the authenticated user (e.g a registrar querying a list of their owned domains) will be fully displayed while objects owned by other registrars will honour any <contact:disclose> settings.

The level of information displayed for non owned objects will be adjusted from time to time as per industry and ICANN recommended best practice as determined by the dotAfrica Policy Oversight Committee

4.2 Abuse Prevention

Unauthenticated users are controlled by a rate limiting system to prevent wholesale mining of the whois database.

Authenticated users will also be limited but to a much lesser degree. All matching objects owned by the requester will be returned in a search. A limited subset of matching objects will be returned when the objects are NOT owned by the requester.

Two aspects of abuse prevention are covered by the rate limiting system.

IP Address:- - Abuse originating from a single IP address or range of IP

addresses will be limited by a Token Bucket algorithm separate to other mechanisms but having the highest priority.

Domain Name:- - Abuse on a single domain name will have an isolated limitation based on the algorithm above to prevent multiple sources querying the same name. This prevents denial of service issues when a domain name is due for deletion and multiple source continuously query the domain to check for availability.

If a user exceeds the limits imposed by the token bucket system on the web based whois system the user is then required to enter a CAPTCHA test to continue using the system.
dotAfrica undertakes to add additional measures if it becomes apparent that large amounts of information are being retrieved by any single entity.

5 RFC 3912 Compliance

The implementation conforms with the requirements of RFC 3912 (WHOIS Protocol Specification)

A whois query to the system connects to TCP port 43 on the public WHOIS server. A single domain name is sent with the line terminated by a carriage return and a new line. The server responds with the result of the whois query in plain ASCII.

Since RFC 3912 does not specify any details for internationalisation, the whois service of the dotAfrica TLD will provide ASCII character set data. This implies that where EPP contact addresses exist of both local and international types, the International version will be returned.

RFC 5733 disclosure settings are honoured when returning information.

For example

```
<contact:disclose flag="0">
  <contact:email/>
  <contact:voice/>
</contact:disclose>
```

will prevent the registrant's email or contact number from being displayed in the whois query.

6 Resourcing Requirements

The dotAfrica TLD development, deployment and operational responsibilities for the above will be staffed by members of the ZA Central Registry during start-up phase. Once the dotAfrica TLD becomes operational dedicated staff will initially be deployed to manage both the RFC 3912 whois and the web based whois as follows

Technical Manager:- - 1 staff member responsible for all technical related issues including keeping up to date with international standards and best practises.

System Administration:- - 2 staff members responsible for the day to day system administration and system monitoring.

7 Bulk Access

Bulk access here is defined as a full copy of the whois database.
Bulk access of objects in the Whois service will only be provided to ICANN or their appointed agents in accordance with the specifications 4 and 10 of the ICANN Registry Agreement.

27. Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:

- 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 description of personnel roles allocated to this area).

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.

If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.

A complete answer is expected to be no more than 5 pages.

1 Synopsis

This chapter provides details on the proposed lifecycle of domains registered in the proposed gTLD. Included in the details is an elaboration on the various states, pending action periods and the registration periods of a domain.

2 Registration Life Cycle

2.1 Introductory Life Cycle

The diagram DNS-DomainLifecycle-SRLR.pdf details the introductory domain life cycle with Sunrise and Landrush periods. Domains registered during the Sunrise and Landrush periods will be registered for a period of 5 years.

2.1.1 Sunrise

On introduction of dotAfrica there will be a Sunrise period as defined below. Applications for Trademark names will be accepted during the Sunrise period. The Sunrise phase will be administered by an external provider as decided by the dotAfrica Policy Oversight Committee

The Sunrise period will be broken up into 3 phases as described in diagram DNS-DomainLifecycle-Sunrise.pdf.

1. Pre-Sunrise - Name collection for reservation and blocking starting from June 2012 and reserved names being held for a period of 24 months while blocked names will be held indefinitely.
2. Sunrise Phase 1 - The initial Sunrise period for African Registered Trademark holders running a period estimated at 2 weeks + 4 weeks, and to be ratified by the dotAfrica policy oversight committee with the latter period being used for examination and verification.

3. Sunrise Phase 2 - The secondary Sunrise period for International Registered Trademark holders running for a period estimated at 2 weeks + 4 weeks, and to be ratified by the dotAfrica policy oversight committee with the latter period being used for examination and verification.

Application names will be reserved during the above periods until resolution occurs. Should an application be rejected or withdrawn the reserved names will be auctioned as part of the Landrush process.

2.1.2 Landrush

A Landrush period of estimated at 14 days, and to be ratified by the dotAfrica policy oversight committee will be enforced on the introduction of dotAfrica.

2.2 Operating Life Cycle

The diagram DNS-DomainLifecycle-LR.pdf details the Domain Operating Life Cycle.

Available:- The domain is available for creation and will not appear on the registry whois or EPP info query. The name might appear on a Sunrise/Landrush whois like interface.

Landrush:- The domain application has been submitted and is pending creation. Multiple creates will be accepted for the same domain during this period with any conflicts resulting in an auction period of 0 to 14 days.

Grace Period:- Once the domain has been created it will be in a state of grace lasting estimated at 10 days, and to be ratified by the dotAfrica policy oversight committee. The domain can be released and return to the available state should the registrant of the domain choose. The result will be a partial refund and a tasting fee as to be determined by the dotAfrica TLD policy oversight committee.

Registered:- The domain is now registered and in operation until a further change in state by one of the following operations:

1. Domain Renew
2. Domain Update
3. Domain Expiry
4. Domain Deletion
5. Domain Transfer

Expired:- A rollover of the domain expiry date will result in one of 2 actions:

Auto Renew:- If the auto renew attribute has been set on the domain and sufficient funds exist in the sponsor account then the domain will be renewed and move to the registered state for another period.

Suspension:- If the auto renew attribute has not been set or the sponsor has insufficient funds then the domain will enter the pending suspension state for eventual release.

Pending Suspension:- The domain may enter a state of pending suspension for estimated at 15 days, and to be ratified by the dotAfrica policy

oversight committee should it be deleted or expire. The domain will still be published to the zone. The pending suspension state may be cancelled at any time which may result in re-instatement should there be sufficient funds (if the pending suspension was due to an expiry).

Pending Deletion:- Once the period for pending suspension lapses so the domain will enter a state of pending deletion for estimated at 5 days, and to be ratified by the dotAfrica policy oversight committee. The domain will no longer be published to the zone but will still appear on whois and EPP info queries. The pending deletion state may be cancelled at any time which may result in re-instatement should there be sufficient funds (if the pending deletion was due to an expiry).

Released:- The domain will enter the available state in the eventual case of a domain being deleted which will then be available for re-registration.

3 Domain Life Cycle State Definition

The domain object status will be adjusted to any of the following states during its registration life cycle. The Domain Status interaction as defined in RFC 5731 will apply.

The diagram DNS-DomainLifecycle-Registration.pdf details the Domain Registration Life Cycle.

3.1 Pending Create

A pendingCreate status with an appropriate message will be applied upon receipt of a domain create command. During the state, the domain may be pending Sunrise legal resolution or Landrush auction. The domain object will be held by an escrow registrar as ordained by dotAfrica. The domain object will be transferred to the winning applicant upon expiration of the Sunrise or Landrush period defined below.

3.1.1 Sunrise

A Sunrise period estimated at 2 weeks + 4 weeks, and to be ratified by the dotAfrica policy oversight committee will begin on the launch of dotAfrica. The domain object will be held and advertised as being in Sunrise phase. Applications will be collected then accepted or rejected.

3.1.2 Landrush

The Landrush state will comprise of three phases:

Introduction:- A Landrush period estimated at 14 days, and to be ratified by the dotAfrica policy oversight committee will apply. Domain names will be offered at a premium fee which will be reduced at selected intervals until the next Landrush phase begins.

Initiation:- Thereafter a secondary Landrush period estimated at 14 days, and to be ratified by the dotAfrica policy oversight committee will apply. During the Landrush phase a domain in contention; which is a domain that is requested by multiple parties over the period; will enter an auctionary period. The auction will be maintained and monitored by an external provider as defined by the dotAfrica Policy Oversight Committee .

Operation:- During standard operation a period of 0 to 14 days will apply. The period will increase based on the amount of applications received for a domain name to a maximum period. Should more than one application be received for a single domain name then the applicants, or further applicants, shall enter a private auction to determine the ultimate owner of the name. The private auction is specific to recently released domain names where an out-of-band notification mechanism is utilized.

3.2 OK

The domain state of OK will apply until further commands are issued resulting in a change of state.

3.3 Pending Update

Domain update commands will be processed asynchronously resulting in an EPP Result Code of 1001. The Update period may vary depending on the extent of the update command and the domain update policy as to be determined by the dotAfrica TLD policy oversight committee.

3.4 Pending Transfer

A Registrar transfer may be initiated during the registration period. The transfer will result in a period varying 0 to 5 days depending on the credentials supplied with the transfer command.

3.5 Pending Delete

The pending delete state will apply for the periods of two of the phases in the domain life cycle as detailed below.

Pending Suspension:- A pending suspension period of estimated at 15 days, and to be ratified by the dotAfrica policy oversight committee during which the domain will remain in the dotAfrica zone.

Pending Deletion:- A pending deletion period of estimated at 5 days, and to be ratified by the dotAfrica policy oversight committee during which the domain will be removed from the dotAfrica zone.

3.6 Inactive

The domain state of Inactive will apply for the Pending Deletion period of estimated at 5 days, and to be ratified by the dotAfrica policy oversight committee. The state flags the domain for removal from the zone.

3.7 Hold States

The hold states of clientHold and serverHold will remove the domain from the dotAfrica zone and may apply indefinitely.

3.8 Locking States

The following client locking states may be applied indefinitely on a domain

object

1. clientUpdateProhibited
2. clientRenewProhibited
3. clientTransferProhibited - Any domain transfer requests sent while the state is in effect will require authentication credentials.
4. clientDeleteProhibited

The following server locking states may be applied indefinitely on a domain object

1. serverUpdateProhibited - State will apply during Sunrise and Landrush periods as well as during any Universal Dispute Resolution Process, (UDRP).
2. serverRenewProhibited
3. serverTransferProhibited - State will apply during Sunrise and Landrush periods as well as during UDRP.
4. serverDeleteProhibited - State will apply during Sunrise and Landrush periods as well as during UDRP.

4 Resource Planning

4.1 Personnel Roles

Period and State roles are held by persons that have a role in affecting the dotAfrica's Policies and Procedures.

The policy roles are:

1. Policy Administrator, PA
2. Legal Advisor, LA
3. Technical Advisor, TA

4.1.1 Number of persons required per task

At any given time, there must be at least 2 individuals within the organization per policy role indicated in 4.1.

4.1.2 Identification and authentication for each role

Only people who have signed a confidentiality agreement and an agreement to acknowledge their responsibilities with the Registry may hold a policy role.

4.1.3 Tasks requiring separation of duties

The policy roles in 4.1 above to a maximum of two may be held simultaneously by one and the same person. In other words, the PA and TA role might be held by one person, while the LA role may be held by another. There must always be a minimum of two personnel present during policy

4.2 Policy Management

The Registry for dotAfrica includes software for maintaining and controlling dotAfrica policy. The policy roles in 4.1 must have access to the software and understand how the policy is implemented by the Registry.

28. 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:

- 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).

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 described below.

- 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:
 - 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 registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:
 - 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.

A complete answer is expected to be no more than 20 pages.

1 Synopsis

This chapter provides details on the Abuse Prevention and Mitigation procedures as provided by the ZA Central Registry as currently in use for the co.za 2nd level domain, and as intended for use in the dotAfrica TLD on ratification by the dotAfrica TLD policy committee and in accordance with industry best practises and the ICANN Registrar and Registry Accreditation Agreement policies.

2 Abuse Policies and Procedures

2.1 Implementation Plan: Abuse Point of Contact

The ZA Central Registry is committed to protecting consumers, registrars and the greater internet community against fraudulent, deceptive and unfair business practices and to provide online advisory assistance to eliminate or at the very least minimize such practices within the dotAfrica TLD name space immediately after delegation. The ZA Central Registry, in consultation with the dotAfrica Policy Oversight Committee , intends investigating and implementing the following strategy to ensure that the above objectives are achieved:

1. Setting up a dedicated online complaints portal with access to email, telephone and fax contact details ;
2. Appointing a dedicated Complaints Officer who will attend to complaints or channel them to the relevant divisions within the registry to expedite resolution thereof;
3. Creating policies that will clearly set out inter alia: the scope and ambit of complaints that will be dealt with; the process that will be followed to deal with domain related complaints; the course of action that will be available to the registry to deal with complaints depending on their nature.

