

3 FEBRUARY 2016 BOARD MEETING

Board Papers



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AGENDA – 3 February 2016 BOARD MEETING – 90 minutes – last updated 26 January

Time, etc.	Agenda Item	Shepherd
Assembly, Roll Call & Consent Agenda Vote 20 min	1. Consent Agenda	
	1.a. Approval of Minutes <ul style="list-style-type: none"> • 18 October – Final NGPC Meeting • 21 October 2015 Brd Mtg • 22 October 2015 Brd Mtgs • 2 December 2015 Brd Mtg 	John Jeffrey
	1.b. RSSAC Co-Chair Appointments	Suzanne Woolf
	1.c. Redelegation of the .TG domain representing Togo to the Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P)	Kuo-Wei Wu
	1.d. Delegation of the .eu (“eu”) domain representing the European Union in Cyrillic script to EURid vzw/asbl	Kuo-Wei Wu

AGENDA – 3 February 2016 BOARD MEETING – 90 minutes – last updated 26 January

Time, etc.	Agenda Item	Shepherd
	1.e. Delegation of the .澳門 (“Macao”) domain representing Macao in Traditional Chinese script to the Bureau of Telecommunications Regulation (DSRT)	Kuo-Wei Wu
Discussion & Decision	2. Main Agenda	
	2.a. Consideration of Independent Review Panel’s Final Declaration in <i>Merck kGaA v. ICANN</i>	John Jeffrey / Amy Stathos
	2.b. Reconsideration Requests 15-19 (the ICANN Business Constituency & the ICANN Noncommercial Stakeholder Group) and 15-20 (The Internet Commerce Association)	Chris Disspain
60 min		

AGENDA – 3 February 2016 BOARD MEETING – 90 minutes – last updated 26 January

Time, etc.	Agenda Item	Shepherd
	2.c. Consideration of Expert Determination Re: Objection to Application for .HOSPITAL	Chris Disspain
	2.d. Ombudsman Report Regarding Complaint by Hu Yi Global Information Resources (applicant for .招聘 (“recruitment” in Chinese))	Steve Crocker
	2.e. GAC Advice: Dublin Communiqué (October 2015)	Chris Disspain
	2.f. Board Governance Committee Recommendation Regarding Implementation of Public Interest Commitments for .DOCTOR Registry Agreement	Chris Disspain
	2.g. Establishing a Set of KPIs for Board Performance and Improvement Efforts (ATRT2 Rec. 1, 2 & 3)	Chris Disspain

AGENDA – 3 February 2016 BOARD MEETING – 90 minutes – last updated 26 January

Time, etc.	Agenda Item	Shepherd
	2.h. USG IANA Stewardship Transition – Additional FY16 Expenses and Funding	Asha Hemrajani / Cherine Chalaby
	2.i. AOB	
10 min	3. Executive Session – CONFIDENTIAL Main Agenda	
	3.a. President and CEO FY16 SR1 At-Risk Compensation	George Sadowsky
	3.b. AOB	

ICANN BOARD SUBMISSION NO. 2016.02.03.1b

TITLE: RSSAC Co-Chairs Appointment

PROPOSED ACTION: For Board Approval

EXECUTIVE SUMMARY:

According to Article XI, Section 2, Subsection 3B of the ICANN Bylaws, the ICANN Board of Directors shall appoint the co-chairs and the members of the Root Server System Advisory Committee (RSSAC). On 3 December 2015, the RSSAC conducted an election for one co-chair position and elected Brad Verd (Verisign, A/J-Root Server Operator) to a two-year term as co-chair. Tripti Sinha (University of Maryland, D-Root Server Operator) will continue to serve as co-chair for the second year of a two-year term.

RSSAC RECOMMENDATION:

The RSSAC recommends the Board of Directors appoint Brad Verd and Tripti Sinha as co-chairs of RSSAC.

PROPOSED RESOLUTION:

Whereas, Article XI, Section 2 of the Bylaws governs the Root Server System Advisory Committee (RSSAC).

Whereas, Article XI, Section 2, Subsection 3B of the Bylaws states that the Board of Directors shall appoint the co-chairs and the members of the RSSAC.

Whereas, on 3 December 2015, the RSSAC conducted an election for one co-chair position and elected Brad Verd (Verisign, A/J-Root Server Operator) to a two-year term as co-chair.

Whereas, Tripti Sinha (University of Maryland, D-Root Server Operator) will continue to serve as co-chair for the second year of a two-year term.

Resolved (2016.02.03.xx) the Board of Directors accepts the recommendation of the RSSAC and appoints Tripti Sinha and Brad Verd as co-chairs of RSSAC and extends its best wishes to Tripti and Brad in their important new roles.

