

ICANN BOARD SUBMISSION NO. 2017.09.23.0a

TITLE: **Consideration of the *Amazon EU S.à.r.l. v. ICANN Independent Review Process Final Declaration***

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Final Declaration in the *Amazon EU S.à.r.l. (Amazon) v. ICANN Independent Review Process (IRP)* was issued on 11 July 2017 (see [Final Declaration](#), Attachment A to Reference Materials). The IRP challenged the decision of the ICANN Board (acting through its New gTLD Program Committee (NGPC)) to accept the Governmental Advisory Committee (GAC) consensus advice that three Amazon applications – for .AMAZON and its Chinese and Japanese character equivalents (Amazon Applications) – should not proceed (Resolution 2014.05.14.NG03, available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b>).

In a 2-1 decision, the IRP Panel declared Amazon to be the prevailing party, and that ICANN shall reimburse Amazon for its IRP fees and costs in the sum of US\$163,045.51. The IRP Panel declared that the “ICANN Board, acting through the NGPC, acted in a manner inconsistent with ICANN’s Bylaws.” Specifically, the IRP Panel stated that: (i) the GAC should have allowed Amazon to present information to the GAC before the GAC issued consensus advice against the Amazon Applications; (ii) the NGPC should have ensured the GAC had a procedure to allow for such a presentation by Amazon; and (iii) the NGPC essentially afforded the GAC consensus advice with an “irrebuttable” rather than a “strong” presumption by failing to independently ascertain and state a valid public policy reason for not proceeding with the Amazon Applications.

In addition, the Panel recommended that the Board “promptly re-evaluate Amazon’s applications” and “make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon’s

applications.” If the Board determines that the Amazon Applications should not proceed, the Panel indicated that “the Board should explain its reasons supporting that decision.” (Final Declaration at ¶ 125.) In the alternative, if the Board determines that the Amazon Applications should proceed, the Panel recommended that ICANN conduct its “‘meet and confer’ with the GAC” “within sixty (60) days of the issuance of this Final Declaration.” (Final Declaration at ¶ 125.)

In accordance with Article IV, section 3.21 of the operative ICANN Bylaws, the Board is being asked to consider the Panel’s Final Declaration in the Amazon IRP. (*See* <https://www.icann.org/resources/pages/governance/bylaws-en/#IV>.)

PROPOSED RESOLUTION:

Whereas, the Final Declaration in the Amazon EU S.à.r.l. (Amazon) v. ICANN Independent Review Process (IRP) was issued on 11 July 2017.

Whereas, among other things, the IRP Panel declared that “Amazon is the prevailing party,” and ICANN “shall reimburse Amazon the sum of US\$163,045.51.” (Final Declaration at ¶ 126.)

Whereas, the Panel recommended that the Board “promptly re-evaluate Amazon’s applications” and “make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon’s applications.” (Final Declaration at ¶ 125.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version on the Bylaws, the Board has considered the Final Declaration.

Resolved (2017.09.23.xx), the Board accepts that the Panel declared the following: (i) Amazon is the prevailing party in the *Amazon EU S.à.r.l. v. ICANN* IRP; and (ii) ICANN “shall reimburse Amazon the sum of US\$163,045.51.”

Resolved (2017.09.23.xx), the Board directs the President and CEO, or his designee(s), to take all steps necessary to reimburse Amazon in the amount of US\$163,045.51 in furtherance of the Panel's Final Declaration.

Resolved (2017.09.23.xx), further consideration is needed regarding the Panel's non-binding recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications."

Resolved (2017.09.23.xx), the Board asks the Board Accountability Mechanisms Committee (BAMC) to review and consider the Panel's recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications," and to provide options for the Board to consider in addressing the Panel's recommendation.

PROPOSED RATIONALE:

Amazon EU S.à.r.l. (Amazon) initiated Independent Review Process (IRP) proceedings challenging the New gTLD Program Committee's (NGPC's) decision on 14 May 2014 to accept the Governmental Advisory Committee (GAC) consensus advice that three Amazon applications – for .AMAZON and its Chinese and Japanese character equivalents – should not proceed. (Resolution 2014.05.14.NG03, available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b.>)

Amazon applied for .AMAZON and its Chinese and Japanese character equivalents (Amazon Applications), which passed Initial Evaluation (see <https://newgtlds.icann.org/sites/default/files/ier/bqe3so7p3lu2ia8ouwp7eph9/ie-1-1315-58086-en.pdf>). Various South American countries including Brazil and Peru, through the GAC, raised concerns about the Amazon Applications. The Guidebook allows for the GAC to provide a GAC Early Warning, which is a notice to an applicant that "the application is seen as potentially sensitive or problematic by one or more governments."

The governments of Brazil and Peru, with the endorsement of Bolivia, Ecuador and Guyana, submitted an Early Warning notice through the GAC, in which the concerned governments stated that: “[g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for the purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region.” (Early Warning, available at

<https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197938/Amazon-BR-PE-58086.pdf>.)

After indicating in the Beijing Communiqué (April 2013) that the Amazon Applications required further GAC consideration, the GAC provided consensus advice (GAC Advice) to the ICANN Board in the Durban Communiqué (18 July 2013) that the Amazon Applications should not proceed (<https://gacweb.icann.org/display/GACADV/2013-07-18-Obj-Amazon>). Pursuant to the New gTLD Program, applicants have the opportunity to respond to GAC advice. Amazon provided responses to both the Beijing and Durban Communiqués, indicating in the latter that the GAC Advice “is inconsistent with international law; would have discriminatory impacts that conflict directly with ICANN’s Governing Documents; and contravenes policy recommendations implemented within the AGB achieved by international consensus over many years.” (Amazon Response to GAC Durban Communiqué, available at

<https://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf>.)

Following careful consideration of Amazon’s response, ICANN commissioned an independent, third-party expert, with respect to Amazon’s international law argument, “to provide an opinion on the well foundedness of various objections raised against the reservation of the new gTLD ‘.amazon’”

(<https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf>).

The conclusion of the expert supported the view that ICANN, within its processes, could either accept or reject the Amazon Applications and neither would be inconsistent with international law.

On 14 May 2014, the NGPC accepted the GAC Advice and directed ICANN not to proceed with the Amazon Applications. (Resolution 2014.05.14.NG03, available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b>.) As part of its deliberations, the NGPC considered various factors including but not limited to the GAC Early Warning, Amazon’s response(s) to the GAC Advice, correspondence received from various parties on the matter, and the expert analysis commissioned by ICANN. The NGPC’s decision was without prejudice to the continuing efforts by Amazon and members of the GAC to pursue dialogue on the relevant issues.

On 1 March 2016, Amazon submitted a request for independent review of ICANN Board Resolution 2014.05.14.NG03 directing that the Amazon Applications should not proceed.

On 11 July 2017, the IRP Panel (Panel) issued its Final Declaration in the Amazon v. ICANN IRP (<https://www.icann.org/en/system/files/files/irp-gcc-final-declaration-24oct16-en.pdf>). The Panel’s findings and recommendation are summarized below, and available in full at <https://www.icann.org/resources/pages/gcc-v-icann-2014-12-06-en>.

In a 2-1 decision, the Panel declared Amazon to be the prevailing party, and declared that the “Board, acting through the NGPC, acted in a manner inconsistent with its Articles, Bylaws and Applicant Guidebook because, [...] by giving complete deference to the consensus advice of the [GAC] regarding whether there was a well-founded public policy reason for its advice, the NGPC failed in its duty to independently evaluate and determine whether valid and merits-based public policy interests existed supporting the GAC’s consensus advice.” (Final Declaration at ¶ 2.) The Panel further declared that “ICANN shall bear the costs of this IRP as well as the cost of the IRP provider,” and “shall reimburse Amazon the sum of \$163,045.51.” (Final Declaration at ¶ 126.)

In addition, the Panel recommended that the Board “promptly re-evaluate Amazon’s applications” and “make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon’s applications.” If the Board determines that the Amazon Applications should not proceed, the Panel indicated that “the Board should explain its reasons supporting that decision”;

the “GAC consensus advice, standing alone, cannot supplant the Board’s independent and objective decision with a reasoned analysis.” (Final Declaration at ¶ 125.) In the alternative, if the Board determines that the Amazon Applications should proceed, the Panel recommended that ICANN conduct its “‘meet and confer’ with the GAC” “within sixty (60) days of the issuance of this Final Declaration.” (Final Declaration at ¶ 125.)

In coming to its conclusions, the Panel stated that “under the facts of this IRP, the procedural fairness obligation applicable to the GAC, at a minimum, required that the GAC allow a written statement or comment from a potentially adversely affected party, before it decided whether to issue consensus advice objecting to an application[; and the] Board’s obligation was to see that the GAC, as a constituent body of ICANN, had such a procedure and that it followed it.” (Final Declaration at ¶ 94.)

The Panel further concluded that “GAC consensus advice, although no reasons or rationale need be given, nonetheless must be based on a well-founded public interest concern and this public interest basis must be ascertained or ascertainable from the entirety of the record before the NGPC.” (Final Declaration at ¶ 103.) According to the Panel, “the NGPC deferred to the consensus GAC advice regarding the existence of a valid public policy concern and by so doing, it abandoned its obligation under ICANN governance documents to make an independent, merits-based and objective decision whether or not to allow the applications to proceed.” The Panel further noted that, “[b]y failing to independently evaluate and articulate the existence of a well-founded public policy reason for the GAC advice, the NGPC, in effect, created a conclusive or irrebuttable presumption for the GAC consensus advice.” (Final Declaration at ¶ 116.)

The dissenting IRP panelist disagreed with the majority’s reliance on the GAC’s failure to give Amazon the chance to present to the GAC (as he thought that reviewing the GAC’s processes was outside the scope of an IRP). He also disagreed with the majority’s determination that the NGPC accepted the GAC Advice as irrebuttable, rather than just a strong presumption, as he thought the NGPC did properly analyze the GAC Advice. Notwithstanding, the dissenting panelist agreed with the final result because he thought Amazon had rebutted the strong presumption created by the GAC Advice, but the NGPC

failed to provide a “well-founded” basis for its conclusion that the Amazon Applications should still not proceed.

The Board appreciates that both parties participated in good faith in the IRP, and accepts and acknowledges that a neutral third-party panel concluded that Amazon is the prevailing party, and that ICANN should reimburse Amazon for its IRP costs. The Board is therefore adopting this resolution so as to not delay the reimbursement of Amazon for its IRP costs, while the Board continues to consider the Panel’s recommendation and/or additional options regarding next steps.

The Board recognizes the importance of this decision and wants to make clear that it takes the results of all ICANN accountability mechanisms very seriously, which is further evidenced by the creation of the new Board Accountability Mechanisms Committee (BAMC) and why the Panel’s recommendation is being referred to the BAMC.

The Board’s decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding gTLD disputes, respecting ICANN’s accountability mechanisms, and abiding by the policies and procedures set forth in the Applicant Guidebook, which were developed over numerous years of community efforts and input.

Taking this decision is expected to have a direct financial impact on the ICANN Organization in the amount the Panel declared ICANN should reimburse the prevailing party. Further review and analysis of the Panel’s recommendation will not have any direct impact on the security, stability or resiliency of the domain name system.