2.2 Domain Complaints Policy

Policies handling complaints pertaining to the dotAfrica domain name will be drafted and approved by the dotAfrica Policy Oversight Committee . What follows is a brief outline of some of the aspects that must be included as part of the policy framework and content

2.2.1 Background

This document sets out the ZA Central Registry policy on handling complaints relating to registrants, accredited registrars and resellers in the dotAfrica TLD domain name space.

2.2.2 Definitions Clause

In this part of the policy it would be imperative to define terms such as complaints (a party who has lodged a complaint regarding a dotAfrica domain name or a service provided by an accredited registrar or reseller), domain complainant (make it subject to the clause that defines what complaints will be covered within the scope of the policy); industry complaints (make it subject to clause that describes what complaints are covered within the parameters of this policy), respondent (person who lodges a complaint with the ZA Central Registry).

2.2.3 Jurisdiction to handle domain name complaints

This clause should define the ability of the ZA Central Registry to handle complaints that fall exclusively within the dotAfrica domain name space and list those complaints which the ZA Central Registry will not be competent to handle such as domain complaints relating to generic Top Level Domains or other country code Top Level Domains; web-hosting, web-management or web-design services which generally fall within the contractual sphere; internet access or email services which again falls outside the registry function; offensive or objectionable website content. Reference should also be made to relevant policies that may be developed and which may contain their own internal authority or institution mandated to deal with breaches thereof. Referrals to these institutions must be possible and perhaps a link should be provided to the appropriate authority or institution.

2.2.4 Complaints Management Process

This clause should give details of how complaints should be communicated to the Complaints Officer, i.e. whether by fax, email or post; whether the respondent will be given an opportunity to respond to the complaint; stipulate the time frames (specific or within a reasonable period of time) within which the complaint will be resolved; and how the complainant will be notified of the outcome of the investigations conducted regarding the complaint.

2.2.5 What constitutes domain complaints/industry domain complaints?

This clause should set out the type of complaints that will be addressed by the Complaints Officer. For example, domain complaints may include but not be limited to: cybersquatting, spam, phishing, ownership of domain names, transfer of domain names from one registrant to another, breach of any dotAfrica published policies; mismanagement of the dotAfrica domain name space by an accredited registrar or domain name reseller, breaches of the registrar agreement or any Codes of Conduct that may exist. Complaints that fall outside the competence of the Complaints Officer must also be specifically mentioned. For example, that the Complaints Officer would not entertain complaints that relate to competing rights in a domain name or any commercial disputes between registrars and resellers and/or registrars/resellers and registrants. The dotAfrica Policy Oversight Committee would have to decide how broad or narrow this component should be.

2.2.6 Kinds of decisions/actions that can be taken

This will depend on the nature of the complaint that is lodged and will have to be streamlined by the Policy Oversight Committee. Sample of decisions/actions could be:

1. In the case of a registrar or reseller being in breach of the registrar

accreditation agreement or any published policy, the action could be to notify the registrar or reseller of the breach and to give them an opportunity (time-based) to remedy the breach or risk more stringent action being taken, such as, to deny or cancel the registration, renewal or transfer of any .africa domain names, or to place any .africa domain name on registry lock, hold or similar status;

2. In the case of an unauthorized/unlawful transfer, it could be a reversal of that transfer;
3. Request the registrar/reseller to submit a full explanation of what transpired and tender an apology for any abusive practice that has negatively affected the complainant.

3 Whois Accuracy

3.1 Ad-hoc Validation Process

Currently, authentication of registrar/registrant data on the Whois database is governed in two ways. Firstly, the ZA Central Registry registrar accreditation agreement contains a number of provisions that places an obligation on the registrars to ensure that the data uploaded on the registry system is correct and updated on a periodic basis, failing which, accreditation status may be lost. The registrar accreditation agreement also places an obligation on the registrar to enter into contracts, which incorporate the key principles enunciated in the accreditation agreement as well as any additional legal requirements, with their registrants. This places a reciprocal duty on both the registrar and registrant community to ensure that at the very least, information maintained on the whois database is accurate, complete and current.

Secondly, the ZA Central Registry has a process (clause 7.3 in terms of the registration agreement, and a subsequent form 15 takedown process) in place to ensure that domain related data submitted to the registry is accurate and complete. The ZA Central Registry conducts ad hoc surveys or scrutiny of its Whois that shows that material information is missing on the Whois database and/or may also receive complaints from third parties that critical information on a particular domain is missing or inaccurate. The clause 7.3 process is activated to handle abusive practices of this nature. This process entails giving the registrar/registrant formal written notice by email/fax/postage to its billing/admin/tech contact to update the Whois database within 14 to 21 days, failing which the domain will be deleted. Upon expiry of this a Whois look-up is conducted and if the domain contact details have not been updated then the registrar/registrant is given a final 24 hour period to attend to our update request. If the Registrant contact details are not updated within the initial and extended periods then a take down request in terms of form 15 is formally processed and the domain is subsequently deleted. This process is properly documented and all efforts are made to ensure that the registrar/registrant receives proper notification and a reasonable opportunity to ensure that the domain details are complete and accurate. Within the dotAfrica gTLD context the dotAfrica Policy Oversight Committee will need to endorse this process or adapt it for implementation in the dotAfrica gTLD space.

4 Registrar Requirements

Notwithstanding the ICANN Registrar Agreement for accredited registrars the proposed registrar accreditation agreement for the dotAfrica TLD will include the following measures to ensure compliance to address abuse prevention, abusive behavior and address service levels for law enforcement requests.

COMMENCEMENT AND DURATION

- a Duration
- b Registrar may Terminate

REGISTRAR ACCREDITATION

- a Requirement for Accreditation
- b Registrar Service
- c Non-Exclusivity
- d Continuous Disclosure

LOSS OF REGISTRAR'S ACCREDITATION

- a Loss of Accreditation
- b Consequences of Loss of Accreditation

WARRANTIES

- a Information Provided to the Registry
- b The Registry's Reliance

USE OF THE REGISTRY NAME AND LOGO

- a Grant of Licence
- b Other Use not Permitted

GENERAL OBLIGATIONS OF REGISTRAR

- a Registrar Services
- b Compliance with Published Policies
- c Notification of changes to Published Policies
- d Compliance with Code of Practice
- e Inconsistencies
- f No Limitation

PAYMENT OF FEES

- a Assessment Fee:
- b Accreditation Fees:
- c Annual Fee:
- d Transaction Fees:
- e Insurance:
- f Value Added Tax (VAT):
- g Timely Payment:
- h Interest on Late Payment:
- i No Set-Off:

APPLICATION FOR A DOMAIN NAME

- a Consideration by Registrar
- b Compliance with Published Policies
- c Final Check by the Registry
- d Approved Domain Name Applications
- e Rejected Domain Name Applications

f Notice of Registration

REGISTRANT AGREEMENTS

- a Registrant Agreement
- b The Registry's Requirements
- c No Inconsistent Terms
- d Make Information Available to the Registrant
- e Registrar's Agency:

REGISTRANT DATA

- a Submit to the Registry Operator
- b Updated Registrant Data
- c Access to Registrant Data
- d Information to be Publicly Available

TRANSFER BETWEEN REGISTRARS

- a Transfers
- b Acknowledgement

NON-SOLICITATION OF REGISTRANTS

- a Use of WHOIS Service Information
- b No Application

REGISTRAR'S OTHER OBLIGATIONS

- a Positive Covenants
- b Negative Covenants
- c Insurance
- d Enquiries and Complaints

CONTROL OF RESELLERS

- a Appointment of Resellers
- b Responsibility of the Registrar
- c Reseller Agreement

PRIVACY

INTELLECTUAL PROPERTY RIGHTS

- a Registrant Data:

OBLIGATIONS OF THE REGISTRY

- a General obligations

CONFIDENTIALITY

a Delivery or Destruction of Confidential Information

LIMITATIONS OF LIABILITY

- a Disclaimer
- b Effect of Legislation
- c Exclusion of Implied Warranties
- d General Exclusion of Liability
- e Specific Performance
- f Limitation of Liability
- g Aggregate Liability
- h Consequential Losses

DISPUTE RESOLUTION

DEFAULT AND TERMINATION

- a Consequences of Default:

CONSEQUENCES OF TERMINATION

- a Rights and Obligations on Termination:
- b Survival:
- c Forced Transfer:

PROHIBITION OF ASSIGNMENT

- a No Assignment:
- b No Change of Control:
- c Fees and Expenses:
- d Details:

GENERAL

- a Entire Agreement and Variations:
- b Further Assurance:
- c Legal Costs and Expenses:
- d Waiver and Exercise of Rights:
- e Time of the Essence:
- f Non-Solicitation:

NOTICES

- a Service of Notice:

INTERPRETATION

- a Governing Law and Jurisdiction:
- b Persons
- c Joint and Several:
- d Legislation:
- e Severance:
- f Rule of Construction:

- g Force Majeure
- h Currency:
- i Business Day:
- j Number and Gender:

5 Domain Operation Control Policies

The domain operation control policies will include adequate controls to ensure proper access to domain functions by registrars and token based control of domain operations by registrants as defined by the following framework.

THE REGISTRY SYSTEM AND SERVICES

- a Introduction
- b Access to the Registry System
- c Registrar Support Services
- d dotAfrica TLD Registrar Interface

NEW REGISTRATIONS

- a Domain Name Registration Process
- b Managing Domain Names
- c Registrar Maintenance
- d Locking Domain Names

CANCELLATIONS, REINSTATEMENTS AND DELETIONS

- a Canceling a Domain Name other than During a Grace Period
- b Canceling a Domain Name during a Grace Period
- c Cancellation of Non-Renewed Domain Names
- d Reinstating Cancelled Domain Names
- e Status Change Notifications to Registrars
- f Status Change Notifications to Registrants

CHANGES TO REGISTRANT INFORMATION

- a Registrant Notification
- b Registrant Change Reinstatement
- c Registrar Guidelines

CHANGES TO ZONE RECORDS

- a General
- b Principles

TRANSFERS BETWEEN REGISTRARS

- a Registrant Notification
- b Registrant Token Control
- c Transfer Control Process (Including Registrant Token Based Control)
- d Transfer Reimbursements

The dotAfrica TLD Registry implementation will support password based authentication for Contact and Domain Registry objects. These password based authentication mechanisms may bypass object locks (EPP client Action Prohibited statuses) depending on usage. One-time passwords may be utilized to issue emergency transfers or suspensions if deemed necessary by the dotAfrica Policy Oversight Committee .

The dotAfrica TLD Registry implementation employs out-of-band notification to the Domain Registrant. The notification system, usually Email/SMS based, is utilized whenever a Domain or Contact object transform command is executed. The notification provides the Registrant an opportunity to query and, if applicable, cancel the action or transfer the domain. Additionally, the notification system allows Domain Registrants to vote via Web or Email on Domain Transfer requests. If, at any point in the process, the Registrant feels that the requesting Registrar is being abusive the registrant may issue an abuse complaint as per section 2.2 of this document.

In addition to the out-of-band notification system, the Registry also employs EPP based Poll messages for the current sponsor of the EPP object. A Poll message notifying the sponsoring Registrar will be queued if any transform command is executed on the Registry.

6 Orphan Glue Record Policy

The dotAfrica Registry implementation may prohibit the use of Host create/update commands, thus forcing the requester to create Host associations via the Domain create/update commands. The process ensures that a host cannot be edited directly and glue cannot be adjusted without knowledge of the superordinate domain. The Zone publication procedures will not publish Glue records for Host objects if the superordinate domain is not owned and published by the same Registrar. The process inherently prevents the creation and publication of orphan glue.

If at any point orphan glue records should exist the ZA Central Registry will provide a policy for removing it based on document ICANN document sac-048-en.pdf as published by the ICANN Security and Stability Advisory Committee (SSAC) dated 12 May 2011.

7 Resource Planning

In the interim post delegation phase, the abuse point of contact portfolio may require the appointment of at least two people. Costing for this position is included in the financial model submitted with this application.