PROPOSED RATIONALE:

The ICANN Bylaws call for the Board to appoint the RSSAC Co-Chairs as selected by the membership. The appointment of RSSAC co-chairs will allow the RSSAC to be properly composed to serve its function within ICANN's policy development work as an advisory committee.

The appointment of co-chairs is not anticipated to have any fiscal impact on ICANN that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC.

This is an Organizational Administrative Function for which no public comment is required.

Submitted by:	Steve Sheng
Position:	Director, SSAC & RSSAC Advisories Development Support
Date Noted:	18 December 2015
Email and Phone Number	steve.sheng@icann.org

ICANN BOARD PAPER NO. 2016.02.03.1c

TITLE: **Redelegation of the .TG domain representing Togo to the Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P)**

PROPOSED ACTION: **For Board Approval**

IANA REFERENCE: **804747**

EXECUTIVE SUMMARY:

As part of ICANN's responsibilities under the IANA Functions Contract, ICANN has prepared a recommendation to authorize the redelegation of the country-code top-level domain .TG, comprised of the ISO 3166-1 code representing Togo, to the Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P).

Sensitive Delegation Information

PROPOSED RESOLUTION:

Resolved (2016.02.03.xx), as part of the exercise of its responsibilities under the IANA Functions Contract, ICANN has reviewed and evaluated the request to redelegate the .TG country-code top-

level domain to Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P). The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2016.02.03.xx), the Board directs that pursuant to Article III, Section 5.2 of the ICANN Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

In accordance with the IANA Functions Contract, the ICANN staff has evaluated a request for ccTLD redelegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN staff has followed the proper procedures.

What is the proposal being considered?

The proposal is to approve a request to IANA to change the sponsoring organization (also known as the manager or trustee) of the .TG country-code top-level domain to Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P).

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, ICANN staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

What concerns or issues were raised by the community?

Staff are 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 IANA staff evaluations:

- The domain is eligible for continued delegation, as it is an assigned alpha-2 code that is listed in the ISO 3166-1 standard for the country of Togo;
- The currently listed sponsoring organization, Cafe Informatique et Telecommunications , consents to the change;
- The relevant government has been consulted and does not object;
- The proposed sponsoring organization and its contacts agree to their responsibilities for managing this domain;
- The proposal has demonstrated appropriate local Internet community consultation and support;
- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domain is managed locally in the country, and is bound under local law;
- The proposed sponsoring organization has confirmed they will manage the domain in a fair and equitable manner;
- The proposed sponsoring organization has demonstrated appropriate operational and technical skills and plans to operate the domain;
- The proposed technical configuration meets IANA's various 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 established by the IANA Functions Contract, the "Delegation and Redelegation Report" will be published 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 ICANN's obligations under the IANA Functions 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: IANA Services Manager
Date Noted: 18 January 2016
Email: naela.sarras@icann.org

EXHIBIT A TO ICANN BOARD SUBMISSION NO. 2016.02.02.2b

Report on the Redelegating of the .TG domain representing Togo to the Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P)

18 January 2016

This report is being provided under the contract for performance of the Internet Assigned Numbers Authority (IANA) function between the United States Government and the Internet Corporation for Assigned Names and Numbers (ICANN). Under that contract, ICANN performs the “IANA functions”, which include receiving delegation and redelegation requests concerning TLDs, investigating the circumstances pertinent to those requests, making its recommendations, and reporting actions undertaken in connection with processing such requests.

FACTUAL INFORMATION

Country

The “TG” ISO 3166-1 code is designated for use to represent Togo.

Chronology of events

The currently designated manager for the .TG top-level domain is Cafe Informatique et Telecommunications, as described in the IANA Root Zone Database. Cafe Informatique et Telecommunications has managed the .TG domain since 1996.

On 11 February 1998, Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P) was created by Telecommunications Act No. 98-005.

On 14 May 2012, Order No. 005/MPT/CAB appointed ART&P the administrative manager of the .TG top-level domain.

On 18 June 2012, a work meeting took place between the commission in charge of the redelegation project and the local Internet community. After an exchange of views, the local Internet community provided support for the redelegation of .TG.

On 13 July 2012, the Togolese government and Cafe Informatique et Telecommunications signed a Memorandum of Understanding to work together on the redelegation of the .TG domain.

On 15 February 2013, Cafe Informatique et Telecommunications agreed to continue performing the role of the technical contact for .TG under the administration of ART&P after the redelegation is complete, to ensure a smooth transition.

On 20 January 2015, Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P) commenced a request to ICANN for redelegation of the .TG top-level domain.

Proposed Sponsoring Organization and Contacts

The proposed sponsoring organization is Reglementation des Secteurs de Postes et de Telecommunications (ART&P), a national regulatory authority in Togo.

The proposed administrative contact is Abayeh Boyodi, the Chief Executive Officer of ART&P. The administrative contact is understood to be based in Togo.