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

Submitted By: Amy Stathos, Deputy General Counsel
Date Noted: 7 September 2017
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ICANN BOARD SUBMISSION NO. 2017-09.23.0b

TITLE: **Further Consideration of the *Gulf Cooperation Council*
v. *ICANN* Independent Review Process Final
Declarations**

PROPOSED ACTION: **For Board Consideration and Approval**

Resolution Not Considered

Resolution Not Considered

PROPOSED RATIONALE:

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

Rationale Not Considered

Submitted By: Amy Stathos, Deputy General Counsel
Date Noted: 7 September 2017
Email: amy.stathos@icann.org

ICANN BOARD PAPER NO. 2017.09.23.1b

TITLE: **Appointment of Root Server Operator
Organization Representatives to the RSSAC**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

Per ICANN Bylaws (Article XII, Section 12.2.C.II.A), the Co-Chairs of the Root Server System Advisory Committee (RSSAC) submit the following members for appointment to the RSSAC:

- Wes Hardaker, University of Southern California—Information Sciences Institute (B-Root)
- Daniel Karrenberg, RIPE Network Coordination Centre (K-Root)
- Terry Manderson, ICANN organization (L-Root)
- Jun Murai, WIDE Project (M-Root)
- Paul Vixie, Cogent Communications (C-Root)

These individuals have been selected by their root server operator organizations to serve on the RSSAC.

RSSAC RECOMMENDATION:

The RSSAC Co-Chairs recommend the ICANN Board of Directors appoint Wes Hardaker, Daniel Karrenberg, Terry Manderson, Jun Murai, and Paul Vixie as the representatives of their respective root server operator organizations.

PROPOSED RESOLUTION:

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

Whereas, the ICANN Bylaws call for the ICANN Board of Directors to appoint one RSSAC member from each root server operator organization, based on recommendations from the RSSAC Co-Chairs.

Whereas, the RSSAC Co-Chairs have recommended to the ICANN Board of Directors the appointments of representatives from Cogent Communications, the ICANN organization, the RIPE Network Coordination Centre, the University of Southern California—Information Sciences Institute, and the WIDE Project to the RSSAC.

Resolved (2017.09.23.xx), the ICANN Board of Directors appoints Terry Manderson to the RSSAC through 31 December 2018 and Wes Hardaker, Daniel Karrenberg, Jun Murai, and Paul Vixie to the RSSAC through 31 December 2020.

PROPOSED RATIONALE:

In May 2013, the root server operator organizations agreed to an initial membership of representatives for the RSSAC, each nominating an individual. The ICANN Board of Directors approved the initial membership of RSSAC in July 2013 with staggered terms.

The current term for the representatives from Cogent Communications, the University of Southern California—Information Sciences Institute, the RIPE Network Coordination Centre, and the WIDE Project expires 31 December 2017. In August 2017, the ICANN organization requested to change its representative for the remainder of the current term, which expires on 31 December 2018.

The appointment of these RSSAC members is not anticipated to have any fiscal impact on the ICANN organization, though there are budgeted resources necessary for ongoing support of the RSSAC.

This resolution is an organizational administrative function for which no public comment is required. The appointment of RSSAC members contributes to the commitment of the ICANN organization to strengthen the security, stability, and resiliency of the DNS.

Signature Block

Submitted by: Kaveh Ranjbar

Position: RSSAC Liaison to the ICANN Board of Directors

Date Noted: 31 August 2017

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ICANN BOARD PAPER NO. 2017.09.23.1c

TITLE:	Transfer of the .CI (Cote d'Ivoire) top-level domain to Autorité de Régulation des Télécommunications/TIC de Côte d'Ivoire (ARTCI)
PROPOSED ACTION:	For Board Consideration and Approval
IANA REFERENCE:	967556

EXECUTIVE SUMMARY:

As part of PTI's responsibilities under the IANA Naming Function contract with ICANN, PTI has prepared a recommendation to authorize the transfer of the country-code top-level domain for .CI (Cote d'Ivoire) to Autorité de Régulation des Télécommunications/TIC de Côte d'Ivoire (ARTCI).

Key points of the investigation on the transfer request are:

- The string under consideration represents Cote d'Ivoire that is listed in the ISO 3166-1 standard and is eligible for transfer
- The proposed manager is Autorité de Régulation des Télécommunications/TIC de Côte d'Ivoire (ARTCI), an independent administrative body established in 2012.
- Support for the transfer has been provided by the Cabinet Director of the Ministry of Digital Economy and Postal Service, and nine other local significantly interested parties.

PROPOSED RESOLUTION:

Resolved (2017.09.23.xx), as part of the exercise of its responsibilities under the IANA Naming Function Contract with ICANN, PTI has reviewed and evaluated the request to transfer the .CI country-code top-level domain to Autorité de Régulation des Télécommunications/TIC de Côte d'Ivoire (ARTCI). The documentation demonstrates that the proper procedures were followed in evaluating the request.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

In accordance with the IANA Naming Function Contract, PTI has evaluated a request for ccTLD transfer and is presenting its report to the Board for review. This review by the Board is intended to ensure that the proper procedures were followed.

What is the proposal being considered?

The proposal is to approve a request to transfer the country-code top-level domain .CI and assign the role of manager to Autorité de Régulation des Télécommunications/TIC de Côte d'Ivoire (ARTCI).

Which stakeholders or others were consulted?

In the course of evaluating this transfer application, PTI consulted with the applicant and other significantly interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

What concerns or issues were raised by the community?

PTI is not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

The Board reviewed the following evaluations:

- The domain is eligible for transfer, as the string under consideration represents Cote d'Ivoire that is listed in the ISO 3166-1 standard;
- The relevant government has been consulted and does not object;
- The proposed manager and its contacts agree to their responsibilities for managing these domains;
- The proposal has demonstrated appropriate significantly interested parties' consultation and support;
- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domains are managed locally in the country, and are bound under local law;

- The proposed manager has confirmed they will manage the domains in a fair and equitable manner;
- The proposed manager has demonstrated appropriate operational and technical skills and plans to operate the domains;
- The proposed technical configuration meets the technical conformance requirements;
- No specific risks or concerns relating to Internet stability have been identified; and
- Staff have provided a recommendation that this request be implemented based on the factors considered.

These evaluations are responsive to the appropriate criteria and policy frameworks, such as "Domain Name System Structure and Delegation" (RFC 1591) and "GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains".

As part of the process, Delegation and Transfer reports are posted at <http://www.iana.org/reports>.

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN's overall mission, the local communities to which country-code top-level domains are designated to serve, and responsive to obligations under the IANA Naming Function Contract.

Are there financial impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS root zone is part of the IANA functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS?

ICANN does not believe this request poses any notable risks to security, stability or

resiliency. This is an Organizational Administrative Function not requiring public comment.

SIGNATURE BLOCK:

Submitted by:	Naela Sarras
Position:	Sr. Manager, IANA Services
Date Noted:	7 September 2017
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ICANN BOARD SUBMISSION NO. 2017.09.23.1d

TITLE: **Appointment of 2018 Nominating Committee Chair and Chair-Elect**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board is being asked to consider the Board Governance Committee's (BGC) recommendation with respect to the 2018 Nominating Committee (NomCom) Chair and Chair-Elect.

Following the call for expressions of interest (EOI), the BGC reviewed and discussed the received EOIs and oversaw the completion of a 360-degree review of the 2017 NomCom leadership as input into the selection of 2018 the NomCom leadership positions. After the results of the 360-degree review were considered, and interviews of candidates were completed, the BGC agreed on recommendations to the Board for the 2018 NomCom Chair and Chair-Elect.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC recommends that the Board appoint Zahid Jamil as the 2018 NomCom Chair and J. Damon Ashcraft as the 2018 NomCom Chair-Elect.

PROPOSED RESOLUTION:

Whereas, the BGC reviewed the Expressions of Interest from candidates for the 2018 Nominating Committee ("NomCom") Chair and Chair-Elect, considered the results of a 360-degree evaluation of the 2017 NomCom leadership, and conducted interviews of candidates.

Whereas, the BGC has recommended that Zahid Jamil be appointed as the 2018 NomCom Chair and J. Damon Ashcraft be appointed as the 2018 NomCom Chair-Elect.

Resolved (2017.09.23.xx), the Board hereby appoints Zahid Jamil as the 2018 Nominating Committee Chair and J. Damon Ashcraft as the 2018 Nominating Committee Chair-Elect.

PROPOSED RATIONALE:

ICANN's Bylaws require the Board to appoint the Nominating Committee (NomCom) Chair and NomCom Chair-Elect. *See* ICANN Bylaws, [Article 8, Section 8.1](#). The Board has delegated the responsibility for recommending the NomCom Chair and Chair-Elect for Board approval to the Board Governance Committee. *See* BGC Charter at <http://www.icann.org/en/committees/board-governance/charter.htm>. The BGC posted a call for expressions of interest (EOI) on 2 June 2017 seeking EOIs by 7 July 2015 (see <https://www.icann.org/news/announcement-2-2017-06-02-en>). The BGC received and reviewed several EOIs, oversaw a 360-degree evaluation of the 2017 NomCom leadership and conducted interviews with candidates before making its recommendations. The Board has considered and agrees with the BGC's recommendation for the 2018 NomCom Chair and 2018 NomCom Chair-Elect. The Board also would like to thank all who expressed interest in becoming part of the 2018 NomCom leadership.

Appointing a NomCom Chair and Chair-Elect identified through a public EOI process, including interviews of the candidates, is in the public interest as it positively affects the transparency and accountability of ICANN. Adopting the BGC's recommendation has no financial impact on ICANN that was not otherwise anticipated, and will not negatively impact the security, stability and resiliency of the domain name system.

Submitted by: Amy A. Stathos, Deputy General Counsel
Date Noted: 6 September 2017
Email: amy.stathos@icann.org

ICANN BOARD PAPER NO. 2017.09.23.1e

TITLE: **Deferral of the Second Review of the Country Code Name Supporting Organization (ccNSO)**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The ICANN Board is asked to approve a recommendation from the Board’s Organizational Effectiveness Committee to defer of the Organizational Review of the ccNSO by twelve months, from August 2017 to August 2018. Under Article IV, Section 4.4 of the ICANN Bylaws, organizational reviews are to occur on five-year cycles, based on feasibility as determined by the Board. The ccNSO is in support of this deferral, given the concurrent conduct of the four Specific Reviews requiring ccNSO participation, continuing involvement in the implementation of the Empowered Community, and the ongoing Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Workstream 2 effort. If approved, the next ccNSO Review will begin in August 2018.

The Board has previously approved the deferral of Organizational Reviews, including the deferral of the second GNSO Review in 2013,¹ and the deferral of a number of Specific and Organizational Reviews in 2015.²

ORGANIZATIONAL EFFECTIVENESS COMMITTEE

RECOMMENDATION:

The OEC recommends that the Board approve a deferral of the ccNSO Organizational Review until August 2018. This recommendation is supported by the concerns of availability of the organization under review when balanced against the ongoing work in which it is already involved. The deferral is also supported by the public comments received on this issue.

BACKGROUND:

¹ See <https://www.icann.org/resources/board-material/resolutions-2013-09-28-en>.

² See <https://www.icann.org/resources/board-material/resolutions-2015-07-28-en#2.c>.

In March 2017, the Chair of the OEC, charged with oversight of the Organizational Review Process, engaged in dialogue with the Chairs each of the ICANN Supporting Organizations and Advisory Committees scheduled to have an Organizational Review initiate in 2017 (the Country Code Names Supporting Organization (ccNSO), the Security and Stability Advisory Committee (SSAC), and the Root Server System Advisory Committee (RSSAC)) noting that a large number of reviews were already being conducted across ICANN or scheduled to start this year and raising concerns about the community's workload. The OEC Chair pointed out that on one option may be to delay the start of their organizational reviews by twelve months, if supported by public comment.

The RSSAC and SSAC leaderships both affirmed their preference to proceed with their reviews as scheduled.

The ccNSO Council, during its meeting on 15 March, agreed to ask the ICANN Board to defer the start of the ccNSO Organizational Review by twelve months.

On 6 April, ICANN Organization opened a [public comment](#) on the proposal to defer the ccNSO Review until August 2018. Four submissions were made to the forum, and three of the contributions, respectively authored by At-Large, the ISPCP, and an individual, supported the deferral; the Non-Commercial Stakeholder Group opposed it on the basis of challenging whether it was appropriate to defer a review past the 5-year mark in the Bylaws. These inputs are also reflected in the [Staff Report of Public Comment Proceedings](#).