29. 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.

A complete answer should include:

- 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 initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

>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.

A complete answer is expected to be no more than 10 pages.

1 Synopsis

This chapter provides details on the Rights Protection Mechanisms as proposed for the dotAfrica gTLD including the sunrise and landrush policy implementation in accordance with the ICANN Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.

2 Launch Process Outline

The ZA Central Registry intends to offer the following launch model.

- * Pre-Sunrise: Allowing names to be reserved for a period of 24 months or to be blocked.
- * Sunrise 1: (favouring trademarks registered inAfrica; those trademarks registered or applied for 18 months prior to delegation will be granted an additional level of priority)
- * Sunrise 2: Favouring all trademarks
- * Introductory Land Rush: seeking to allocate premium names in separate sub-phases, during which the prices of these names will decrease in steps.
- * Initiation Land Rush: Seeking to allocate names not previously identified as premium at an increased price compared to open delegation.
- * Limited Availability Operational Period: Placing newly requested names on a reserved list for a short period before allocation to guard against unfair allocation of domain names where multiple applications for the same domain name following release of domains or following an announcement or event. Conflicted names will be referred to auction.
- * General Availability Operational Period: Steady state pricing; first-come-first-served allocation.

3 Sunrise:

The Sunrise process is separated into three phases:

- * Pre-Sunrise provides the opportunity to place names on the reserved or blocked lists. Names will be placed on the Reserved list if they hold special meaning in Africa (such as city names, names of cultural sites or groups, etc). Names will be blocked if the names are offensive in the

African region. The African Union Commission (AUC) in partnership with the African Governments will administer Pre-Sunrise.

- * Sunrise 1 provides priority for eligible owners of trademarks registered in Africa to obtain domains corresponding to the trademarks they own that are related to the policy of the Registry.
- * Sunrise 2 allows eligible trademark owners to obtain domains corresponding to the trademarks they own.

There is no priority during the respective Sunrise Periods. A batching system is used for identical competing applications, which are then allocated by auction.

The ZA Central Registry will publish full details of its Sunrise policy and eligibility once it has been approved by the Policy Oversight Committee. What follows is a basic outline of the proposed policy with some key definitions. To be eligible to submit a REGISTRATION REQUEST under Sunrise 1, a Sunrise APPLICANT must:

1. comply with the SUNRISE ELIGIBILITY REQUIREMENTS; and
2. be related to the POLICY of the REGISTRY; and
3. AFFIRM COMPLIANCE with the POLICY of the REGISTRY.

To be eligible to submit a REGISTRATION REQUEST under Sunrise 2, a Sunrise APPLICANT must:

1. comply with the SUNRISE ELIGIBILITY REQUIREMENTS; and
2. AFFIRM COMPLIANCE with the POLICY of the REGISTRY.

3.1 Sunrise Definitions:

The policy will in all likelihood be based inter alia upon the following key definitions.

ELIGIBLE: A trademark or service mark conforming to the SUNRISE ELIGIBILITY REQUIREMENTS (SERs).

OWNERSHIP: Ownership of an ELIGIBLE trademark may mean owner, co-owner or assignee. For an assignee, the PROVIDER may request appropriate evidence that the assignment has taken place, and meets the legal requirements to be an effective assignment in the jurisdiction in which the mark is registered. For a co-owner, the PROVIDER may request appropriate evidence that the co-owners have joined in the application. Any dispute will be decided upon by the PROVIDER.

PROVIDER: An independent entity or entities appointed by the Registry to provide certain rights protection services which may include inter alia verification, validation, and dispute resolution related to eligibility of trademarks. In this regard the ZA Central Registry has provisionally elected to engage the South African Institute of Intellectual Property Law (www.SAIPL.org.za) for assistance and advice concerning the establishment of a specialist panel of experts.

REGISTRATION REQUEST: An application submitted by an ACCREDITED REGISTRAR on behalf of an APPLICANT to register a name in the TLD.

3.2 Sunrise Dispute Resolution Policy

The REGISTRY will operate a Sunrise Dispute Resolution Policy either itself or via the PROVIDER, full details and the fees of which will be published on the REGISTRY WEBSITE.

The policy will allow challenges based on the following grounds:

- * at the time the challenged domain name was registered, the domain name REGISTRANT did not hold an ELIGIBLE trademark;
- * the trademark registration on which the domain name REGISTRANT based its Sunrise registration is not ELIGIBLE;
- * the domain name is not identical to the trademark on which the domain name REGISTRANT based its Sunrise registration; and
- * the REGISTRATION REQUEST which led to the award of the domain name was in some way incorrect, misleading or fraudulent.

3.3 Sunrise Eligibility Requirements (SERs)

1. These are cumulative.

- * OWNERSHIP of a word mark registered in the Trademark Clearinghouse; or
- * OWNERSHIP of a word mark of national or regional or international effect registered in one of the states or entities in the WIPO Standard ST.3, that is in full force and effect at the time of submission of the REGISTRATION REQUEST, and at the time of Registration of any awarded name, and for which acceptable evidence of USE in the class for which it is registered is provided; or
- * OWNERSHIP of a word mark that has been court-validated; or
- * OWNERSHIP of a word mark that is specifically protected by a statute or treaty currently in effect. Trademarks that were in effect on or before a date 18 months prior to delegation will be given priority in Sunrise 1;

2. a word mark which directly corresponds to the name in the REGISTRATION REQUEST;

3. a statutory declaration or an affidavit signed by the APPLICANT:

- * that the information provided is true, correct and complete;
- * that no pertinent information has been withheld;
- * that acknowledges the fact that if there is any information withheld, that it automatically results in the loss of rights in any domain name(s) acquired, or the loss of the right to seek to register same; and
- * that the application is compliant with the relevant Sunrise requirements;

4. provision of data conforming to the SUNRISE INFORMATION REQUIREMENTS sufficient to document rights in the trademark;

5. is not a word mark that includes the STRING as a portion of the trademark;
6. is not a trademark for which an application for registration has been filed, but is not actually registered;
7. is not a trademark for which an application has lapsed, been withdrawn, revoked, or cancelled;
8. is not an unregistered trademark including such common law marks;
9. is not a U.S. state trademark or service mark or a U.S. supplemental registration;
10. is not an international application for the registration of trademarks, made through the Madrid system, unless based on or have resulted in a registered trademark of national effect;
11. is not intellectual property other than a word mark such as rights in a sign or name, including domain names, trade names, and appellations of origin.
12. is not a trademark registration that came into full effect after the effective date of the Registry Agreement;
13. is not a trademark registration that was applied for after the 1 May 2012 being the date at which ICANN announced the applications received.

One key objective of the SERs is to facilitate marks registered and used in good faith and not merely as a means to register a domain name.

3.4 Sunrise Information Requirements

APPLICANTS in Sunrise 1 and Sunrise 2 must submit the following information, either in an ACCEPTABLE ELECTRONIC FORMAT, as prescribed by the ZA Central Registry, or via a link to the relevant database of the trademark registry, as part of a REGISTRATION REQUEST:

- * EITHER OF: the Trademark name and its corresponding Trademark Clearing House identity number; or
- * Two (2) all of the following:
 - the trademark corresponding to the name to be Registered;
 - the country, region, or organization found in WIPO STANDARD ST.3 in which the trademark is registered;
 - the current registration number of the trademark;
 - the date on which the trademark application was submitted;
 - the date on which the trademark was registered;
 - the class or classes under the latest publication of the Nice system (or its equivalent) for with the trademark is registered (see: ; and
 - the status of the APPLICANT being one of owner, co-owner, or assignee of the trademark.

USE: Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use in the relevant jurisdiction, provided in an ACCEPTABLE ELECTRONIC FORMAT. The form of the signed declaration will be as follows. I/We [name of applicant]

declare that I/we have used the trademark [name of work mark] since [date] in [country] on [state goods or services] and attach a sample of [type of sample] as evidence.

4 Land Rush:

Land Rush is a period designed to allocate domain names (by price) that may be regarded by the market as desirable (premium names). The Land Rush Period is divided into sub phases and will be administered through the Applicants Registrar Web Portal.

The first phase is the Introductory Land Rush period. All Domain Names not taken up during the Sunrise Periods are made available for purchase for a certain period at a certain price. Where there is more than one party interested in the same domain name, that domain name will be auctioned. Only parties that indicated that they were willing to pay the price for the domain name during that period (by submitting an application for the name in the prescribed manner) will be entitled to bid in the subsequent auction. During the Introductory Land Rush period the price of domain names will start at USD 10000, and will fall by USD 2000 at the beginning of each subsequent period (such as a week) until it reaches USD 2000. Bids will be collated at the end of each of these periods and undisputed applications will be allocated, whilst disputed application (more than 1 (one) application for the same name) will be referred to auction.

Then starts the Initiation Land Rush period. This period will last for an estimated 14 days. It will also be administered through the Registrar Web Portal. A minimum cost of USD 300 will apply to registrations during this period. Multiple applications for the same domain name during this period will also be resolved using an auction process. Undisputed applications will be allocated at the end of the period.

To be eligible for Land Rush an applicant must AFFIRM COMPLIANCE with the POLICY of the REGISTRY. An applicant may submit one or more REGISTRATION REQUESTS during Land Rush for any available name.

5 Operational Phase: Limited Availability:

Depending on the decision made by the dotAfrica Policy Oversight Committee , the ZA Central Registry may elect to implement a limited availability operational phase, following on from the Initiation Land Rush period. This phase could last between 0 and 14 days, and will be administered through the Applicants SRS EPP system.

The procedure will be to place any requested domain name (application) in a reserved queue for a short period. If any additional applications for the same domain name are received during this period then the domain will enter a Land Rush auction for a maximum predetermined period. At the end of the period the bids will be collected and the winner determined. This process is intended to mitigate the effects of multiple applications for the same name following domain release as well as spontaneous applications due to international events or announcements.

6 Operational Phase: General Availability:

General Availability starts at the close of the limited availability operational phase. Domain names are available at fixed prices (via Registrars) on a first-come first-served model.

7 Trademark Clearing House:

During Sunrise 1 and Sunrise 2, all applications will be compared to the Trademark Clearinghouse database, and the applicant will be informed if there is any trademark in that database that is an identical match to the domain name applied for.

The notice will be sent in English, and the applicant will be required to:

1. Acknowledge receipt of the notice;
2. Confirm that it understands the notice; and
3. Confirm that, to the best of its knowledge and belief, use of the domain name applied for will not infringe the rights of the trademark cited.

During Sunrise 1, Sunrise 2 and Introductory Land Rush, all applications will be compared to the Trademark Clearinghouse database and, if the domain name is identical to any trademark recorded in this database, the owner of that trademark shall be given notice of the domain name application in good time for him to also make application for the domain name.

8 Rights Protection Mechanisms (RPMs):

All RPMs prescribed by ICANN will be implemented.

In particular, the Uniform Rapid Suspension System (URS) shall be available. Examiners accredited by ICANN appointed Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to make findings in URS applications.

In the case of where a Post Delegation Dispute Resolution Procedure (PDDRP) is initiated following allegations that the Registry profited from a bad faith registration, the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD.

Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to stand as Providers in PDDRP applications.

Provision will be made to file initial complaints that the Registry has not complied with registry restrictions through a Whois Data Problem Report System (WDPRS) through InterNIC.net at a nominal, non-refundable fee.

If a complainant is not satisfied that the Registry has complied with its requirements, the matter may be escalated using the RRDRP.

In the case of Registry Restrictions Dispute Resolutions Procedures (RRDRP), the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD.

Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to stand as Providers in RRDRP applications.

The Registry will endeavour to encourage and support suitably qualified persons in Africa to apply to be appointed to the board of Examiners in the present ICANN Dispute Resolution Bodies.

9 Resources:

Supporting RPMs requires several departments within the registry operator to work together. The implementation of Sunrise and the Trademark Claims service and on-going RPM activities will pull from the members of the engineering, product management, development, security and policy teams at the registry. No additional hardware or software resources are required to

support this as the Applicant has fully operational capabilities to manage abuse today.

30A. Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:

- 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.

To be eligible for a score of 2, answers must also include:

- Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).

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).

1 Synopsis

This chapter provides a summary of the security policy for the proposed dotAfrica TLD to be provided and implemented by the ZA Central Registry.

2 Independent Assessment

The ZA Central Registry has developed and ISO27001 Information Security Management System (ISMS) policy with an accreditation provider. The ZA Central Registry is committed to obtaining ISO27001 certification. Further details are included in Question 30b.

3 Registry Security Policy

The Registry Security Policy acts the overseeing policy for the following key aspects:

Data Security:- The data security must be maintained to ensure data integrity and confidentiality. All the policies and procedures for data security are detailed in the Data Security Policy.

Hardware Security:- Hardware security must be instituted to maintain system availability, integrity and confidentiality. All the policies and procedures for hardware security are detailed in the Hardware Security Policy.

Network Security:- Network must be secure to ensure system availability, integrity and confidentiality. All the policies and procedures for network security are detailed in the Network Security Policy.

Software Security:- Software security for all system services must be maintained to ensure system availability, integrity and confidentiality. All the policies and procedures for software security are detailed in the System Services Security Policy.

Physical Security:- Physical security must be maintained at all sites to ensure system availability, integrity and confidentiality. All the policies and procedures for physical security are detailed in the Physical Security Policy.

Threat Security:- Threats must be identified mitigated and managed to ensure system availability, integrity and confidentiality. All the policies and procedures for threats are detailed in the Threat Security Policy.

Issue Tracking System:- The registry must provide and maintain a issue tracking system for tracking security incidents, the system will contain all information detailed the Security Incident Report contained in the Threat Response Procedure.

The Main Policy Statement is:

The ZA Central Registry must ensure the registry system maintains availability, integrity and appropriate confidentiality of all information.

Compliance to the Registry Security Policy is ensured through the following Compliance Clause:

The security measures will be tested and a report will be compiled and reviewed by management in accordance with the security policy schedule to be defined by management.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

4 Data Security

The security policy governing Data Security is the "Data Security Policy" with the following Main Policy Statement:

The ZA Central Registry does ensure the protection of registry system data and backups and prevent any unauthorised access.

The Data Security Policy address the following key aspects:

Access Control:- Access to registry system must be performed through the following mechanisms:

1. Authentication in accordance with the following procedure:Authentication Procedure
2. Access Control Lists (ACL) in accordance with the following procedure:Access Control List Procedure

Data Encryption:- All communication with the database must be over encrypted SSL connections.

Private Keys:- Private Keys for zone signing must be stored in Hardware Security Module HSM devices. These will be managed according to the HSM Key Procedure.

Backups:- Backups are stored in secure storage and in secure off site storage facilities. Backups are also encrypted and will be performed according to the procedure detailed in the Backup Procedure.

Data Escrow:- dotAfrica TLD conforms with ICANN's requirements on registry data escrow as outlined by Specification 2 of the Agreement as contained in the Applicant Guidebook. The procedure for handling data escrow is defined in the Data Escrow Procedure.

Portable Storage:- Sensitive registry data must not be stored on portable drives or USB flash disks unless required to by security procedure and fully encrypted.

Compliance to the Data Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager. Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date. All processes and procedures are supported by reporting systems, allowing timely access to required information. Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

5 Hardware Security

The security policy governing Hardware Security is the "Hardware Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system hardware including servers, HSM's and routers are protected from unauthorised access.

The Hardware Security Policy address the following key aspects:

Physical Access:- Physical access to the area containing registry hardware including servers, HSM's and routers are controlled by keycard and biometric access control mechanisms. Keycards are used and issued according to the Keycard Issuing Procedure.

Server Access:- All servers are housed in locked server cabinets.

Router Access:- All routers are housed in locked server cabinets.

HSM Access:- All HSM's are housed in locked server cabinets or locked safes.

Console Access:- All console access is restricted by system level password authentication and follow the procedures defined in the Authentication Procedure.

Auditing Access:- All network access is logged and audited in accordance with the Threat Detection Through Auditing section.

Compliance to the Hardware Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager. Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date. All processes and procedures are supported by reporting systems, allowing timely access to required information. Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

6 Network Security

The security policy governing Network Security is the "Network Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system network infrastructure routers are protected from unauthorised access and DOS attacks.

The Network Security Policy address the following key aspects:

6.0.1 Supporting Statements

Firewall:- A Firewall is configured to limit connections according to an ACL. The ACL will be operated in accordance with the Access Control List Procedure

Routers:- Routers are secured by limiting access according to an ACL. The ACL must be operated in accordance with the Access Control List Procedure

DOS Mitigation:- A plan is in place to mitigate the effects of a DOS attack. The procedures for mitigating security threats is detailed in the Threat Mitigation Procedure.

Network Access:- Network access is controlled by the use of the following 2 mechanisms:

1. Authentication in accordance with the Authentication Procedure
2. Access Control Lists (ACL) in accordance with the Access Control List Procedure

Compliance to the Network Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

7 System Service Security

The security policy governing System Service Security is the "System Service Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system software is maintained and updated to prevent any security issues.

The System Service Security Policy address the following key aspects:

Operating System:- All registry systems run Ubuntu LTS 12.04 or newer.

Operating System Security Updates:- All security patches for operating systems that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

OpenSSL Software Updates:- All security updates to the OpenSSL li-

braries that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

OpenSSH Server Software Updates:- All security updates to the OpenSSH server that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

BIND Server Software Updates:- All security updates to the BIND server that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

Compliance to the System Security Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the above-mentioned key aspects as well as any other criteria identified by the management.

8 Physical Security

The security policy governing Physical Security is the "Physical Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system physical sites are secure to prevent any unauthorized access.

The Physical Security Policy address the following key aspects:

Regulation Compliance:- The registry physical security measures comply with local safety codes, building codes and fire prevention codes.

Building Access:- Building Access is controlled by the use of key cards.

Server Room Access:- Server Room Access is controlled by the use of biometric testing.

Server Cabinet Access:- Server Cabinet Access is controlled by the use of keys.

Access Auditing:- All access logs are kept for auditing purposes.

Compliance to the Physical Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the above-

9 Threat Security

The security policy governing Threat Security is the "Threat Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system manages its security risk against threats identified.

The Threat Security Policy addresses the following key aspects:

Threat Identification:- Threats that are identified are reported on in accordance with the Threat Identification Procedure.

Threat Classification:- Threats are classified. Threat Classification must be done in accordance with the Incident Severity Classification Procedure.

Threat Detection:- Threats are identified through auditing logs. Threat Detection is done in accordance with the Threat Auditing Procedure.

Threat Mitigation:- Threats are mitigated to reduce risk to the registry system where reasonable. Threat mitigation is done in accordance with the Threat Mitigation Procedure.

Threat Response:- Threats are responded to in accordance with the threat classification and Threat Response Procedure.

Compliance to the Threat Security Policy is ensured by the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

10 Additional Information

Monitoring of systems for compliance to the abovementioned policies is performed by various tools that review logs, monitor critical systems availability, produce security reports and will escalate identified anomalies to the network and system administrators on a 24x7 basis.

11 Commitment to Registrants

The ZA Central Registry is committing to running industry standard security practices or higher where possible.

11.1 Registrant Rights

The registrant will retain control of their domain name, and in this regard registrants must be able to choose the registrar they wish to use to maintain the domain name. The registrar will not operate in such a way that the registrant is locked-in, or such that their actions could make the registrant reasonably believe that they are locked in.

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EXHIBIT 21

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

P. O. Box 3243, Addis Ababa, ETHIOPIA Tel.: (251-11) 5182406 Fax: (251-11) 5182450

COMMUNIQUE

On the implementation of the dotAFRICA (.AFRICA) Top Level Domain (TLD)

The AUC wishes to provide the following clarity to all stakeholders in Africa and internationally:

1. In view of the needs expressed by the African community at large, and in order to fast track the launch and operation of the dotAFRICA (.AFRICA) TLD, the Extraordinary Session of the African Union Conference of Ministers in charge of Communications and Information Technologies (CITMC) held in Johannesburg acknowledged the benefits of the dotAFRICA (.AFRICA) domain name to Africa and called for :

"Establishment of dot Africa as a continental Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet agencies."

2. Following the endorsement of the outcomes of the above extraordinary conference by the Heads of States and Governments Summit in January 2010, the Ministers of the African Union in charge of Communication and Information Technologies who met at the Third Ordinary Session of the African Union Conference in Abuja (The Abuja Declaration), requested the AUC to:

"Set up the structure and modalities for the implementation of the dotAFRICA project."

3. In fulfilling its mandate from African governments the AUC has, in accordance with an open and transparent Request for Proposal (RFP) process, officially endorsed UniForum SA t/a the ZA Central Registry (ZACR) to apply for and launch the dotAFRICA (.AFRICA) TLD.

THE OFFICIALLY ENDORSED APPLICATION:

4. The UniForum/ZACR, in accordance with the procedures and standards prescribed by the Internet Corporation for Assigned Names and Numbers (ICANN), has officially lodged an application for the delegation of the dotAFRICA (.AFRICA) geographic Top Level Domain, under reference number: **1-1243-89583**. This application constitutes the official AUC endorsed application for the dotAFRICA (.AFRICA) Top Level Domain.

Further details of this official application is available at:

<http://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1184>

5. The application submitted by the UniForum/ZACR, meets or exceeds, the minimum evaluation criteria set by ICANN and will result in the successful delegation of the dotAFRICA (.AFRICA) geographic TLD (gTLD).
6. Furthermore, UniForum/ZACR's application, as endorsed by the AUC, is correctly designated as a geographic application in accordance with the criteria and processes outlined by ICANN in the Applicant Guidebook.

In particular:

Africa (and therefore .Africa) is a clearly designated geographic area as defined in the UNESCO "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.

Therefore the designation of the official dotAFRICA (.AFRICA) TLD string application, as a geographic name, is technically and procedurally correct. The "geographic evaluation process" that this application is subject to provides sufficient checks and balances for the protection of interests and rights of African governments and the Pan-African community.

7. The AUC endorsed dotAFRICA (.AFRICA) application has been, and continues to be, a collaborative Pan-African initiative involving African governments, ICT stakeholders and the broader African community.

In this regard the stated mission and objective of the AUC's officially endorsed application is enshrined in the answers to question 18 of the Application, and reads as follows:

"To establish a world class domain name registry operation for the dotAfrica Top Level Domain (TLD) by engaging and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups".

8. In addition, to adhere to the spirit of inclusivity of African ICT stakeholders, community and governments, the ZACR has set up a Steering Committee (Steercom) comprising of the AUC, African country code Top Level Domains (ccTLDs), African ICANN-accredited registrars, ICT regulators, UNECA and civil society.
9. The Steercom is responsible for driving the ICANN application process, and for ensuring that a suitable . dotAFRICA (.AFRICA) Foundation is set up to ensure that dotAFRICA (.AFRICA) is run in a manner that supports the development of the African domain name community. More information about the Steercom and about the progress of the AUC endorsed dotAFRICA (.AFRICA) project is available at <http://africainonespace.org/>

10. To emphasize their commitment to the AUC-endorsed .Africa application, at least 39 African governments have submitted letters of support to the UniForum/ZACR .Africa application.
11. Details about the AUC's officially endorsed application, including the .Africa Steercom, can be found at:
 - a. <http://www.AfricaInOneSpace.Org>
 - b. Twitter @africandomain
 - c. <http://www.facebook.com/africandomain>
 - d. <http://www.youtube.com/user/Africandomain?feature=watch>

CONFUSINGLY SIMILAR APPLICATION:

12. A competing private application for a confusingly similar string has been lodged by the DotConnectAfrica Trust. This application for the .dotAfrica ("dotdotafrica") TLD string, under reference number 1-1165-42560, is an unwarranted and unnecessary intrusion on the AUC's mandate from African governments and, if allowed to proceed, will lead to confusion with the AUC's officially endorsed application. Consequently, the AUC has initiated suitable proceedings (in accordance with the ICANN new gTLD Applicant Guidebook) to oppose this application through the Governmental Advisory Committee (GAC) and ICANN's prescribed objection procedures.

Further details of this application is available at: <http://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/1276>

EXHIBIT 22



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.