Based on the support of the ccNSO to defer the review, the established precedent of the ability to defer organizational reviews past the 5-year mark because of feasibility issues, and the continued demand on community volunteer time, including four Specific Reviews, the implementation of the Empowered Community, the ongoing Cross Community Working Group on Enhancing ICANN Accountability, and the Cross Community Working Group on Auction Proceeds, the OEC recommends that the Board should defer the ccNSO Review until August 2018.

PROPOSED RESOLUTION:

Whereas, under the ICANN Bylaws the Organizational Review of the ccNSO was due to commence in August 2017.

Whereas the ccNSO has been subject to a continued, heavy work load, including four Specific Reviews, the implementation of the Empowered Community, the ongoing Cross Community Working Group on Enhancing ICANN Accountability.

Whereas, the Chair of the Organizational Effectiveness Committee reached out to the Chair of the Country Code Names Supporting Organization Council to defer the start of the second ccNSO Review by twelve months until August 2018, to alleviate the ccNSO's heavy workload.

Whereas the ccNSO Council Chair indicated that the ccNSO supports the deferral of the second ccNSO Review.

Whereas a public comment period on the proposed deferral received support from a majority of contributors.

Resolved (2017.09.23.xx.), that the second Review of the Country Code Names Supporting Organization (ccNSO) shall be deferred until August 2018, as initiating the Review at this time is not feasible due to ccNSO's workload.

Resolved (2017.09.23.xx), that the ccNSO is encouraged to conduct a self-review prior to the start of the second ccNSO Review in August 2018.

RATIONALE:

Why the Board is addressing the issue?

There is a continued pressure on community volunteer time. Currently, four Specific Reviews are underway, in addition to CCWG-Accountability Workstream 2 and various cross-community work efforts, all of which consume considerable volunteer time from the ccNSO community. Deferring the second review of the ccNSO will enable the ccNSO to conduct a preparatory self-review, adding valuable substance to the Review when it begins in August 2018. Under the Bylaws, the Board has the power to defer Organizational Reviews beyond the five-year cycle if conducting a review in that cycle is not feasible, and the various strains on the ccNSO support that feasibility concern. This action is in the public interest as it supports ICANN's component entities in devoting the proper resources to considering their accountability and ongoing purpose in the ICANN system.

What is the proposal being considered?

The proposal under consideration is to defer the second review of the ccNSO until August 2018.

Which stakeholders or others were consulted?

The Chair of the ccNSO Council, indicated that the ccNSO is supportive of a deferral because of competing obligations on the ccNSO's time. A public comment forum was opened on 6 April 2017. Four submissions were made, three of which were supportive of the deferral of the second ccNSO Review, citing benefits to the effectiveness of the review, use of volunteer resources, and an improved outcome, as well as deferral being an appropriate exercise of discretion provided for in the Bylaws with respect to timing. A summary of comments can be found [here](#).

What concerns or issues were raised by the community?

Among the community submissions, conflicting interpretations transpired on the wording of the ICANN Bylaws that permit the Board to defer Organizational Reviews. The Non-Commercial Stakeholder Group cited the wording of ICANN Bylaws Article

4, Section 4—specifically use of the word “shall” in reference to review timing--as justification for its stance, along with the importance of timing for maintaining public confidence, and thus setting a “dangerous precedent” by delaying. Noting this, the ICANN Board, acting under the same Bylaws language, [has previously deferred organizational reviews](#) based on feasibility considerations, namely the At-Large Review, and reviews of the Generic Names Supporting Organization, the Root Server System Advisory Committee, and the Security and Stability Advisory Committee.

The Non-Commercial Stakeholder Group also raised the concern that a deferral would undermine the newly set up review schedule (under the new Bylaws), questioning that the benefits of a deferral would outweigh the potential risk of impinging on ICANN’s accountability commitment. However, deferring the review by 12 months, and thereby allowing the ccNSO to complete some of its work will allow for more focus on the ccNSO review; adding to rather than substratcing from ICANN’s accountability commitment.

In addition, community comments pointed out that the second ccNSO review had already been deferred in 2015 due to the IANA Transition, and therefore the current process is the second time it is being deferred, resulting in the second ccNSO Review starting two years late. While this is a valid point, the fact that the additional volunteer committee to support the ccNSO review appropriately is necessary, means that the Board can rely on the feasibility provision in the Bylaws to agree to an additional 12 months deferral.

What significant materials did the Board review?

The Board reviewed the ccNSO request to defer the review. The public comments submitted in response to the proposal to defer the second ccNSO review were also taken into consideration by the Board. In addition, the Board gained an overview of the ongoing community work efforts, including CCWG-Accountability Workstream 2, cross-community working groups, ccNSO working groups,³ and all Specific Reviews. Based on this overview, and the fact that Bylaws allow for a deferral of reviews ‘based on feasibility’ the Board made the decision to support the deferral until August 2018.

³ For non-PDP ccNSO working groups, see <https://ccnso.icann.org/workinggroups>; for the PDP on ‘Retirements of ccTLDs’ see <https://ccnso.icann.org/workinggroups/pdp-retirement.htm>.

What factors did the Board find to be significant?

The Board considered its prerogative to defer organizational reviews based on feasibility. In this context, the Board considered the high volume of on-going ccNSO work efforts and the resulting pressure on volunteer time. The Board also relied on the precedents set by the deferral of the second GNSO review in 2013, and the delay of several Specific (then Affirmation of Commitments) Reviews and Organizational Reviews in 2015.

The OEC, in light of concerns of multiple deferrals, recommends that while deferral is still appropriate in this situation because of the feasibility issues identified, believes that in the future it will be appropriate to consider only one deferral for a review for up to a year, assuming the appropriate feasibility concerns have been raised.

Are there positive or negative community impacts?

Positive impacts are the reduced pressure on the ccNSO workload, including more focused participation when the review process kicks off in August 2018. Additionally, the ccNSO has offered to use the deferral productively and conduct a self-review regarding the implementation status of the outcome of the previous Review, to set the context and prepare for the second ccNSO review.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no fiscal impacts or ramifications on ICANN as the FY18 budget set aside for this review will be reallocated to the next fiscal year. The ccNSO community will benefit from reduced pressure on its workload.

Are there any security, stability or resiliency issues relating to the DNS?

There are no security, stability or resiliency issues relating to the DNS as the result of this action.

Signature Block:

Submitted by: Larisa Gurnick

Position: Senior Director

Date Noted: 12 September
2017

Email:

larisa.gurnick@icann.org

ICANN BOARD PAPER NO. 2017.09.23.1f

TITLE: **GAC Advice: Johannesburg Communiqué (June 2017)**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered advice to the ICANN Board in its [Johannesburg Communiqué](#) issued 29 June 2017. The advice concerns: protection of names and acronyms of Intergovernmental Organizations (IGOs) in gTLDs.

The Johannesburg Communiqué was the subject of such an exchange between the Board and the GAC on 14 August 2017. The purpose of the exchange was to ensure common understanding of GAC advice provided in the communiqué. A transcript of the call is available here: **[INSERT LINK TO TRANSCRIPT OF THE BOARD GAC-CALL ONCE POSTED]**

The Board is being asked to approve an iteration of the GAC-Board Scorecard to address the GAC's advice in the Johannesburg Communiqué. The draft Scorecard is attached to this briefing paper. The Scorecard includes: the text of the GAC advice; the Board's understanding of the GAC advice following the August 2017 dialogue with the GAC; the GNSO Council's review of the advice in the Johannesburg Communiqué as presented in a 7 August 2017 [letter](#) to the Board; and the Board's proposed response to the GAC advice.

STAFF RECOMMENDATION:

Staff recommends that the Board adopt the attached scorecard to address the GAC's advice in the June 2017 Johannesburg Communiqué.

PROPOSED RESOLUTION:

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN59 meeting in Johannesburg, South Africa and issued advice to the ICANN Board in a [communiqué](#) on 29 June 2017 (“Johannesburg Communiqué”).

Whereas, the Johannesburg Communiqué was the subject of an exchange [**INSERT LINK TO TRANSCRIPT OF THE BOARD GAC-CALL ONCE POSTED**] between the Board and the GAC on 14 August 2017.

Whereas, in a 7 August 2017 [letter](#), the GNSO Council provided its feedback to the Board concerning advice in the Johannesburg Communiqué relevant to generic top-level domains to inform the Board and the community of gTLD policy activities that may relate to advice provided by the GAC.

Whereas, the Board developed an iteration of the scorecard to respond to the GAC’s advice in the Johannesburg Communiqué, taking into account the exchange between the Board and the GAC and the information provided by the GNSO Council.

Resolved (2017.09.23.xx), the Board adopts the scorecard titled “GAC Advice – Johannesburg Communiqué: Actions and Updates (23 September 2017)” [**INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY BOARD**] in response to items of GAC advice in the Johannesburg Communiqué.

PROPOSED RATIONALE:

Article 12, Section 12.2(a)(ix) of the ICANN Bylaws permits the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” In its Johannesburg Communiqué (29 June 2017), the GAC issued advice to the Board on: protection of names and acronyms of Intergovernmental Organizations (IGOs) in gTLDs. The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. Any GAC advice approved by a full consensus of the GAC (as defined in the Bylaws) may only be rejected by a vote of no

less than 60% of the Board, and the GAC and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

At this time, the Board is taking action to address the advice from the GAC in the Johannesburg Communiqué. The Board's actions are described in scorecard dated XX September 2017 **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY THE BOARD]**.

In adopting its response to the GAC advice in the Johannesburg Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- Johannesburg Communiqué (29 June 2017):
<https://www.icann.org/en/system/files/correspondence/gac-to-icann-29jun17-en.pdf>
- The GNSO Council's review of the advice in the Copenhagen Communiqué as presented in the 7 August 2017 letter to the Board:
<https://www.icann.org/en/system/files/correspondence/bladel-et-al-to-crocker-07aug17-en.pdf>

The Board also notes that the GAC has included a new section in the Johannesburg Communiqué entitled "Follow-Up on Previous Advice and Other Issues". The Board thanks the GAC for this information and for its efforts in organizing the communiqué to distinguish between new advice and previous advice. The Board believes this change will contribute to additional information sharing between the Board, the ICANN Organization, and the GAC.

The adoption of the GAC advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC concerning gTLDs and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. This is an Organizational Administrative function that does not require public comment.

Signature Block:

Submitted by: Christine Willett/ David Olive

Position: Vice President, gTLD Operations

Senior Vice President, Policy Development Support

Date Noted: 12 September 2017

Email: christine.willett@icann.org

david.olive@icann.org

ICANN BOARD PAPER No. 2017.09.23.1g

TITLE: Information Transparency Initiative

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The ICANN organization has determined there is a need to enhance the technical infrastructure of the ICANN ecosystem with a new Document Management System (DMS) and Content Management System (CMS), and create and implement content governance through this new infrastructure. This will be accomplished with the Information Transparency Initiative. Since resources and vendor contracts required to implement the Information Transparency Initiative will exceed US\$500,000, this action requires Board approval (see <https://www.icann.org/resources/pages/signing-authority-2012-02-25-en>). Reference materials are available that summarize the steps taken to identify and select the recommended solution and the steps taken by the Board to evaluate the decision considered.

ICANN ORGANIZATION AND BOARD FINANCE COMMITTEE

RECOMMENDATION:

The ICANN organization recommends that the Board authorize the ICANN organization to proceed with the Information Transformation Initiative; the Board Risk Committee does not object, on the basis of the risk-related information provided to it, to proceeding with the Information Transformation Initiative. The Board Finance Committee recommends that the Board authorize the President and CEO, or his designee(s), to take all necessary actions to execute the contracts for the Information Transparency Initiative, as reflected in the reference materials to this paper, and make all necessary disbursements pursuant to the contracts.