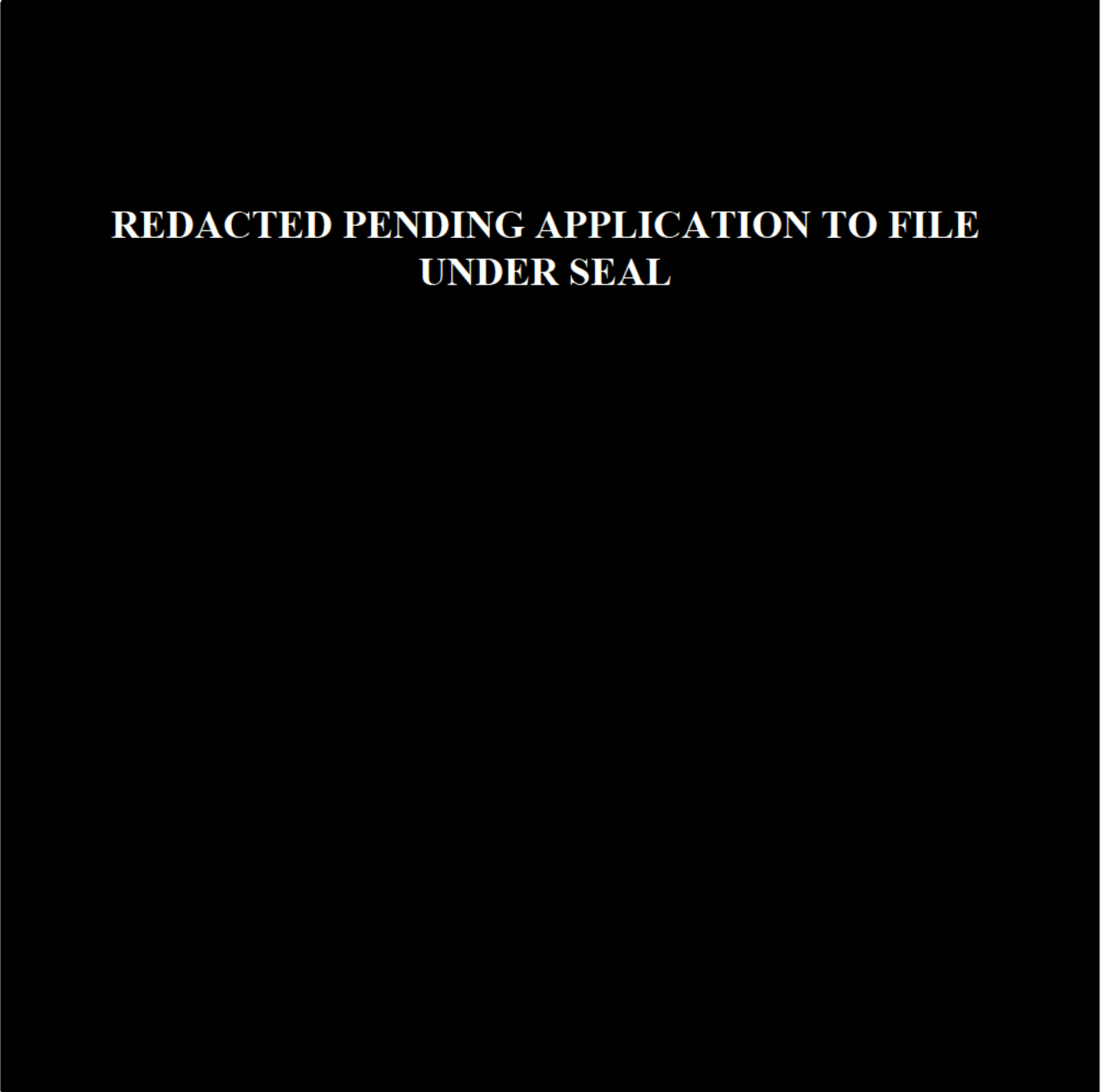
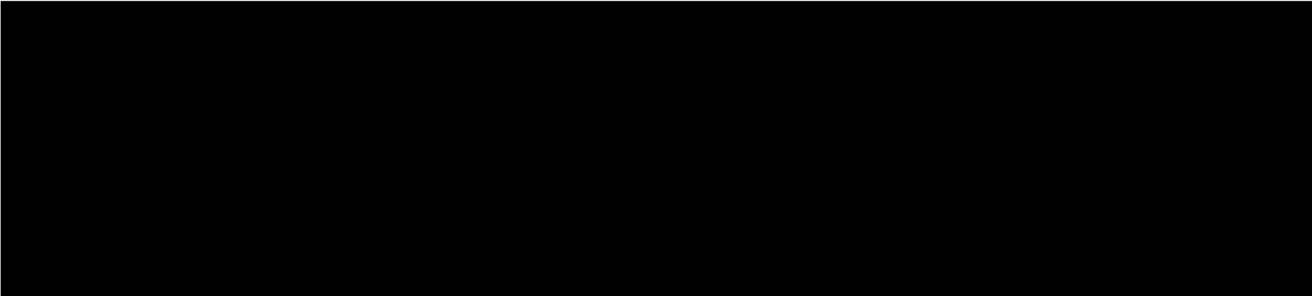
The New gTLD Application Program is a major undertaking for ICANN and the global Internet community. We are very excited to get this program underway. Stay tuned for additional announcements as we continue to prepare for launch on 12 January 2012.

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

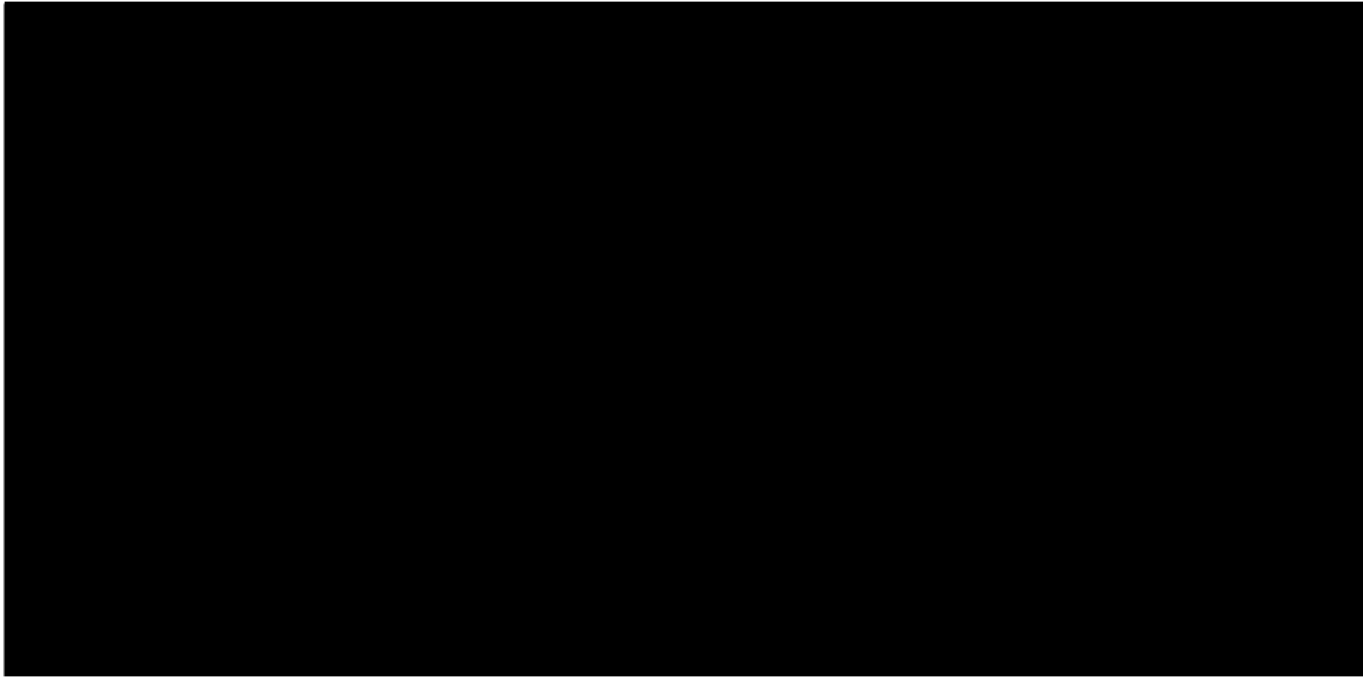
newgtld@icann.org (<mailto:newgtld@icann.org>)

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[Site Map](#)

EXHIBIT 23



**REDACTED PENDING APPLICATION TO FILE
UNDER SEAL**



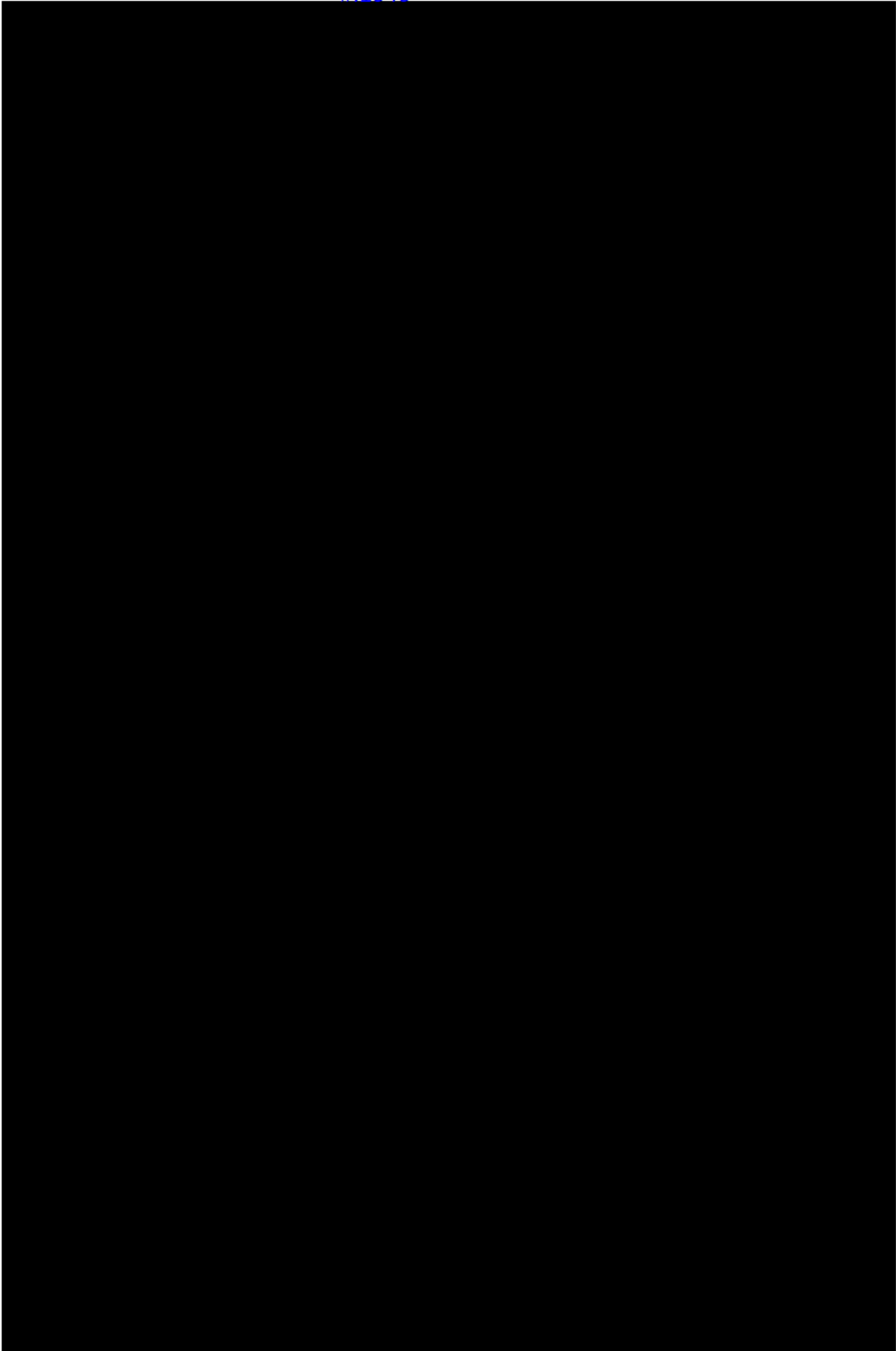


EXHIBIT 24

**REDACTED PENDING APPLICATION TO FILE UNDER
SEAL**

EXHIBIT 25

**REDACTED PENDING APPLICATION TO FILE UNDER
SEAL**

EXHIBIT 26



Governmental Advisory Committee

Beijing, People's Republic of China – 11 April 2013

GAC Communiqué – Beijing, People's Republic of China¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Beijing during the week of 4 April 2013. Sixty-one (61) GAC Members participated in the meetings and eight (8) Observers. The GAC expresses warm thanks to the local hosts China Internet Network Information Center (CNNIC), China Organizational Name Administration Center (CONAC), and Internet Society of China for their support.