PROPOSED RESOLUTION:

Whereas, the ICANN organization has established a need to secure vendors to implement the Information Transparency Initiative.

Whereas, upon receiving information from ICANN Organization on the identified needs and recommended solution of the Information Transparency Initiative, the Board followed a 6-step process to assist the Board in evaluating the recommended Information Transparency Initiative and approve it, and after having approved, to allow its oversight of the Information Transparency Initiative implementation.

Whereas, during its meeting on 17 August 2017, the Board Finance and Risk Committees reviewed the Information Transparency Initiative, and particularly financial and risk information, and the Board Finance Committee requested further analysis and documentation, which it received.

Whereas, the Board Risk Committee members present during the meeting on 17 August 2017, reviewed the risk information provided and had no objection, from a risk management perspective, to proceed with the Information Transparency Initiative,

Whereas, the Board Finance Committee has recommended that the Board authorize the President and CEO, or his designee(s), to take all actions necessary to execute the contracts for the Information Transparency Initiative, as reflected in the reference materials to this paper, and make all necessary disbursements pursuant to those contracts.

Resolved (2017.09.23.xx), the Board authorizes the President and CEO, or his designee(s), to take all necessary actions to execute the contracts for the Information Transparency Initiative, as reflected in the reference materials to this paper, and make all necessary disbursements pursuant to those contracts.

Resolved (2017.09.23.xx), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article III, section 5.2 of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

PROPOSED RATIONALE:

Valuable ICANN information has accumulated in thousands of pieces of unstructured public content spread across 38 different public ICANN and SO/AC sites. This content continues to grow at rates of 25-30% per year. The ICANN organization currently surfaces

this content through multiple, unconnected platforms with differing foundational technologies that are non-scalable, may be vulnerable, and are no longer fit for purpose.

ICANN has commitments to accountability and transparency to provide up-to-date and easy-to-find information in all six official U.N. languages, but the ICANN organization has no integrated system or process in place to efficiently create, govern, store, and manage that content.

The Information Transparency Initiative will allow ICANN organization to:

- Create an integrated ongoing operational process to govern, preserve, organize, and secure ICANN's public content.
- Build a foundation of content governance through consistent multilingual tagging, a functional information architecture, and enforced workflows.
- Implement this governance through a new document management system, the content foundation for ICANN ecosystem-wide governance.
- Deploy new workflows and processes to ensure consistent, multilingual taxonomy for greater content findability and multifaceted search capabilities.
- Surface this improved multilingual content and search to the community through a new Content Management System which will serve as the backbone for ICANN's external web properties.
- Establish a future-proof and content agnostic technology landscape.
- Upgrade our technical infrastructure, and thereby serve our global community better through increased findability and accessibility of multilingual content.

There are three key areas for which the Information Transparency Initiative is aimed at improving: the ICANN organization's internal and external content governance, its public content findability in all six U.N. languages, and its technical foundation for the entire ICANN ecosystem (community, Board, organization).

The ICANN organization performed a thorough analysis of the costs associated with the Information Transparency Initiative, and finds it to be a viable, cost-effective solution. Further, the Board followed a 6-step process to allow for a thorough evaluation of the

Information Transparency Initiative, leveraging the expertise available among Board members related to the scope of the project. The steps include: (i) the Board defines its requirements and questions; (ii) ICANN Organization prepares answers to Board questions; (iii) a group of interested Board members signs off on the Project plan; (iv) the Board Finance Committee signs off on the Project costs and funding and the Board Risk Committee evaluates the project's risks and the Organization's plans to mitigate them; (v) the Board makes a final decision on the Information Transparency Initiative; and (vi) the group of interested Board members (or Board members tasked by the rest of the Board) will provide oversight on the implementation of the Information Transparency Initiative.

In furtherance of step (iii) above, a group of Board members, including some from the Board's Finance and Risk Committees, as well as others with interest in the topic, came together to liaise with the ICANN organization to evaluate the Information Transparency Initiative project plan. However, the Board is considering establishing a Board Technical Committee and, once formed, this Committee will be the group expected to provide oversight on the implementation of the Information Transparency Initiative as referenced in setp (vi) above.

The Board reviewed the ICANN organization's recommendation to approve the Information Transparency Initiative, the Board Finance Committee's recommendations for contracting and disbursement authority relating to the Information Transparency Initiative, and the fact that the Board Risk Committee did not object to the Information Transparency Initiative.

Taking this decision at this time is in the public interest in that it will enhance and improve the public's access to, and findability of, data surfaced by the ICANN organization in support of ICANN's mission. There will be a financial impact on ICANN to implement the Information Transparency Initiative. The FY18 project costs will be funded from FY18 budgeted operating costs, FY18 budgeted contingency and additional FY18 savings/net excess. The FY19 - FY22 operating expenses for the Information Transparency Initiative will be included in those annual budgets. This action will not have a direct impact on the security, stability, and resiliency of the domain name system.

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

Submitted by: Duncan Burns and David Conrad
Position: SVP, Communications and Chief Technology Officer
Date Noted: xx September 2017
Email: duncan.burns@icann.org and david.conrad@icann.org

ICANN BOARD PAPER NO. 2017.09.23.1i

TITLE: **Board Governance Committee Charter Revisions and the Inaugural Charters of the Board Accountability Mechanisms Committee and the Board Technical Committee**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board Governance Committee (BGC) previously recommended, and the Board agreed, that it might be more appropriate for a new Committee to be charged with oversight of ICANN's accountability mechanisms while the BGC retains its core governance duties. This action required a change to a Fundamental Bylaw as it relates to reconsideration responsibilities.

Accordingly, after following the process set forth in the Bylaws to effect a Fundamental Bylaws amendment, the Bylaws amendment redesignating the reconsideration responsibilities from the BGC to the Board Accountability Mechanisms Committee (BAMC) came into effect on 22 July 2017. (*See ICANN Bylaws, Art. 4, § 4.2, as amended 22 July 2017.*)

In addition, the Board has further determined that a Board committee should be formed to help the ICANN Board with oversight of technical work necessary to meet ICANN's mission of ensuring the stable and secure operation of the Internet's unique identifier systems (the Board Technical Committee (BTC)).

Accordingly, the Board is being asked to approve: (i) the inaugural charter of the BAMC, as reflected in Attachment A to the Reference Materials; (ii) a revised BGC charter, as reflected in Attachment B of the Reference Materials; and (iii) the inaugural charter of the BTC, as reflected in Attachment C of the Reference Materials.

BOARD GOVERNANCE COMMITTEE RECOMMENDATIONS:

The BGC recommends that the Board approve the proposed inaugural Charter for the BAMC, approve the proposed revised BGC charter, and approve the proposed inaugural BTC charter.

PROPOSED RESOLUTION:

Whereas, in 2008, the Board delegated to the Board Governance Committee (BGC) the responsibility for considering Reconsideration Requests, a responsibility that was previously delegated to a stand-alone committee of the Board.

Whereas, the BGC recommended, and the Board agreed, that the BGC's performance would be enhanced through the development of a Board committee specifically charged with oversight of ICANN accountability mechanisms, as the Board deems appropriate, with the BGC focusing on core governance activities.

Whereas, pursuant to the process set forth in the Bylaws for a Fundamental Bylaws amendment, on 22 July 2017, the Bylaws amendment redesignating the Reconsideration responsibilities from the BGC to the Board Accountability Mechanisms Committee (BAMC) came into effect.

Whereas, the Board previously specified that that the charter concerns raised during the public comments public comment process for the Fundamental Bylaws change be taken into account, as appropriate, by the BGC in developing the new BAMC charter and revising the BGC charter.

Whereas, the BGC has recommended that the Board approve the **[insert link: attached inaugural Charter for the BAMC]**, which aligns with the purposes of the BAMC and the amended Bylaws, and which incorporates suggestions received during the public comment period for the Fundamental Bylaws change, as appropriate.

Whereas, the BGC has recommended that the Board approve the **[insert link: attached revised BGC charter]** in which the Purpose and Responsibilities sections have been amended to align with the Bylaws amendment and the BAMC charter, and which incorporates suggestions received during the public comment period for the Fundamental Bylaws change, as appropriate.

Whereas, the BGC has also recommended that Board approve revisions to the BGC charter as part of the process of standardizing certain provisions of Board Committee charters.

Whereas, the Board has further determined that a Board committee should be formed to help the ICANN Board with oversight of technical work necessary to meet ICANN's mission of ensuring the stable and secure operation of the Internet's unique identifier systems (the Board Technical Committee (BTC)).

Whereas , the BGC has recommended that the Board approve the attached inaugural charter of the BTC.

Resolved (2017.09.23.xx), the Board hereby adopts the Charter of the Board Accountability Mechanisms Committee.

Resolved (2017.09.23.xx), the Board hereby adopts the revised Charter of the Board Governance Committee.

Resolved (2017.09.23.xx), the Board hereby adopts the Charter of the Board Technical Committee.

PROPOSED RATIONALE:

The Board is addressing this matter to ensure committee charters are up-to-date and reflect the most current needs of the organization, in accordance with governance requirements and best practices.

Over the past several years, the Board Governance Committee's (BGC) work relating to Reconsideration Requests, which was delegated to the BGC by the Board, has increased exponentially, particularly with the New gTLD Program. As a result of the increased volume of Reconsideration Requests, the BGC was required to focus more of its time on Reconsideration Requests and less on its other governance duties. Given that the Bylaws in effect on 1 October 2016 expanded the scope of the Reconsideration process, as well as ICANN's other accountability mechanisms, it is anticipated that the volume and complexity of accountability mechanisms filed, including Reconsideration Requests, might increase and that the BGC's workload on Reconsideration Requests will not likely lessen.

As part of its responsibilities, the BGC is tasked with "periodically review[ing] the charters of the Board Committees, including its own charter and work with the members of the Board Committees to develop recommendations to the Board for any charter adjustments deemed advisable." (BGC Charter, I.A, at <https://www.icann.org/resources/pages/charter-06-2012-02-25-en>) In this role, the BGC recommended, and the Board agreed, that to enhance its own performance and focus on core governance activities, the Reconsideration responsibilities should be moved to a new committee dedicated to oversight of ICANN's accountability mechanisms as deemed appropriate by the Board.

On 3 February 2017, the ICANN Board directed the initiation of the Fundamental Bylaws amendment process to allow for the ICANN community to consider these changes alongside the Board.

Pursuant to the process set forth in the Bylaws for a Fundamental Bylaws amendment, on 22 July 2017, the Bylaws amendment redesignating the Reconsideration responsibilities from the BGC to the Board Accountability Mechanisms Committee (BAMC) came into effect.

Accordingly, the BGC has recommended, and the Board agrees, that the Board adopt the inaugural charter of the BAMC to align with the purposes of the BAMC and the amended Bylaws.

The BGC further recommended, and the Board agrees, that the Board approve the revised BGC charter in which the Purpose and Responsibilities sections have been amended to align with the Bylaws amendment and the BAMC charter, and which incorporates the suggestions received during the public comment period for the Fundamental Bylaws change as appropriate. Additionally, the BGC has recommended, and the Board agrees, that Board approve revisions to the BGC charter as part of the process of standardizing certain provisions of Board Committee charters.

The Board previously specified that that the charter concerns raised during the public comments public comment process for the Fundamental Bylaws change be taken into account, as appropriate, by the BGC in developing the new BAMC charter and revising the BGC charter. (*See* [Resolution 2017.05.18.06.](#)) The Board notes that BAMC

charter and revised BGC charter have incorporated the charter concerns received during the public comment period for the Fundamental Bylaws change as appropriate.

The Board has further determined that a Board committee should be formed to help the ICANN Board with oversight of technical work necessary to meet ICANN's mission of ensuring the stable and secure operation of the Internet's unique identifier systems (the Board Technical Committee (BTC)). The BGC has recommended, and the Board agrees, that the Board adopt the inaugural charter of the BTC.

This action is in the public interest as it is important to ensure that the Board has the necessary Committees, properly tasked with responsibilities, to ensure oversight over the ICANN organization, as the Board deems appropriate. There will be no direct fiscal impact or adverse ramifications on ICANN's strategic and operating plans from the proposed changes to the charters.

There are no security, stability or resiliency issues relating to the DNS as the result of this action.

Submitted By: Amy A. Stathos
Date: 17 October 2017
Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2017.09.23.2a

TITLE: **Consideration of Reconsideration Request 17-2**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Requestor, DotMusic Limited, seeks reconsideration of ICANN organization's response to the Requestor's request for documents (DIDP Request), pursuant to ICANN's Documentary Information Disclosure Policy (DIDP), relating to the Community Priority Evaluation (CPE) process review (CPE Process Review). The Requestor suggests that reconsideration is warranted because ICANN organization violated its Core Values and policies established in the Bylaws concerning non-discriminatory treatment and transparency by declining to produce certain requested documents.

The Board Accountability Mechanisms Committee (BAMC) evaluated Request 17-2 and found that the Request does not set forth a proper basis for reconsideration because ICANN organization adhered to established policies and procedures in its response to the DIDP Request. The BAMC concluded that ICANN organization did not violate ICANN's Mission, Commitments and Core Values or established ICANN policy(ies) in its response to the DIDP Request. Accordingly, the BAMC has recommended that the Board deny Request 17-2 and that no further action be taken in response to the Request.

Following the issuance of the BAMC's recommendation, the Requestor submitted a rebuttal¹ to the recommendation. Notwithstanding that the rebuttal was submitted past the Bylaws mandated-deadline, the merits of the rebuttal are discussed below and, as noted, it does not raise arguments or facts that support reconsideration.

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)

RECOMMENDATION:

¹ Article 4, Section 4.2(q) of the ICANN Bylaws permits the requestor to file a rebuttal to the BAMC's recommendation, provided that the rebuttal is: (i) "limited to rebutting or contradicting the issues raised in the BGC's recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request." (Bylaws, [Art. 4, § 4.2\(g\).](#))

The BAMC recommended that Request 17-2 be denied and that no further action be taken in response to the Request. As detailed in the Recommendation attached as Attachment D to the Reference Materials in support of this submission, the BAMC determined that the Requestor's claims are unsupported because ICANN organization adhered to established policies and procedures in its response to the DIDP Request.

PROPOSED RESOLUTION:

Whereas, DotMusic Limited (the Requestor) filed Reconsideration Request 17-2 (Request 17-2) challenging ICANN organization's response to the Requestor's request for documents, pursuant to ICANN's Documentary Information Disclosure Policy, relating to the Community Priority Evaluation (CPE) process review.

Whereas, the Board Governance Committee² previously determined that Request 17-2 is sufficiently stated and sent the Request to the Ombudsman for review and consideration in accordance with Article 4, Section 4.2(j) and (k) of the ICANN Bylaws.

Whereas, the Ombudsman recused himself from this matter pursuant to Article 4, Section 4.2(l)(iii) of the Bylaws.

Whereas, the Board Accountability Mechanisms Committee (BAMC) has carefully considered the merits of Request 17-2 and all relevant materials and recommended that Request 17-2 be denied on the basis that Request 17-2 does not set forth a proper basis for reconsideration, and the Board agrees.

Whereas, even though the Requester's rebuttal to the BAMC's Recommendation on Request 17-2 was untimely, the Board has carefully considered it and concludes that the rebuttal provides no additional argument or evidence to support reconsideration.

Resolved (2017.09.XX.XX), the Board adopts the [BAMC Recommendation on Request 17-2](#).

² Prior to 22 July 2017, the Board Governance Committee (BGC) was tasked with reviewing and considering Reconsideration Requests pursuant to Article 4, Section 4.2 of the Bylaws. See ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e), (<https://www.icann.org/resources/pages/bylaws-2016-09-30-en - article4>). As such, the BGC reviewed Request 17-2 to determine if it was sufficiently stated, and it did so on 7 July 2017. On 22 July 2017, while Request 17-2 is pending, the amended Bylaws came into effect and the Board Accountability Mechanisms Committee (BAMC) is now designated to review and consider Reconsideration Requests. See ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(e), available at <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>. Since that time, the BAMC is responsible for reviewing reconsideration requests, including Request 17-2.

PROPOSED RATIONALE:

1. Summary

The Requestor submitted a community-based application for .MUSIC, was invited to, and did, participate in CPE, but did not prevail. On 24 February 2016, the Requester sought reconsideration of the CPE determination (Request 16-5).

The ICANN Board directed the President and CEO, or his designees, to undertake a review of the process by which ICANN organization interacted with the CPE provider (CPE Process Review). The BGC later decided that the CPE Process Review should also include: (1) evaluation of the research process undertaken by the CPE panels to form their decisions; and (2) compilation of the reference materials relied upon by the CPE provider for the evaluations which are the subject of pending Reconsideration Requests concerning CPE. The BGC also placed the eight pending reconsideration requests relating to CPE on hold, including Request 16-5, pending completion of the CPE Process Review.

On 5 May 2017, the Requestor submitted a request pursuant to ICANN organization's Documentary Information Disclosure Policy (DIDP) seeking ten categories of documents and information relating to the CPE Process Review (the DIDP Request), some of which the Requestor had already requested in a prior DIDP request. (See [DIDP Request](#), attached as Attachment E to Reference Materials.) In its response (DIDP Response) ICANN organization explained that, with the exception of certain documents that were subject to DIDP Defined Conditions for Nondisclosure (Nondisclosure Conditions), all the remaining documents responsive to nine (Items No. 1-9) of the ten categories have already been published. (See [DIDP Response](#), attached as Attachment F to Reference Materials.) The DIDP Response further explained that all the documents responsive to Item No. 10 were subject to certain Nondisclosure Conditions and were not appropriate for disclosure. (See *id.*) Additionally, the DIDP Response explained that ICANN organization evaluated the documents subject to the Nondisclosure Conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure, and determined that there were no circumstances for which the public interest in disclosing the information outweighed the potential harm of doing so. (See *id.*)

The Requestor suggests that reconsideration of ICANN’s DIDP Response is warranted because ICANN organization violated ICANN’s Core Values and policies established in the DIDP and Bylaws concerning non-discriminatory treatment and transparency. (See [Request 17-2](#), § 10, Pg. 16, attached as Attachment A to Reference Materials.)

The BAMC considered Request 17-2 and all relevant materials and recommended that the Board deny Request 17-2 because it does not set forth a proper basis for reconsideration for the reasons set forth in the [BAMC Recommendation on Reconsideration Request 17-2](#) (the BAMC Recommendation), which have been considered and are incorporated here. (See [BAMC Recommendation](#), attached as Attachment D to Reference Materials.)

On 12 September 2017, the Requestor submitted a rebuttal to the BAMC’s Recommendation (Rebuttal). (See [Rebuttal](#), attached as Attachment G to the Reference Materials.) The Requestor suggests that: (1) neither ICANN nor the BAMC identify or apply the specific Nondisclosure Condition for each category of document or document itself; (2) ICANN organization misapplied the provision of the DIDP that permits ICANN to disclose information subject to Nondisclosure Conditions if the public interest in disclosure outweighs the harm; (3) “ICANN has closed-off th[e] possibility [of obtaining information about the CPE Process Review] in clear contradiction of its own stated Commitments and Core Values”; and (4) that “ICANN’s Board and the BGC remain in ultimate control of any review process initiated by ICANN staff” and therefore DotMusic seeks reconsideration of the “BGC’s actions in denying its requests for information.” (Rebuttal.)

2. Facts

The full factual background is set forth in the [BAMC Recommendation](#), which the Board has reviewed and considered, and which is incorporated here.

On 23 August 2017, the BAMC recommended that Request 17-2 be denied on the basis that Request 17-2 does not set forth a proper basis for reconsideration for the reasons set forth in the [BAMC Recommendation](#), which are incorporated here.

On 12 September 2017, the Requestor submitted a rebuttal to the BAMC’s Recommendation, which the Board has also reviewed and considered.

3. Issues

The issues for reconsideration are³:

- Whether ICANN organization complied with established ICANN policies in responding to the DIDP Request.
- Whether ICANN organization was required by the DIDP or established policies to provide the Requestor with “the specific formula used to justify the nondisclosure.”
- Whether ICANN organization complied with its Core Values, Mission, and Commitments.

4. The Relevant Standards for Evaluating Reconsideration Requests

Article 4, Section 4.2(a) and (c) of ICANN’s Bylaws provide in relevant part that any entity may submit a request “for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

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

(ICANN Bylaws, 22 July 2017, [Art. 4, §§ 4.2\(a\), \(c\)](#).) Pursuant to Article 4, Section 4.2(k) of the Bylaws, if the BAMC determines that the Request is sufficiently stated, the Request is sent to

³ As the BAMC noted, the Requestor indicated (by checking the corresponding box on the Reconsideration Request Form) that Request 17-2 seeks reconsideration of staff and Board action or inaction. However, but for a passing reference that in requesting materials from CPE panels as part of the CPE Process Review “the BGC became obligated to disclose these materials under its Bylaws, but has failed to do so”, the Requestor makes no further arguments concerning the BGC’s actions or inactions. The Requestor also does not ask ICANN organization to take any action concerning this issue. Rather, the Requestor focuses on the “ICANN staff” response to the Requestor’s DIDP request. Accordingly, the BAMC interpreted Request 17-2 to seek reconsideration of ICANN organization’s response to the Requestor’s DIDP Request, and not reconsideration of BGC action or inaction, and the Board agrees. (See [BAMC Recommendation](#), Pg. 9.)

the Ombudsman for review and consideration. (*See id.* at § 4.2(l).) If the Ombudsman recuses himself from the matter, the BAMC reviews the Request without involvement by the Ombudsman, and provides a recommendation to the Board. (*See id.* at § 4.2(l)(iii).) The Requestor may file a rebuttal to the BAMC’s recommendation, provided that the rebuttal is: (i) “limited to rebutting or contradicting the issues raised in the BGC’s recommendation; and (ii) not offer new evidence to support an argument made in the Requestor’s original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.” (*See id.* at § 4.2(q).) Denial of a request for reconsideration of ICANN action or inaction is appropriate if the BAMC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws. (*See id.* at § 4.2(e)(vi), (q), (r).)

5. Analysis and Rationale

The Board has reviewed and thoroughly considered Request 17-2 and all relevant materials, including the BAMC Recommendation. The Board finds the analysis set forth in the [BAMC Recommendation](#), which is incorporated here, to be sound.

A. ICANN Organization Adhered To Established Policies And Procedures In Responding To The DIDP Request.

The BAMC concluded and the Board agrees that the DIDP Response complied with applicable policies and procedures. ([BAMC Recommendation](#), Pg. 13.) In responding to a request for documents submitted pursuant to the DIDP, ICANN organization adheres to the “Process For Responding To ICANN’s Documentary Information Disclosure Policy (DIDP) Requests” (DIDP Response Process). (*See* [DIDP Response Process](#).) The DIDP Response Process provides that “[u]pon receipt of a DIDP Request, ICANN staff performs a review of the Request and identifies what documentary information is requested . . . , interviews . . . the relevant staff member(s) and performs a thorough search for documents responsive to the DIDP Request.” (*Id.*) Once the documents collected are reviewed for responsiveness, a review is conducted to determine if the documents identified as responsive to the Request are subject to any of the Nondisclosure Conditions set forth on the DIDP web page at <https://www.icann.org/resources/pages/didp-2012-02-25-en>. If so, a further review is conducted to determine whether, under the particular

circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such disclosure. (See [DIDP Response Process](#).)