II. Internal Matters

1. New Members and Observers

The GAC welcomes Belarus, Cape Verde, Côte d'Ivoire, Lebanon, and the Republic of the Marshall Islands to the Committee as members, and The World Meteorological Organisation as an Observer.

2. GAC Secretariat

Following a request for proposals, the GAC received presentations from two organizations and agreed that one such candidate should be providing secretariat services to the GAC, with the aim of becoming operational as soon as possible. Negotiations with such organization will start immediately after the Beijing meeting.

¹ To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

3. GAC Leadership

The GAC warmly thanks the outgoing Vice-Chairs, Kenya, Singapore, and Sweden and welcomes the incoming Vice-Chairs, Australia, Switzerland and Trinidad & Tobago.

III. Inter-constituencies Activities

1. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC met with the ATRT 2 and received an update on the current activities of the ATRT 2. The exchange served as an information gathering session for the ATRT 2 in order to hear GAC member views on the Review Team processes and areas of interest for governments. The GAC provided input on governmental processes and the challenges and successes that arose during the first round of reviews, and implementation of the GAC related recommendations of the first Accountability and Transparency Review Team.

2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)

The Board-GAC Recommendation Implementation Working Group (BGRI-WG) met to discuss further developments on ATRT1 recommendations relating to the GAC, namely recommendations 11 and 12. In the context of Recommendation 11, the GAC and the Board have concluded the discussion and agreed on the details of the consultation process mandated per ICANN Bylaws, should the Board decide not to follow a GAC advice. With respect to Recommendation 12, on GAC Early Engagement, the BGRI-WG had a good exchange with the GNSO on mechanisms for the GAC to be early informed and provide early input to the GNSO PDP. The BGRI-WG intends to continue this discussion intersessionally and at its next meeting in Durban.

3. Brand Registry Group

The GAC met with the Brand Registry Group and received information on its origins, values and missions.

4. Law Enforcement

The GAC met with law enforcement representatives and received an update from Europol on the Registrar Accreditation Agreement (RAA).

The GAC warmly thanks the Accountability and Transparency Review Team 2, the Brand Registry Group, Law Enforcement, and the ICANN Board who jointly met with the GAC as well

as all those among the ICANN community who have contributed to the dialogue with the GAC in Beijing.

IV. GAC Advice to the ICANN Board²

1. New gTLDs

a. GAC Objections to Specific Applications

i. The GAC Advises the ICANN Board that:

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:³

1. The application for .africa (Application number 1-1165-42560)
2. The application for .gcc (application number: 1-1936-2101)

ii. With regard to Module 3.1 part II of the Applicant Guidebook⁴:

1. The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

b. Safeguard Advice for New gTLDs

To reinforce existing processes for raising and addressing concerns the GAC is providing safeguard advice to apply to broad categories of strings (see Annex I).

c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban.

- i. Consequently, the GAC advises the ICANN Board to: not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin

² To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings>

³ Module 3.1: "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.

⁴ Module 3.1: "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.

d. The GAC requests:

- i. a written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.

e. Community Support for Applications

The GAC advises the Board:

- i. that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.

f. Singular and plural versions of the same string as a TLD

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

Therefore the GAC advises the ICANN Board to:

- i. Reconsider its decision to allow singular and plural versions of the same strings.

g. Protections for Intergovernmental Organisations

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the **GAC reiterates its advice to the ICANN Board that:**

- i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

2. Registrar Accreditation Agreement (RAA)

Consistent with previous communications to the ICANN Board

a. the GAC advises the ICANN Board that:

- i. the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.

The GAC also strongly supports the amendment to the new gTLD registry agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

The GAC appreciates the improvements to the RAA that incorporate the 2009 GAC-Law Enforcement Recommendations.

The GAC is also pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventative mechanisms that help deter criminal or other illegal activity. Furthermore the GAC urges all stakeholders to accelerate the implementation of accreditation programs for privacy and proxy services for WHOIS.

3. WHOIS

The GAC urges the ICANN Board to:

- a. ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.

The GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

4. International Olympic Committee and Red Cross /Red Crescent

Consistent with its previous communications, **the GAC advises the ICANN Board to:**

- a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

5. Public Interest Commitments Specifications

The GAC requests:

- b. more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.

V. Next Meeting

The GAC will meet during the period of the 47th ICANN meeting in Durban, South Africa.

ANNEX I

Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for.

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars should:

- be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.
- respect all substantive and procedural laws under the applicable jurisdictions.
- be operated in an open manner consistent with general principles of openness and non-discrimination.

Safeguards Applicable to all New gTLDs

The GAC Advises that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

1. **WHOIS verification and checks** —Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar's obligation to solicit accurate and complete information from the registrant.
2. **Mitigating abusive activity**—Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
3. **Security checks**— While respecting privacy and confidentiality, Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.

4. **Documentation**—Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.
5. **Making and Handling Complaints** – Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
6. **Consequences** – Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

Category 1

Consumer Protection, Sensitive Strings, and Regulated Markets:

The GAC Advises the ICANN Board:

- Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. The following safeguards should apply to strings that are related to these sectors:
 1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
 2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
 3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
 4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- **Children:**
 - .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys
- **Environmental:**
 - .earth, .eco, .green, .bio, .organic
- **Health and Fitness:**
 - .care, .diet, .fit, .fitness, .health, .healthcare, .heart, .hiv, .hospital,, .med, .medical, .organic, .pharmacy, .rehab, .surgery, .clinic, .healthy (IDN Chinese equivalent), .dental, .dentist .doctor, .dds, .physio
- **Financial:**
 - capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .fianancialaid, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .autoinsurance, .bank, .banque, .carinsurance, .credit, .creditcard, .creditunion,.insurance, .insure, ira, .lifeinsurance, .mortgage, .mutualfunds, .mutuelle, .netbank, .reit, .tax, .travelersinsurance, .vermogensberater, .vermogensberatung and .vesicherung.
- **Gambling:**
 - .bet, .bingo, .lotto, .poker, and .spreadbetting, .casino
- **Charity:**
 - .care, .gives, .giving, .charity (and IDN Chinese equivalent)
- **Education:**
 - degree, .mba, .university
- **Intellectual Property**
 - .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip
- **Professional Services:**
 - .abogado, .accountant, .accountants, .architect, .associates, .attorney, .broker, .brokers, .cpa, .doctor, .dentist, .dds, .engineer, .lawyer, .legal, .realtor, .realty, .vet
- **Corporate Identifiers:**
 - .corp, .gmbh, .inc, .limited, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
- **Generic Geographic Terms:**
 - .town, .city, .capital

- .reise, .reisen⁵
- .weather
- .engineering
- .law
- **Inherently Governmental Functions**
 - .army, .navy, .airforce
- In addition, applicants for the following strings should develop clear policies and processes to minimise the risk of cyber bullying/harassment
 - .fail, .gripe, .sucks, .wtf

The GAC further advises the Board:

1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:
 6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.
 7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.
 8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Category 2

Restricted Registration Policies

The GAC advises the ICANN Board:

1. **Restricted Access**
 - As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1

⁵ Austria, Germany, and Switzerland support requirements for registry operators to develop registration policies that allow only travel-related entities to register domain names. Second Level Domains should have a connection to travel industries and/or its customers

above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

2. Exclusive Access

- For strings representing generic terms, exclusive registry access should serve a public interest goal.

- In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access
 - .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels, .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]

ANNEX II

List of questions related to Public Interest Commitments Specifications

1. Could a third party intervene or object if it thinks that a public interest commitment is not being followed? Will governments be able to raise those sorts of concerns on behalf of their constituents?
2. If an applicant does submit a public interest commitment and it is accepted are they able to later amend it? And if so, is there a process for that?
3. What are ICANN's intentions with regard to maximizing awareness by registry operators of their commitments?
4. Will there be requirements on the operators to maximize the visibility of these commitments so that stakeholders, including governments, can quickly determine what commitments were made?
5. How can we follow up a situation where an operator has not made any commitments? What is the process for amending that situation?
6. Are the commitments enforceable, especially later changes? Are they then going into any contract compliance?
7. How will ICANN decide whether to follow the sanctions recommended by the PIC DRP? Will there be clear and transparent criteria? Based on other Dispute Resolution Procedures what is the expected fee level?
8. If serious damage has been a result of the past registration policy, will there be measures to remediate the harm?

EXHIBIT 27



**New gTLD Program
Initial Evaluation Report**
Report Date: 12 July 2013

Application ID:	1-1243-89583
Applied-for String:	AFRICA
Priority Number:	307
Applicant Name:	UniForum SA (NPC) trading as Registry.Africa

Overall Initial Evaluation Summary

Initial Evaluation Result	Pass
<p>Congratulations!</p> <p>Based on the review of your application against the relevant criteria in the Applicant Guidebook (including related supplemental notes and advisories), your application has passed Initial Evaluation.</p>	

Background Screening Summary

Background Screening	Eligible
<p>Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.</p>	

Panel Summary

String Similarity	Pass - No Contention																						
<p>The String Similarity Panel has determined that your application is consistent with the requirements in Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, and your applied-for string is not in contention with any other applied-for strings.</p>																							
DNS Stability	Pass																						
<p>The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.</p>																							
Geographic Names	Geographic Name - Pass																						
<p>The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4, and the documentation of support or non-objection provided has met all relevant criteria in Section 2.2.1.4.3 of the Applicant Guidebook.</p>																							
Registry Services	Pass																						
<p>The Registry Services Panel has determined that the proposed registry services do not require further review.</p>																							
Technical & Operational Capability	Pass																						
<p>The Technical & Operational Capability Panel determined that:</p> <p>Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.</p> <table border="1"> <thead> <tr> <th>Question</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>24: SRS</td> <td>1</td> </tr> <tr> <td>25: EPP</td> <td>1</td> </tr> <tr> <td>26: Whois</td> <td>2</td> </tr> <tr> <td>27: Registration Life Cycle</td> <td>1</td> </tr> <tr> <td>28: Abuse Prevention and Mitigation</td> <td>1</td> </tr> <tr> <td>29: Rights Protection Mechanism</td> <td>1</td> </tr> <tr> <td>30: Security Policy</td> <td>1</td> </tr> <tr> <td>31: Technical Overview of Registry</td> <td>1</td> </tr> <tr> <td>32: Architecture</td> <td>2</td> </tr> <tr> <td>33: Database Capabilities</td> <td>2</td> </tr> </tbody> </table>		Question	Score	24: SRS	1	25: EPP	1	26: Whois	2	27: Registration Life Cycle	1	28: Abuse Prevention and Mitigation	1	29: Rights Protection Mechanism	1	30: Security Policy	1	31: Technical Overview of Registry	1	32: Architecture	2	33: Database Capabilities	2
Question	Score																						
24: SRS	1																						
25: EPP	1																						
26: Whois	2																						
27: Registration Life Cycle	1																						
28: Abuse Prevention and Mitigation	1																						
29: Rights Protection Mechanism	1																						
30: Security Policy	1																						
31: Technical Overview of Registry	1																						
32: Architecture	2																						
33: Database Capabilities	2																						

34: Geographic Diversity	2	C-99
35: DNS Service	1	
36: IPv6 Reachability	1	
37: Data Backup Policies & Procedures	1	
38: Data Escrow	1	
39: Registry Continuity	2	
40: Registry Transition	1	
41: Failover Testing	1	
42: Monitoring and Fault Escalation	1	
43: DNSSEC	1	
44: IDNs (Optional)	0	
Total	25	
Minimum Required Total Score to Pass*	22	

**No zero score allowed except on optional Q44*

Financial Capability		Pass
The Financial Capability Panel determined that:		
Your application meets the Financial Capability criteria specified in the Applicant Guidebook.		
<u>Question</u>	<u>Score</u>	
45: Financial Statements	1	
46: Projections Template	1	
47: Costs and Capital Expenditures	2	
48: Funding and Revenue	1	
49: Contingency Planning	2	
50: Funding Critical Registry Functions	1	
Total	8	
Minimum Required Total Score to Pass**	8	

***No zero score allowed on any question*

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. 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>.