Consistent with the DIDP Response Process, the DIDP Response identified documentary information responsive to all 10 items. (See [DIDP Response](#).) For Items No. 1 through 9, ICANN organization determined that most of the responsive documentary information had already been published on ICANN’s website. (See *id.*) Although the DIDP does not require ICANN organization to respond to requests seeking information that is already publicly available, ICANN organization identified and provided the hyperlinks to 21 publicly available categories of documents that contain information responsive to Items No. 1 through 9. (See *id.*) The DIDP Response also explained that some of the documents responsive to Items No. 6 and 8, as well as all the documents responsive to Item 10, were subject to certain identified Nondisclosure Conditions and were therefore not appropriate for disclosure. (See *id.*) The DIDP Response further explained that ICANN organization evaluated the documents subject to the Nondisclosure Conditions, as required, and determined that there were no circumstances for which the public interest in disclosing the information outweighed the potential harm of disclosing the documents. (See *id.*)

The Requestor suggests that the determinations as to the applicability of the specified Nondisclosure Conditions warrant reconsideration because “ICANN did not state compelling reasons for nondisclosure as it pertains to each individual item requested nor provide the definition of public interest in terms of the DIDP Request.” ([Request 17-2](#), § 3, Pg. 8.) The BAMC determined, and the Board agrees, that Requestor’s position is not supported because ICANN organization *did* identify compelling reasons in each instance of nondisclosure, which are pre-defined in the DIDP; the Nondisclosure Conditions that ICANN identified, by definition, set forth compelling reasons for not disclosing the materials. There is no policy or procedure requiring that ICANN organization provide *additional* justification for nondisclosure. (See [BAMC Recommendation](#), Pgs. 23-24.)

The Requestor asks the Board to “inform the Request[or] as to the specific formula used to justify the nondisclosure position that the *public interest* does not outweigh the harm.” ([Request 17-2](#), § 9, Pg. 14.) The BAMC concluded, and the Board agrees, that neither the DIDP nor the

DIDP Response Process requires ICANN organization to use or provide a “formula” for determining whether materials that are subject to Nondisclosure Conditions may nonetheless be disclosed. (See [BAMC Recommendation](#), Pgs. 23-24.)

The Requestor also suggests that nondisclosure “needs to be avoided in order to ensure the procedural fairness guaranteed by Article 3, Section 1 of ICANN’s Bylaws.” ([Request 17-2](#), § 9, Pg. 14.) As the BAMC noted, the DIDP provides the procedural fairness that the Requestor seeks. Consistent with the DIDP Response Process, ICANN organization applied the DIDP, determined that certain of the requested materials were subject to Nondisclosure Conditions, considered whether the materials should nonetheless be made public, determined that the public interest in disclosing the information did not outweigh the harm of disclosure, and explained that determination to the Requestor. (See [BAMC Recommendation](#), Pg. 24.)

Finally, the Requestor suggests that reconsideration is warranted because the Dot Registry Independent Review Process (IRP) Final Declaration gave rise to a “unique circumstance where the ‘pubic interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.’” ([Request 17-2](#), § 3, Pg. 10.) The BAMC concluded, and the Board agrees, that the Dot Registry IRP Final Declaration is not an established ICANN policy or procedure, and the Board’s acceptance of aspects of the Final Declaration does not make it so. Moreover, the Dot Registry IRP Final Declaration did not establish that the public interest in disclosure outweighs the potential harm for each and every document in ICANN organization’s possession related to the CPE Process Review. (See [BAMC Recommendation](#), Pg. 24-25.)

As such, the BAMC concluded, and the Board agrees, that Requestor does not claim that the DIDP Response is contrary to the DIDP Response Process, nor does the Requestor provide any information to show how ICANN organization’s Response violates ICANN’s Mission, Commitments, or Core Values. (See *id.*)

B. The Reconsideration Process is Not a Mechanism for “Instructing” ICANN Staff on General Policies Where No Violation of ICANN Policies or Procedure Has Been Found.

The Requestor asks the Board to “recognize and instruct Staff that ICANN’s default policy is to release all information requested unless there is a compelling reason not to do so.” ([Request 17-2](#), § 9, Pgs. 13-14.) However, the reconsideration request process is not an avenue for “instruct[ing]” ICANN staff concerning ICANN’s policies in general, where no violation of ICANN policies or procedures has been found, as is the case here. Further, as the BAMC noted, and the Board agrees, to the extent the Requestor is challenging the DIDP Response Process or the DIDP itself, the time to do so has passed. (See [BAMC Recommendation](#), Pg. 25-26.)

C. The Requestor’s Unsupported References to ICANN Commitments and Core Values Do Not Support Reconsideration of the DIDP Response.

The Requestor suggests that ICANN organization violated the following Commitments and Core Values in the DIDP Response: Article 1, Sections 1.2(a)(i), 1.2(a)(iv), 1.2(a)(vi), 1.2(b)(iv), 1.2(b)(v), 1.2(b)(vi), Article 2, Sections 2.3, 2.9, and Article 3, Section 3.2 of the ICANN Bylaws. (See [Request 17-2](#), § 10, Pgs. 15-16.) However, as the BAMC concluded, and the Board agrees, the Requestor provides no explanation for how these Commitments and Core Values relate to the DIDP Response at issue in [Request 17-2](#) or how ICANN organization might have violated these Commitments and Core Values. (See [BAMC Recommendation](#), Pg. 26-27.) In fact, many of them, such as ICANN’s Core Value of accounting for the public policy advice of governments and public authorities, have no clear relation to the DIDP Response. The Requestor has not established grounds for reconsideration through its list of Commitments and Core Values.

The Board notes that the Requestor states in passing that it has “standing and the right to assert this reconsideration request” as a result of “[f]ailure to consider evidence filed,” but does not identify any evidence that it believes ICANN organization failed to consider in responding to the DIDP Request. ([Request 17-2](#), § 10, Pg. 13-14.) The Requestor similarly references “[c]onflict of interest issues,” “Breach of Fundamental Fairness,” and the need for “[p]redictability in the introduction of gTLDs” without explaining how those principles provide grounds for reconsideration here. As such, the BAMC found, and the Board agrees, that the Requestor’s claims are unsupported.

D. The Rebuttal Does Not Raise Arguments or Facts That Support Reconsideration.

The Board has considered the Requestor's Rebuttal and finds that the Requestor has not provided any additional arguments or facts supporting reconsideration.

The Rebuttal suggests that: (1) "neither ICANN nor the BAMC identify or apply the specific Nondisclosure Condition for each category of document" in the Requestor's DIDP Request, "much less to individual documents that have been requested"; (2) ICANN organization misapplied the provision of the DIDP that permits ICANN to disclose information subject to Nondisclosure Conditions if the public interest in disclosure outweighs the harm that may be closed by disclosure; and (3) "[i]n rejecting the DIDP Request, ICANN has closed-off th[e] possibility [of obtaining information about the CPE Process Review] in clear contradiction of its own stated Commitments and Core Values"; and (4) that "ICANN's Board and the BGC remain in ultimate control of any review process initiated by ICANN staff" and therefore DotMusic seeks reconsideration of the "BGC's actions in denying its requests for information."

(Rebuttal.)

As noted above, before addressing the Requestor's rebuttal arguments, the Board notes that the Rebuttal is untimely. The Rebuttal was due within 15 days of receipt of the BAMC's Recommendation. (ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(q).) The Requestor received the BAMC's Recommendation on 25 August 2017. The rebuttal was therefore due on 9 September 2017. However, the Requestor did not submit its Rebuttal until 12 September 2017, three days after the deadline. Regardless, for the below reasons, even if the Rebuttal was timely, it does not support reconsideration.

With respect to the first point, the Board has considered Request 17-2, the BAMC's Recommendation, and the Rebuttal, and finds that the BAMC did explain how the Nondisclosure Conditions applied to the documents that ICANN organization determined were not appropriate for disclosure. Consistent with the DIDP Response Process, the BAMC explained that the requested materials contained internal drafts, proprietary, confidential information, and materials

that could compromise the integrity of the deliberative and decision-making process with respect to the CPE Process Review. (See [BAMC Recommendation](#), Pgs. 20-24.)

Second, the Requestor suggests that several of ICANN’s Commitments and Core Values required ICANN organization to disclose the requested materials even if certain Nondisclosure Conditions apply. (See [Rebuttal](#), Pgs. 3-10.) The Requestor suggests that ICANN organization should have concluded that ICANN’s commitments to Transparency, Openness, and Accountability to the Internet Community made the public interest in disclosing the information greater than the potential harm in disclosing it. (*Id.*) The Board finds that the Requestor’s position is not supported. The DIDP gives ICANN organization the discretion to decide if, “under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information.” (DIDP webpage, <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

As explained in the DIDP Response, ICANN organization evaluated the documents that were subject to Nondisclosure Conditions to determine if the public interest (including transparency and fairness concerns) in disclosing them outweighed the harm that may be caused by such disclosure, and concluded that the public interest did not warrant the harm caused by disclosure under these circumstances. (See [DIDP Response](#), Pg. 6.) The Requestor believes that ICANN should have exercised its discretion differently, but that is not a basis for reconsideration.

Further, with respect to transparency, as the Panel in the *Amazon v. ICANN* Independent Review Process Panel noted earlier this year:

[N]otwithstanding ICANN’s transparency commitment, both ICANN’s By-Laws and its Publication Practices recognize that there are situations where non-public information, e.g., internal staff communications relevant to the deliberative processes of ICANN . . . may contain information that is appropriately protected against disclosure.

(*Amazon EU S.A.R.L. v. ICANN*, ICDR Case No. 01-16-000-7056, Procedural Order (7 June 2017), at Pg. 3.)

Third, the Requestor also suggests that ICANN “has closed off th[e] possibility [of obtaining information about the CPE Process Review] in clear contradiction of its own stated Commitments and Core Values.” (Rebuttal, Pg. 5.) The Board notes that BGC and ICANN organization have provided several updates concerning the CPE Process Review, including one on 1 September 2017. (<https://www.icann.org/news/announcement-2017-09-01-en>.) Additionally, and as noted in the 1 September 2017 update, the CPE Process Review is still ongoing. When FTI completes the review, additional information will be made available to the ICANN community, including the Requestor.

Fourth, the Requestor believes that the BGC is ultimately responsible for ICANN organization’s DIDP response, and states that it seeks reconsideration of the BGC’s supervision of ICANN organization’s response to the DIDP Request, and of the BGC’s inaction, insofar as the BGC did not cause ICANN organization to disclose the requested documents. ([Rebuttal](#), Pg. 6.) The Requestor is mistaken. As noted in the DIDP, ICANN organization responds to DIDP requests. Nothing in the DIDP indicates that the BGC is responsible for or otherwise oversees that process. Likewise, nothing in the BGC’s Charter indicates that the BGC is responsible for oversight of the DIDP Response Process. (BGC Charter, 25 February 2012, <https://www.icann.org/resources/pages/charter-06-2012-02-25-en>.) Rather, the DIDP states that the Reconsideration Request process is the proper mechanism for appealing denials of DIDP requests. That process was followed here.

This action is in the public interest as it is important to ensure that ICANN is accountable to the community for operating within the Articles of Incorporation and Bylaws, and other established procedures, by having a process in place for those materially affected by an action of the ICANN Board or Staff may seek reconsideration. Taking this action has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function not requiring public comment.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 13 September 2017
Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2017.09.23.2a

TITLE: **Consideration of Reconsideration Request 17-3**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Requestor, dotguy LLC, seeks reconsideration of ICANN organization’s response to the Requestor’s request for documents (DIDP Request), pursuant to ICANN’s Documentary Information Disclosure Policy (DIDP), relating to the Community Priority Evaluation (CPE) process review (CPE Process Review). The Requestor suggests that reconsideration is warranted because ICANN organization violated its Core Values and policies established in the Bylaws concerning non-discriminatory treatment and transparency by declining to produce certain requested documents.