EXHIBIT 28

Upcoming Meeting: Marrakech, 5-10 March 2016

Meeting 55: Marrakech, Kingdom of Morocco, 5-10 March 2016

ICANN 55 Public Schedule

TRAVEL

Travel and Visa Information

Travel Support rules

VISA APPLICATIONS

Ordinary visas (English | français)

Diplomatic visas (English | français)

HIGH LEVEL GOVERNMENTAL MEETING

ICANN 55 High Level Governmental Meeting revised agenda (18 Feb 2016)

Translations: | français

GAC Guidelines for High Level Government Meetings

DOCUMENTS

Fact sheet - Attending your first GAC meeting

ICANN55_Hotel_Shuttles.pdf

ICANN55_Two_pages_Flyer_and_Map.pdf

icann55_meetingguideandvenuemap.pdf

GAC AGENDA

OPEN	BREAK	CLOSED
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Meeting room: CRISTAL

Adobe Connect link: fbc

Session Date	Session Time/ Item	Session Title
Friday 4 March 2016	08:30 - 17:00	CCWG Accountability Face to Face Meeting (CRISTAL)
Saturday 5 March 2016	Community Sessions relevant to the GAC*	
	14:00 - 14:30	GAC Opening Plenary 1. Welcome new Members and Observers (lead: GAC Chair) 2. Introduce Support, logistics and Secretariat Staff (lead: GAC Chair) 3. Overview of the week : GAC and ICANN (lead: ACIG) 4. Next phase of the GAC election cycle (lead: ACIG)
	14:30 - 16:00	Transition and Accountability Overview Leads: GAC Chair, ACIG, GAC Members in the CCWG Accountability and ICG Groups

	16:00 - 16:30	
	16:30 - 17:00	gTLD Safeguards - Current Round Lead: GAC Chair
	17:00 - 18:00	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
Sunday 6 March 2016	08:30-10:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	10:30 - 11:00	BREAK
	11:00 - 12:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	12:30 - 14:00	LUNCH BREAK GAC Human Rights and International Law WG meeting (CRISTAL)
	14:00 - 14:30	Update on CCT Review Lead: GAC CCT Review Team Members
	14:30 - 15:30	Future New gTLD Rounds Policy Development Lead: GAC Chair
	15:30 - 16:00	BREAK
	16:00 - 17:00	Meeting with the GNSO Lead: Co-Chairs GNSO
	17:00 - 18:00	Preparation for the High Level Governmental Meeting (HGLM) Lead: Morocco
Monday 7 March 2016	10:00 - 19:30	High Level Governmental Meeting
Tuesday 8 March 2016	09:00 - 09:30	HGLM Stocktake Lead: Morocco
	09:30 - 10:30	Meeting with the ALAC Lead: ALAC and GAC Chairs
	10:30 - 11:00	BREAK
	11:00 - 12:00	Meeting with ccNSO Lead: GAC Chair
	12:00 - 12:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	12:30 - 14:00	LUNCH BREAK GAC Commonwealth Members meeting (COUPLE)
	14:00 - 14:30	Preparation for Meeting with the ICANN Board Lead: GAC Chair
	14:30 - 15:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	15:30 - 16:00	BREAK
	16:00 - 18:00	Finalise GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
		Tuesday GAC Working Group Sessions: <ul style="list-style-type: none"> • 12:30 – 14:00 - GAC PSWG and ASO/NRO Workshop (CRISTAL) • 12:30 – 14:00 – GAC GeoNames Working Group – Room TBA • 18:00 – 19:00 – GAC Nom Com Working Group – Room TBA • 18:00 – 19:00 - PSWG WG (closed meeting) (AMETYSTY)

		18:00 – 19:00 - GAC HRIL and CCWP on ICANN's Corporate and Social Responsibility to Respect Human Rights joint meeting with GAC HRIL (CRISTAL)
Wednesday 9 march 2016	08:30 - 10:00	Meeting with the ICANN Board Lead: GAC Chair and ICANN Board
	10:00 - 10:30	Independent GAC Secretariat Lead: GAC Chair
	10:30 - 11:00	BREAK
	11:00 - 12:00	GAC Working Groups Updates (except Operating Principles WG which has dedicated slots elsewhere on the agenda) Leads: <ul style="list-style-type: none"> • Public Safety – AUC and Thailand • Human Rights – Peru, UK & Switzerland • Under Served Regions - Trinidad & Tobago, and AUC • Geo Names – Argentina • Nom Com – Argentina
	12:30 - 14:00	LUNCH BREAK
	14:00 - 14:30	2 Character code Implementation
	14:30 - 18:00	GAC Communiqué drafting
Thursday 10 March 2016	09:00 - 10:00	GAC Operating Principles Working Group Lead: Namibia
	10:00 - 10:30	New ICANN Meeting Structure Lead: Portugal
	10:30 - 11:00	BREAK
	11:00 - 11:30	Asia-Pacific Region Discussion Lead: Australia, New Zealand, Cook Islands, Thailand
	11:30 - 12:00	GAC Website Update Lead: Trinidad and Tobago
	12:00 - 12:30	Planning for GAC Meeting in June (ICANN 56) 27th – 30th June, 2016 Lead: GAC Chair and ACIG

EXHIBIT 29

GAC Operating Principles

Dedicated to preserving the central co-ordinating functions of the global Internet for the public good.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

GOVERNMENTAL ADVISORY COMMITTEE (GAC) - OPERATING PRINCIPLES

As amended, GAC Buenos Aires meeting in June, 2015

ARTICLE I – SCOPE OF THE GOVERNMENTAL ADVISORY COMMITTEE
ARTICLE II – MEETINGS
ARTICLE III – AGENDA
ARTICLE IV – MEMBERSHIP
ARTICLE V – OBSERVERS
ARTICLE VI – REPRESENTATION
ARTICLE VII – CHAIR, VICE CHAIRS, OTHER OFFICERS AND COMMITTEES
ARTICLE VIII – POWERS OF THE CHAIR
ARTICLE IX – ELECTION OF CHAIR AND VICE CHAIRS
ARTICLE X – CONDUCT OF BUSINESS
ARTICLE XI – THE SECRETARIAT
ARTICLE XII – PROVISION OF ADVICE TO THE ICANN BOARD
ARTICLE XII – RECORDS
ARTICLE XIII – PUBLICITY OF MEETINGS
ARTICLE XIV – REVISION
ARTICLE XV – GENERAL PROVISIONS

Whereas:

1. The functions and responsibilities of the Internet Assigned Numbers Authority (IANA) are being transferred to a new private not for profit corporation, the Internet Corporation for Assigned Names and Numbers (ICANN).
2. ICANN's functions and responsibilities will affect the functioning of the global Internet.
3. ICANN's Articles of Incorporation establish that the corporation shall operate for the benefit of the Internet community as a whole and shall pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by performing and coordinating functions associated with the technical management of Internet names and addresses.
4. a) The Articles of Incorporation and Bylaws establish that ICANN shall carry out its activities in conformity with the relevant principles of international law and applicable international conventions and local law. b) ICANN is committed to carrying out its activities based on the principles of stability, competition, private bottom-up coordination, and representation.
5. ICANN's Bylaws, Article XI Advisory Committees, Section 2.1 provide for a Governmental Advisory Committee. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments and where they may affect public policy issues. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account by ICANN, both in the formulation and adoption of policies.
6. The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests.

Considering that:

1. The Internet naming and addressing system is a public resource that must be managed in the interests of the global Internet community;
2. The management of Internet names and addresses must be facilitated by organizations that are global in character.
3. ICANN's decisions making should take into account public policy objectives including, among other things:
 - secure, reliable and affordable functioning of the Internet, including uninterrupted service and universal connectivity;
 - the robust development of the Internet, in the interest of the public good, for government, private, educational, and commercial purposes, worldwide;
 - transparency and non-discriminatory practices in ICANN's role in the allocation of Internet names and addresses;
 - effective competition at appropriate levels of activity and conditions for fair competition, which will bring benefits to all categories of users including, greater choice, lower prices, and better services;
 - fair information practices, including respect for personal privacy and issues of consumer concern; and
 - freedom of expression.
4. Country code top level domains are operated in trust by the Registry for the public interest, including the interest of the Internet community, on behalf of the relevant public authorities including governments, who ultimately have public policy authority over the r ccTLDs, consistent with universal connectivity of the Internet.

ARTICLE I – SCOPE OF THE GOVERNMENTAL ADVISORY COMMITTEE

Principle 1

The Governmental Advisory Committee (GAC) shall consider and provide advice on the activities of ICANN as they relate to concerns of governments, multinational governmental organizations and treaty organizations, and distinct economies as recognized in international fora, including matters where there may be an interaction between ICANN's policies and various laws and international agreements and public policy objectives.

Principle 2

The GAC shall provide advice and communicate issues and views to the ICANN Board. The GAC is not a decision-making body. Such advice given by the GAC shall be without prejudice to the responsibilities of any public authority with regard to the bodies and activities of ICANN, including the Supportng Organizations and Councils.

Principle 3

The GAC shall report its findings and recommendations in a timely manner to the ICANN Board through the Chair of the GAC.

Principle 4

The GAC shall operate as a forum for the discussion of government and other public policy interests and concerns.

Principle 5

The GAC shall have no legal authority to act for ICANN.

ARTICLE II – MEETINGS

Principle 6

The GAC shall meet at least once annually; notwithstanding this designated annual meeting, the GAC shall meet as appropriate.

Principle 7

A meeting may be convened on the initiative of the Chair, at the request of a Member or at the request of the ICANN Board, concurred in by one third (1/3) of the Current Membership.

Principle 8

Face-to-face meetings of the GAC shall be convened by the Chair, by a notice issued not less than twenty-eight (28) calendar days prior to the date set for the meeting. This notice may be issued electronically, via telefacsimile, or via a remote.

Principle 9

Online and electronic meetings of the GAC shall be convened by the Chair, by a notice issued not less than ten (10) calendar days prior to the date set for the meeting.

This notice may be issued electronically, via telefacsimile, or via a remote.

Principle 10

An emergency meeting of the GAC may be convened by the Chair, by a notice issued not less than ten (10) calendar days prior to the date set for the meeting. This notice may be issued electronically, via telefacsimile, or via a remote. Principle 11 In addition to face-to-face meetings, meetings and discussions may be conducted online via secure communications. "Online" includes electronic mail, web-based communications, and teleconferences.

ARTICLE III – AGENDA

Principle 12

A proposed agenda for the meeting shall be communicated to Members prior to the meeting.

Principle 13

Requests for items to be placed on the agenda of a forthcoming meeting shall be communicated to the Secretariat of the GAC in writing, either via electronic mail, telefacsimile or a remote.

ARTICLE IV – MEMBERSHIP

Principle 14

Members of the GAC shall be national governments, multinational governmental organizations and treaty organizations, and public authorities, each of which may appoint one representative and one alternate representative to the GAC. The accredited representative of a Member may be accompanied by advisers. The accredited representative, alternate and advisers must hold a formal office position with the Member's public administration. The term "office" includes a holder of an elected governmental office or a person who is employed by such government, public authority or multinational governmental or treaty organization, and whose primary function with such government, public authority or organization is to develop or influence governmental or public policies.

Principle 15

Memberships are open to all national governments. Memberships are also open to distinct economies as recognized in international fora. Multinational governmental organizations and treaty organizations, may also participate as observers, on the invitation of the GAC through the Charter.

Principle 16

Accredited representatives of governments and other public authorities, Members of GAC, have voting rights. Accredited representatives of International Organizations and entities other than public authorities participate fully in the GAC and its Committees and Working Groups, as Observers, but do not have voting rights.

Principle 17

Those who constitute the Current Memberships are defined as those Members from whom the Charter has received formal notification of the name and contact details of the accredited representative. The list of current Members shall be updated regularly and be posted online.

ARTICLE V – OBSERVERS

Principle 18

Representatives of invited UN Intergovernmental Organizations, non-member public authorities and other relevant entities may attend meetings of the GAC as observers, at the discretion of the Charter.

ARTICLE VI – REPRESENTATION

Principle 19

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organization is not represented at that meeting. Any decisions made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

Principle 20

In consideration of the GAC's commitment to efficiency, there shall be no attendance or voting by proxy. Members may only be represented at meetings, both face-to-face and electronic, by the accredited representative, or designated alternate representative.