The Board Accountability Mechanisms Committee (BAMC) evaluated Request 17-3 and found that the Request does not set forth a proper basis for reconsideration because ICANN organization adhered to established policies and procedures in its response to the DIDP Request. The BAMC concluded that ICANN organization did not violate ICANN’s Mission, Commitments and Core Values or established ICANN policy(ies) in its response to the DIDP Request. Accordingly, the BAMC has recommended that the Board deny Request 17-3 and that no further action be taken in response to the Request.

Following the issuance of the BAMC’s recommendation, the Requestor submitted a rebuttal¹ to the recommendation in accordance with Article 4, Section 4.2(q) of the Bylaws. As discussed in below, the rebuttal does not raise arguments or facts that support reconsideration.

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)

RECOMMENDATION:

¹ Article 4, Section 4.2(q) of the ICANN Bylaws permits the requestor to file a rebuttal to the BAMC’s recommendation, provided that the rebuttal is: (i) “limited to rebutting or contradicting the issues raised in the BGC’s recommendation; and (ii) not offer new evidence to support an argument made in the Requestor’s original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.” (Bylaws, [Art. 4, § 4.2\(g\)](#).)

The BAMC recommended that Request 17-3 be denied and that no further action be taken in response to the Request. As detailed in the Recommendation attached to as Attachment D to the Reference Materials in support of this submission, the BAMC determined that the Requestor's claims are unsupported because ICANN organization adhered to established policies and procedures in its response to the DIDP Request.

PROPOSED RESOLUTION:

Whereas, dotgay LLC (the Requestor) filed Reconsideration Request 17-3 (Request 17-3) challenging ICANN organization's response to the Requestor's request for documents pursuant to ICANN's Documentary Information Disclosure Policy relating to the Community Priority Evaluation (CPE) process review.

Whereas, the Board Governance Committee² previously determined that Request 17-3 is sufficiently stated and sent the Request to the Ombudsman for review and consideration in accordance with Article 4, Section 4.2(j) and (k) of the ICANN Bylaws.

Whereas, the Ombudsman recused himself from this matter pursuant to Article 4, Section 4.2(l)(iii) of the Bylaws.

Whereas, the Board Accountability Mechanisms Committee (BAMC) has carefully considered the merits of Request 17-3 and all relevant materials and recommended that Request 17-3 be denied on the basis that Request 17-3 does not set forth a proper basis for reconsideration, and the Board agrees.

Whereas, the Board has carefully considered the Requestor's rebuttal to the BAMC's Recommendation on Request 17-3 and concludes that the rebuttal provides no additional argument or evidence to support reconsideration.

² Prior to 22 July 2017, the Board Governance Committee (BGC) was tasked with reviewing and considering Reconsideration Requests pursuant to Article 4, Section 4.2 of the Bylaws. *See* ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e) (<https://www.icann.org/resources/pages/bylaws-2016-09-30-en - article4>). As such, the BGC reviewed Request 17-3 to determine if it was sufficiently stated, and it did so on 19 July 2017. On 22 July 2017, while Request 17-3 is pending, amended Bylaws came into effect and the Board Accountability Mechanisms Committee (BAMC) is now designated to review and consider Reconsideration Requests. *See* ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(e) (<https://www.icann.org/resources/pages/governance/bylaws-en/#article4>). Since that time, the BAMC is responsible for reviewing reconsideration requests, including Request 17-3.

Resolved (2017.09.23.xx), the Board adopts the [BAMC Recommendation on Request 17-3](#).

PROPOSED RATIONALE:

1. Brief Summary

The Requestor submitted a community-based application for .GAY, which was placed in a contention set with other .GAY applications. The Requestor was invited to, and did, participate in CPE, but did not prevail. On 22 October 2015, the Requestor sought reconsideration of the CPE report (Request 15-21). On 1 February 2016, the Board Governance Committee (BGC) denied Request 15-21.³ On 17 February 2016, the Requestor filed another reconsideration request (Request 16-3), seeking reconsideration of the BGC's determination on Request 15-21 concerning the CPE Report.

On 17 September 2016, the ICANN Board directed the President and CEO, or his designee(s), to undertake a review of the process by which ICANN organization interacted with the CPE provider (CPE Process Review). The BGC later decided that the CPE Process Review should also include: (1) evaluation of the research process undertaken by the CPE panels to form their decisions; and (2) compilation of the reference materials relied upon by the CPE provider for the evaluations which are the subject of pending Requests for Reconsideration concerning CPE. The BGC also placed the eight pending reconsideration requests relating to CPE on hold, including Request 16-3, pending completion of the CPE Process Review.

On 18 May 2017, the Requestor submitted a request pursuant to ICANN organization's Documentary Information Disclosure Policy (DIDP) seeking 13 categories of documents and information relating to the CPE Process Review (the DIDP Request), some of which the Requestor had already requested in a prior DIDP request. (See [DIDP Request](#), attached as Attachment E to the Reference Materials.) On 18 June 2017, ICANN organization responded to the DIDP Request (DIDP Response) and explained that, with the exception of certain documents

³ Pursuant to Article IV, Section 2.3 of the Bylaws in effect at the time Request 15-21 was filed the BGC was tasked with reviewing and considering Reconsideration Requests. See ICANN Bylaws, 30 July 2014, Art. IV, § 2.3 (<https://www.icann.org/resources/pages/bylaws-2012-02-25-en#IV>). Article IV, Section 2.15 provided that “[f]or all Reconsideration Requests brought regarding staff action or inaction, the BGC shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter.” *Id.* at Art. IV, § 2.15.

that were subject to Nondisclosure Conditions, all the remaining documents responsive to eight (Items No. 4-7 and 9-12) of the 13 categories have already been published. (See [DIDP Response](#), attached as Attachment F to Reference Materials.) The DIDP Response identified and provided hyperlinks to those publicly available responsive documents. (See *id.*) The DIDP Response further explained that the documents responsive to Items No. 1-3, 8, and 13, and certain documents responsive to Item No. 9, were subject to Nondisclosure Conditions and were not appropriate for disclosure. (See *id.*) Additionally, the DIDP Response explained that ICANN organization evaluated the documents subject to the Nondisclosure Conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure, and determined that there were no circumstances for which the public interest in disclosing the information outweighed the potential harm of disclosing the documents. (See *id.*)

The Requestor claims that reconsideration of ICANN’s DIDP Response is warranted because ICANN organization violated ICANN’s Core Values and policies established in the DIDP and Bylaws concerning non-discriminatory treatment and transparency by determining not to produce certain documents responsive to Items No. 1-3, 8, 9, and 13. (See [Request 17-3](#), § 3, Pg. 3, attached as Attachments A & B to Reference Materials.)

The BAMC considered Request 17-3 and all relevant materials and recommended that the Board deny Request 17-3 because it does not set forth a proper basis for reconsideration for the reasons set forth in the [BAMC Recommendation on Reconsideration Request 17-3](#) (the BAMC Recommendation), which have been considered and are incorporated here. (See [BAMC Recommendation, attached as Attachment D to Reference Materials.](#))

On 8 September 2017, the Requestor submitted a rebuttal to the BAMC’s Recommendation (Rebuttal), pursuant to Article 4, Section 4.2(1) of ICANN’s Bylaws. (See [Rebuttal](#), attached as Attachment G to Reference Materials.) The Requestor claimed that: (1) “neither ICANN nor the BAMC offer any explanation” for how the Nondisclosure Conditions apply to the documents that ICANN organization determined were not appropriate for disclosure; (2) ICANN organization misapplied the provision of the DIDP that permits ICANN to disclose information subject to Nondisclosure Conditions if the public interest in disclosure outweighs the harm that may be closed by disclosure; and (3) “[i]n rejecting the DIDP Request, ICANN has closed off

th[e] possibility [of obtaining information about the CPE Process Review] in clear contradiction of its own stated Commitments and Core Values.” (*Id.* at 2.)

2. Facts

The full factual background is set forth in the [BAMC Recommendation](#), which the Board has reviewed and considered, and which is incorporated here.

On 23 August 2017, the BAMC recommended that Request 17-3 be denied on the basis that Request 17-3 does not set forth a proper basis for reconsideration for the reasons set forth in the [BAMC Recommendation](#), which are incorporated here.

On 8 September 2017, the Requestor submitted a rebuttal to the BAMC’s Recommendation, pursuant to Article 4, Section 4.2(1) of ICANN’s Bylaws, which the Board has also reviewed and considered.

3. Issues

The issues for reconsideration are⁴:

- Whether ICANN organization complied with established ICANN policies in responding to the DIDP Request.
- Whether ICANN organization complied with its Core Values, Mission, and Commitments.

4. The Relevant Standards for Evaluating Reconsideration Requests

Article 4, Section 4.2(a) and (c) of ICANN’s Bylaws provide in relevant part that any entity may submit a request “for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

⁴ As the BAMC noted, the Requestor indicated (by checking the corresponding box on the Reconsideration Request Form) that Request 17-3 seeks reconsideration of staff and Board action or inaction. However, but for a passing reference that in requesting materials from CPE panels as part of the CPE Process Review “the BGC became obligated to disclose these materials under its Bylaws, but has failed to do so”, the Requestor makes no further arguments concerning the BGC’s actions or inactions. The Requestor also does not ask ICANN organization to take any action concerning this issue. Rather, the Requestor focuses on ICANN organization’s response to the Requestor’s DIDP request. Accordingly, the BAMC interpreted Request 17-3 to seek reconsideration of ICANN organization’s response to the Requestor’s DIDP Request, and not reconsideration of BGC action or inaction, and the Board agrees. (*See* [BAMC Recommendation](#), Pg. 10.)

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

(ICANN Bylaws, 22 July 2017, [Art. 4, §§ 4.2\(a\), \(c\)](#).) Pursuant to Article 4, Section 4.2(k) of the Bylaws, if the BAMC determines that the Request is sufficiently stated, the Request is sent to the Ombudsman for review and consideration. (*See id.* at § 4.2(l).) If the Ombudsman recuses himself from the matter, the BAMC reviews the Request without involvement by the Ombudsman, and provides a recommendation to the Board. (*See id.* at § 4.2(l)(iii).) The Requestor may file a rebuttal to the BAMC’s recommendation, provided that the rebuttal is: (i) “limited to rebutting or contradicting the issues raised in the BGC’s recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.” (*See id.* at § 4.2(q).) Denial of a request for reconsideration of ICANN action or inaction is appropriate if the BAMC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws. (*See id.* at § 4.2(e)(vi), (q), (r).)

5. Analysis and Rationale

The Board has reviewed and thoroughly considered Request 17-3 and all relevant materials, including the BAMC Recommendation. The Board finds the analysis set forth in the [BAMC Recommendation](#), which is incorporated here, to be sound. The Board has also considered the Requestor’s Rebuttal to the BAMC Recommendation. The Board finds that the Rebuttal does not raise arguments or facts that support reconsideration.

A. ICANN Organization Adhered To Established Policies And Procedures In Responding To The DIDP Request.

The BAMC concluded and the Board agrees that the DIDP Response complied with applicable policies and procedures. ([BAMC Recommendation](#), Pg. 22.) In responding to a request for documents submitted pursuant to the DIDP, ICANN organization adheres to the “Process For Responding To ICANN’s Documentary Information Disclosure Policy (DIDP) Requests” (DIDP Response Process). (See [DIDP Response Process](#).) The DIDP Response Process provides that “[u]pon receipt of a DIDP Request, ICANN staff performs a review of the Request and identifies what documentary information is requested . . . , interviews . . . the relevant staff member(s) and performs a thorough search for documents responsive to the DIDP Request.” (*Id.*) Once the documents collected are reviewed for responsiveness, a review is conducted to determine if the documents identified as responsive to the Request are subject to any of the Nondisclosure Conditions set forth on the DIDP web page at <https://www.icann.org/resources/pages/didp-2012-02-25-en>. If so, a further review is conducted to determine whether, under the particular circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such disclosure. (See [DIDP Response Process](#).)

Consistent with the DIDP Response Process, the DIDP Response identified documentary information responsive to nine of the 13 items. For Items No. 4 through 7 and 9 through 12, ICANN organization determined that most of the responsive documentary information had already been published on ICANN’s website. Although the DIDP does not require ICANN organization to respond to requests seeking information that is already publicly available, ICANN organization identified and provided the hyperlinks to 18 publicly available categories of documents that contain information responsive to Items No. 4 through 7 and 9 through 12. (See [DIDP Response](#), Pg. 4-7.) The DIDP Response also explained that some of the documents responsive to Item No. 9, as well as the documents responsive to Items No. 1-3, 8, and 13, were subject to certain identified Nondisclosure Conditions. The DIDP Response further explained that ICANN organization evaluated the documents subject to the Nondisclosure Conditions, as required, and determined that there were no circumstances for which the public interest in disclosing the information outweighed the potential harm of disclosing the documents. (See *id.* at 7.)

The Requestor suggests that reconsideration is warranted because ICANN organization violated ICANN's Core Values and policies established in the DIDP and Bylaws concerning non-discriminatory treatment and transparency by determining not to produce certain documents responsive to Items No. 1-3, 8, 9, and 13. ([Request 17-3](#), § 3, Pg. 3.) Additionally, the Requestor suggests that the ICANN organization's determinations as to the applicability of the specified Nondisclosure Conditions warrant reconsideration because "ICANN failed to state compelling reasons for nondisclosure as it pertains to each document request, which it was required to do under its own policy." (*Id.* at § 6, Pg. 6.)

The BAMC determined, and the Board agrees, that Requestor's position is not supported because ICANN organization did adhere to established policies and procedures in responding to the DIDP Request. (*See* [BAMC Recommendation](#), Pgs. 16-22.) The Requestor does not claim that the DIDP Response is contrary to the DIDP Response Process, nor does the Requestor provide any information to show how ICANN organization's Response violates ICANN's Mission, Commitments, or Core Values. (*See id.*) The BAMC further concluded, and the Board agrees, that ICANN organization did identify compelling reasons in each instance of nondisclosure, which are pre-defined in the DIDP; the Nondisclosure Conditions that ICANN identified, by definition, set forth compelling reasons for not disclosing the materials. There is no policy or procedure requiring that ICANN organization provide additional justification for nondisclosure. (*See id.* at 20-21.)

B. The Requestor's Unsupported References to ICANN Commitments and Core Values Do Not Support Reconsideration of the DIDP Response.

The Requestor suggests that ICANN organization violated the following Commitments and Core Values in the DIDP Response: Article 1, Sections 1.2(a), 1.2(a)(v), 1.2(a)(vi) and Article 3, Section 3.1 of the ICANN Bylaws. (*See* [Request 17-3](#), § 6, Pg. 5.) However, as the BAMC concluded, and the Board agrees, the Requestor provides no explanation for how these Commitments and Core Values relate to the DIDP Response at issue in Request 17-3 or how ICANN organization might have violated these Commitments and Core Values. (*See* [BAMC Recommendation](#), Pgs. 21-22.) As such, the Requestor has not established grounds for reconsideration through its list of Commitments and Core Values.

C. The Rebuttal Does Not Raise Arguments or Facts That Support Reconsideration.

The Board has considered the Requestor's Rebuttal and finds that the Requestor has not provided any additional arguments or facts supporting reconsideration.

The Rebuttal suggests that: (1) "neither ICANN nor the BAMC offer any explanation" for how the Nondisclosure Conditions apply to the documents that ICANN organization determined were not appropriate for disclosure; (2) ICANN organization misapplied the provision of the DIDP that permits ICANN to disclose information subject to Nondisclosure Conditions if the public interest in disclosure outweighs the harm that may be closed by disclosure; and (3) "[i]n rejecting the DIDP Request, ICANN has closed off th[e] possibility [of obtaining information about the CPE Process Review] in clear contradiction of its own stated Commitments and Core Values." ([Rebuttal](#), Pg. 5.)

With respect to the first point, the Board has considered Request 17-3, the BAMC's Recommendation, and the Rebuttal, and finds that the BAMC did explain how the Nondisclosure Conditions applied to the documents that ICANN organization determined were not appropriate for disclosure. Specifically, the BAMC explained that the requested materials contained proprietary, confidential information, and materials that had the potential to compromise the integrity of ICANN organization's and FTI's deliberative and decision-making process with respect to the CPE Process Review. (See [BAMC Recommendation](#), Pgs. 19-21.)

With respect to the Requestor's suggestion that several of ICANN's Commitments and Core Values required ICANN organization to disclose the requested materials even if they were subject to Nondisclosure Conditions, the Board finds that the Requestor's position is not supported. While the Requestor suggests that "ICANN organization did not adhere to its Commitment to openness and transparency when it denied [the Requestor's] request for information", the Requestor provides nothing to support its position. ([Rebuttal](#), Pg. 4.) The Board notes that the DIDP gives ICANN organization the discretion to decide if, "under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the

harm in disclosing the information outweighs the public interest in disclosing the information.” (DIDP webpage, <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

As explained in the DIDP Response, ICANN organization evaluated the documents that were subject to Nondisclosure Conditions to determine if the public interest (including transparency and fairness concerns) in disclosing them outweighed the harm that may be caused by such disclosure, and concluded that the public interest did not warrant the harm caused by disclosure under these circumstances. (See [DIDP Response](#), Pg. 7.) The Requestor believes that ICANN should have exercised its discretion differently, but that is not a basis for reconsideration. Further, with respect to transparency, as the Panel in the *Amazon v. ICANN* Independent Review Process Panel noted earlier this year:

[N]otwithstanding ICANN’s transparency commitment, both ICANN’s By-Laws and its Publication Practices recognize that there are situations where non-public information, e.g., internal staff communications relevant to the deliberative processes of ICANN . . . may contain information that is appropriately protected against disclosure.

(*Amazon EU S.A.R.L. v. ICANN*, ICDR Case No. 01-16-000-7056, Procedural Order (7 June 2017), at Pg. 3.)

The Requestor also suggests that ICANN organization “has closed off th[e] possibility [of obtaining information about the CPE Process Review] in clear contradiction of its own stated Commitments and Core Values.” (Rebuttal, Pg. 5.) The Board notes that BGC and ICANN organization have provided several updates concerning the CPE Process Review, including one on 1 September 2017. (<https://www.icann.org/news/announcement-2017-09-01-en>.) Additionally, and as noted in the 1 September 2017 update, the CPE Process Review is still ongoing. When FTI completes the review, additional information will be made available to the ICANN community, including the Requestor.⁵

This action is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles of Incorporation,

⁵ As noted in the 1 September 2017 update, the CPE Provider has provided documents to FTI, and FTI is currently evaluating whether the CPE provider’s production is complete. (1 September 2017 update.)

Bylaws, and other established procedures, by having a process in place by which a person or entity materially affected by an action of the ICANN Board or Staff may request reconsideration of that action or inaction by the Board. Adopting the BAMC's Recommendation has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

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

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 12 September 2017
Email: amy.stathos@icann.org

AGENDA – 23 SEPTEMBER REGULAR BOARD Meeting – 120 minutes

Last Updated 15 September

Time, etc.	Agenda Item	Shepherd	Expected Action	Conflict of Interest
Assembly, Roll Call & Consent Agenda Vote	0. Main Agenda – for Workshop discussion, followed by formal consideration			
	0.a. Consideration of the <i>Amazon EU S.à.r.l. v. ICANN</i> Independent Review Process Final Declaration	Chris Disspain		
	0.b. Further Consideration of the <i>Gulf Cooperation Council</i> <i>v. ICANN</i> Independent Review Process Final Declarations	Chris Disspain		
	Note: Required 15-minute break for IT to set up public call-in capability			
	1. Consent Agenda			
	1.a. Board Meeting Minutes from 24 June and 29 June 2017	John Jeffrey	Approval	

AGENDA – 23 SEPTEMBER REGULAR BOARD Meeting – 120 minutes

Last Updated 15 September

Time, etc.	Agenda Item	Shepherd	Expected Action	Conflict of Interest
	1.b. Appointment of Root Server Operator Organization Representatives to the RSSAC	Kaveh Ranjbar	Approval	
	1.c. Transfer of the .CI (Cote d’Ivoire) top-level domain	Khaled Koubaa	Approval	
	1.d. Appointment of 2018 Nominating Committee Chair and Chair-Elect	Chris Disspain	Approval	
	1.e. Deferral of the second review of the Country Code Name Supporting Organization (ccNSO)	Rinalia Abdul Rahim	Approval	
	1.f. GAC Advice: Johannesburg Communiqué (June 2017)	Markus Kummer	Approval	
	1.g. Information Transparency Initiative	Ron da Silva	Approval	
	1.h KSK Roll Current Status	Ram Mohan	Approval	

AGENDA – 23 SEPTEMBER REGULAR BOARD Meeting – 120 minutes

Last Updated 15 September

Time, etc.	Agenda Item	Shepherd	Expected Action	Conflict of Interest
	1.i. Board Governance Committee Charter Revisions and the Inaugural Charters of the Board Accountability Mechanisms Committee and the Board Technical Committee	Chris Disspain	Approval	
Discussion & Decision	2. Main Agenda			
	2.a. Consideration of BAMC Recommendation on Reconsideration Request 17-2	Chris Disspain	Approval	
	2.b. Consideration of BAMC Recommendation on Reconsideration Request 17-3	Chris Disspain	Approval	
	2.d. AOB			

Directors and Liaisons,

Attached below please find Notice of date and time for a Regular Meeting of the ICANN Board.

23 September 2017 – Regular Meeting of the ICANN Board of Directors - at 11:00 UTC (8:00am – 10:00am in Montevideo).

<https://www.timeanddate.com/worldclock/fixedtime.html?msg=Regular+Meeting+of+the+ICANN+Board&iso=20170923T08&p1=163&ah=2>

Some other time zones:

23 September 2017 – 4:00am PDT Los Angeles

23 September 2017 – 7:00am EDT Washington, D.C.

23 September 2017 – 1:00pm CEST Brussels

REGULAR MEETING OF THE ICANN BOARD (CLOSED SESSION)

Main Agenda – for Workshop discussion, followed by formal consideration:

- Consideration of the Amazon EU S.à.r.l. v. ICANN Independent Review Process Final Declaration
- Further Consideration of the Gulf Cooperation Council v. ICANN Independent Review Process Final Declarations

Note: Required 15-minute break for IT to set up open session call-in capability

REGULAR MEETING OF THE ICANN BOARD (OPEN SESSION)

Consent Agenda:

- Approval of Board Meeting Minutes
- Appointment of Root Server Operator Organization Representatives to the RSSAC
- Transfer of the .CI (Cote d'Ivoire) top-level domain
- Appointment of 2018 Nominating Committee Chair and Chair-Elect
- Deferral of the second review of the Country Code Name Supporting Organization (ccNSO)

- GAC Advice: Johannesburg Communiqué (June 2017)
- Information Transparency Initiative
- KSK Roll Current Status
- Board Governance Committee Charter Revisions and the Inaugural Charters of the Board Accountability Mechanisms Committee and the Board Technical Committee

Main Agenda

- Consideration of BAMC Recommendation on Reconsideration Request 17-2
- Consideration of BAMC Recommendation on Reconsideration Request 17-3
- AOB

MATERIALS – You can access the Board Meeting materials in Google Drive here:

Contact Information Redacted

If you have trouble with access, please let us know and we will work with you to assure that you get access to the documents.

If call information is required, it will be distributed separately.

If you have any questions, or we can be of assistance to you, please let us know.

John Jeffrey

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