ARTICLE VII – CHAIR, VICE CHAIRS, OTHER OFFICERS AND COMMITTEES

Principle 21

If the GAC moves to require additional officers other than the Chair, then five (5) Vice-Chairs shall be elected from among the Members. To the extent possible, the Vice-Chairs should appropriately reflect the geographic and development diversity of the membership. The Chair shall hold office for a term of two (2) years, renewable once. The Vice-Chairs shall hold office for a term of one (1) year and may be re-elected; however no person may serve as Vice-Chair for more than two consecutive terms.

Principle 22

The GAC Chair and Vice Chairs shall be elected by the Members of the GAC from among the accredited representatives of governments and other public authorities, Members of GAC, pursuant to procedures outlined under Article IX (Election of Office Holders) of these Operating Principles. The elections of the Chair and Vice Chairs shall be concurrent, as provided for in Principle 34.

Principle 23

The GAC may designate other officers as necessary.

Principle 24

The Chair shall normally participate in the proceedings as such and not as the accredited representative of a Member, in which case the Member may accredit another representative. The Chair may, however, at any time request permission to act in either capacity. The Vice Chairs shall participate in the proceedings as accredited representatives of a Member.

Principle 25

If the Chair is absent from any meeting or part thereof, one of the five (5) Vice-Chairs shall perform the functions of the Chair. If no Vice-Chairs were elected or if no Vice-Chairs present the GAC shall elect an interim Chair for that meeting or that part of the meeting.

Principle 26

If the Chair cannot perform the functions of the office, the GAC shall designate one of the Vice-Chairs referred to in Principle 22 of these Operating Principles to perform those functions pending election of a new Chair in pursuant to procedures outlined under Article IX (Election of Chair and Vice Chairs) of these Operating Principles. If no Vice-Chair was elected, the GAC shall elect an interim Chair to perform those functions pending the election of a new Chair.

Principle 27

The Chair may call for the creation of Committees and Working Groups to address matters that relate to concerns of governments and where they may affect public policy issues. Accredited representatives may designate advisers to serve on such committees.

ARTICLE VIII – POWERS OF THE CHAIR

Principle 28

In addition to exercising the power conferred elsewhere by these Principles, the Chair shall declare the opening and closing of each meeting shall direct the discussion, accord the right to speak, submit questions for decisions, announce decisions, rule on points of order and subject to these rules, have control of the proceedings. The Chairperson may also call a speaker to order if the remarks of the speaker are not relevant.

Principle 29

The Chair, with the consent of the meeting, may limit the time allowed to each speaker.

Principle 30

The Chair shall not normally have voting power; however in the event of a tie, the Chair shall have a casting vote.

ARTICLE IX – ELECTION OF CHAIR AND VICE CHAIRS

Principle 31

Elections for the GAC Chair shall take place during the final meeting of every second year (even years) unless the Chair cannot perform the functions of the office. If Chair cannot perform the functions during the first year in the office, the elections shall be organized for the remaining term in the office during the next GAC meeting. If Chair cannot perform the functions during the second year in the office, the GAC shall decide which of the Vice Chairs should replace the Chair until the regular elections are held.

Elections for the five Vice Chairs shall normally take place during the final meeting of the year. If Vice Chair cannot perform the functions before the full term has finished, new elections shall be organized for the remaining term in the office during the next GAC meeting. The results of each election shall normally be announced at the end of any meeting in which an election has taken place, and shall take effect at the end of the next GAC meeting.

Principle 32

In the event of a single candidate he or she shall be elected by acclamation. If there is more than one candidate for the position of Chair, or more than five (5) candidates for the positions of Vice Chairs, an election will be held. For elections, the candidate or candidates with the most votes shall be elected to the position(s) that he or she has stood for.

In case of a tie ballot for two leading candidates, an additional ballot shall be held restricted to these candidates after an interval of at least one hour.

Elections shall be valid if more than 1/3 of the GAC members participate in the voting in person and by electronic mail. In case of the second round of voting, only present at the meeting GAC members participate.

Principle 33

Nominations for candidates to the office of Chair and/or Vice Chair of the GAC shall normally start during the GAC meeting which precedes the meeting in which the confirmation is due to take place. In any event, the nomination procedure will close 45 days before the start of the meeting at which the confirmation of appointment is due to take place and a list of candidates should be posted on the GAC website within 14 days. In the event that there are more candidates than positions available, the GAC Chair will notify members that an election will be organized in accordance with principles 34 to 36 of this document.

Principle 34

For elections, votes shall be taken by secret ballot. It will be a matter for each voting Member to decide if they wish to make his or her choice public. This includes the taking of votes in person, or ballots transmitted by electronic mail. The GAC Secretariat will organize the voting procedure and count the votes under the supervision of the Chair or Vice Chairs who do not stand for reelection.

Principle 35

For votes to be taken in person, the GAC Secretariat will distribute ballot papers to Members' accredited representatives at that meeting, and arrange for a ballot box to be placed in the conference room.

Principle 36

Members unable to attend in person, should notify the Secretariat no less than 7 days before the beginning of the meeting in which the election is due to take place. They will then be provided with the opportunity to cast their votes by electronic mail addressed to the Secretariat, which shall then be added to the votes cast by other members during the meeting. Any Member from whom a vote has not been received within such a time-frame shall be regarded as not voting.

ARTICLE X – CONDUCT OF BUSINESS

Principle 40

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

A Member may initiate an online discussion of a question by forwarding to the Chair a request for the opening of an online discussion on a specific topic. The GAC Secretariat will initiate this discussion and all Members may post their contributions during a period of time established by the Chair, the period of which is to be no longer than sixty (60) calendar days. At the end of this discussion period, the Chair will summarize the results of the discussion and may forward the results to the ICANN Board. Nothing in this Principle overrides the decisions making processes set out elsewhere in these Operating Principles.

Principle 41

Representatives of Members shall endeavour, to the extent that a situation permits, to keep their oral statements brief. Representatives wishing to develop their position on a particular matter in further detail may circulate a written statement for distribution to Members.

Principle 42

Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record.

Principle 43

In order to expedite the conduct of business, the Chair may invite representatives who wish to express their support for a given proposal to show their hands, in order to be duly recorded in the records of the GAC as supporting statements; thus only representatives with dissenting views or wishing to make explicit points or proposals would actually be invited to make a statement. This procedure shall only be applied in order to avoid undue repetition of points already made, and will not preclude any representative who so wishes from taking the floor.

ARTICLE XI – THE SECRETARIAT

Principle 44

The Secretariat of the Governmental Advisory Committee shall undertake such administrative, coordination, liaison and research activities as shall be necessary for the efficient functioning of the GAC. The Secretariat shall facilitate communications among the GAC Chair, Vice Chairs, other Officers, the GAC membership and with ICANN. The Secretariat participates in all GAC meetings.

Principle 45

The Secretariat shall be financed by such means as shall be agreed by the GAC members.

ARTICLE XII – PROVISION OF ADVICE TO THE ICANN BOARD

Principle 46

Advice from the GAC to the ICANN Board shall be communicated through the Chair.

Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice^[1], consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the

Char sha convey the fu range of v ews expressed by members to the ICANN Board.

Principle 48

The GAC may de ver adv ce on any other matter w th n the funct ons and respons b t es of ICANN, at the request of the ICANN Board or on ts own n t at ve. The ICANN Board sha cns der any adv ce from the GAC pr or to tak ng act on.

ARTICLE XII – RECORDS

Principle 49

Records of the meet ngs of the GAC sha be n the form of Execut ve M nutes.

ARTICLE XIII – PUBLICITY OF MEETINGS

Principle 50

The meet ngs of the GAC sha ord nar y be he d n pr vate. The Cha r may dec de that a part cu ar meet ng, or part of a part cu ar meet ng, shou d be he d n pub c.

Principle 51

After a pr vate meet ng has been he d, the Cha r may ssue a commun qué to the Med a, such commun qué hav ng been approved by the GAC beforehand.

ARTICLE XIV – REVISION

Principle 52

The GAC may dec de at any t me to rev se these Operat ng Pr nc p es or any part of them.

Principle 53

A Member or Members may move, at a meet ng, for these Operat ng Pr nc p es to be open to rev s on. If so moved, the Cha r sha ca for the movement to be seconded. If so seconded, then the Cha r sha ca for a vote to support the reso ut on. The dec d ng vote may be by ba ot, by the ra s ng or cards, or by ro ca , and sha cns tute a s mp e major ty of the Members who are present at the meet ng at wh ch t was moved for these Operat ng Pr nc p es to be rev sed. If so reso ved n favour of a rev s on of these Operat ng Pr nc p es, then the proposa sha s t for consu tat on for a per od of s xty (60) days. At the next meet ng fo ow ng the s xty days, the Cha r sha ca for a vote for or aga nst the proposa . The dec d ng vote may be taken by ba ot, by the ra s ng or cards, or by ro ca , and sha be a s mp e major ty of the Members who are present at the meet ng at wh ch the vote takes p ace.

ARTICLE XV – GENERAL PROVISIONS

Principle 54

Whenever there s a d fference n nterpretat on between the pr nc p es set out n these Operat ng Pr nc p es and ICANN's Art ces of Incorporat on and By aws, ICANN's Art ces of Incorporat on and By aws sha preva .

[1] In Un ted Nat ons pract ce, the concept of "consensus" s understood to mean the pract ce of adopt on of reso ut ons or dec s ons by genera agreement w thout resort to vot ng n the absence of any forma object on that wou d stand n the way of a dec s on be ng dec ared adopted n that manner. Thus, n the event that consensus or genera agreement s ach eved, the reso ut ons and dec s ons of the Un ted Nat ons meet ngs and conferences have been adopted w thout a vote. In th s connect on, t shou d be noted that the express ons "w thout a vote", "by consensus" and "by genera agreement" are, n the pract ce of the Un ted Nat ons, synonymous and therefore nterchangeab e.

Previous Versions of the GAC Operating Principles:

[GAC Operat ng Pr nc p es Mar De P ata - 2005](#)

[GAC Operat ng Pr nc p es Na rob - 2010](#)

[GAC Operat ng Pr nc p es Dakar 2011.pdf](#)

GAC Operating Principles Buenos Aires 2015

EXHIBIT D

From: Jeffrey LeVee <jleee@JonesDay.com>
Sent: March 01, 2016 6:55 AM
To: Sara Colon
Cc: 'Ethan Brown'; kete@bnslawgroup.com; kwallace@jonesday.com; rzernik@jonesday.com
Subject: Re: DCA v. ICANN

Sara and Ethan:

I was hoping you could provide me this morning with a few more details related to your motion. I ask because most of the ICANN legal department and others who are knowledgeable of the .AFRICA situation are in literally en route to ICANN 55 in Marrakesh. Accordingly, while I assume you are not applying for any relief ex parte, in the event you do so, I wanted to note 2 things:

1. The judge's clerk has advised us that the ex parte rules on the court's website are incorrect and that a defendant would have 24 hours notice to respond to any TRO application by the plaintiff.
2. I am almost certain to ask for even more time due to the fact that I will not be able to communicate easily (or perhaps at all) with my client overnight and tomorrow.

Further, in the event the ICANN Board acts during ICANN 55 with respect to the applications for .AFRICA, I understand that delegation of .AFRICA into the Internet root is likely to take more than 2 weeks from any Board decision. I will know further after speaking to ICANN, but you may assume that you have at least two weeks (and perhaps longer) from the time of any Board action before the status quo could change.

Finally, I assume you saw that the Court rejected your substitution of counsel because of the electronic signatures.

I will look forward to hearing from you, preferably by 11 a.m. this morning as I will be in a deposition this afternoon.

Thank you.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: Contact Information Redacted

From: "Sara Colon" <sara@bnslawgroup.com>
To: <jleee@jonesday.com>, <kwallace@jonesday.com>, <rzernik@jonesday.com>,
Cc: "'Ethan Brown'" <ethan@bnslawgroup.com>, <kete@bnslawgroup.com>
Date: 02/29/2016 09:49 PM
Subject: DCA v. ICANN

Counsel,

We plan on using the attached documents as exhibits to a motion for a preliminary injunction, which we will file tomorrow. Please advise by 3.30 pm tomorrow whether you will agree to let us file these documents as is. If not, we will apply to file them under seal.

Best,

Sara [attachment "20160229201637823.pdf" deleted by Jeffrey LeVee/JonesDay]

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