The proposed technical contact is Yawo Noagbodji, Chief Executive Officer of Cafe Informatique et Telecommunications.

EVALUATION OF THE REQUEST

String Eligibility

The top-level domain is eligible for continued delegation under ICANN policy, as it is the assigned ISO 3166-1 two-letter code representing Togo.

Public Interest

Government support was provided by Cina Lawson, the Minister of Posts and Telecommunications, Republic of Togo.

Additional community support was provided by:

- Azanlekor Ekoué Segla, Resp. Computer Cell, Université Catholique de Afrique de Ouest- Unité Universitaire du Togo (UCAO-UUT);
- Dogba Agbeko, President, Entente des Specialistes des Technologies des TIC (ESTETIC);
- Laba Komlan, Association Togolaise des Consommateurs (ATC);
- Tepe Kossi, Teacher, University of Lome;
- Wallah Palakiyem, Teacher/Researcher, University of Kara;
- Jonathan Fiawoo, President, of the Chamber of Commerce and Industry of Togo.

The application is consistent with known applicable local laws in Togo.

The proposed sponsoring organization undertakes responsibility to operate the domain in a fair and equitable manner.

Based in country

The proposed sponsoring organization is constituted in Togo. The proposed

administrative contact is understood to be resident in Togo.

Stability

The request is deemed uncontested, with the currently listed sponsoring organization consenting to the transfer.

Based on the information submitted, ICANN staff has not identified any stability issues given the technical operation is not changing. The currently designated manager has agreed to continue to act as the technical operator of the domain.

Competency

The application has provided satisfactory details on the technical and operational infrastructure and expertise that will be used to operate the .TG domain. Proposed policies for management of the domain have also been tendered.

EVALUATION PROCEDURE

ICANN is tasked with coordinating the Domain Name System root zone as part of a set of functions governed by a contract with the U.S. Government. This includes accepting and evaluating requests for delegation and redelegation of top-level domains.

A subset of top-level domains are designated for the local Internet communities in countries to operate in a way that best suits their local needs. These are known as country-code top-level domains (ccTLDs), and are assigned by ICANN to responsible trustees (known as “Sponsoring Organizations”) that meet a number of public-interest criteria for eligibility. These criteria largely relate to the level of support the trustee has from its local Internet community, its capacity to ensure stable operation of the domain, and its applicability under any relevant local laws.

Through ICANN’s IANA department, requests are received for delegating new ccTLDs, and redelegating or revoking existing ccTLDs. An investigation is performed on the circumstances pertinent to those requests, and, when appropriate, the requests are implemented and a recommendation for delegation or redelegation is made to the U.S. National Telecommunications and Information Administration (NTIA).

Purpose of evaluations

The evaluation of eligibility for ccTLDs, and of evaluating responsible trustees charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet’s unique identifier systems.

In considering requests to delegate or redelegate ccTLDs, input is sought regarding the proposed new Sponsoring Organization, as well as from persons and organizations that

may be significantly affected by the change, particularly those within the nation or territory to which the ccTLD is designated.

The assessment is focused on the capacity for the proposed sponsoring organization to meet the following criteria:

- The domain should be operated within the country, including having its sponsoring organization and administrative contact based in the country.
- The domain should be operated in a way that is fair and equitable to all groups in the local Internet community.
- Significantly interested parties in the domain should agree that the prospective trustee is the appropriate party to be responsible for the domain, with the desires of the national government taken very seriously.
- The domain must be operated competently, both technically and operationally. Management of the domain should adhere to relevant technical standards and community best practices.
- Risks to the stability of the Internet addressing system must be adequately considered and addressed, particularly with regard to how existing identifiers will continue to function.

Method of evaluation

To assess these criteria, information is requested from the applicant regarding the proposed sponsoring organization and method of operation. In summary, a request template is sought specifying the exact details of the delegation being sought in the root zone. In addition, various documentation is sought describing: the views of the local internet community on the application; the competencies and skills of the trustee to operate the domain; the legal authenticity, status and character of the proposed trustee; and the nature of government support for the proposal. The view of any current trustee is obtained, and in the event of a redelegation, the transfer plan from the previous sponsoring organization to the new sponsoring organization is also assessed with a view to ensuring ongoing stable operation of the domain.

After receiving this documentation and input, it is analyzed in relation to existing root zone management procedures, seeking input from parties both related to as well as independent of the proposed sponsoring organization should the information provided in the original application be deficient. The applicant is given the opportunity to cure any deficiencies before a final assessment is made.

Once all the documentation has been received, various technical checks are performed on the proposed sponsoring organization's DNS infrastructure to ensure name servers are properly configured and are able to respond to queries correctly. Should any anomalies be detected, ICANN staff will work with the applicant to address the issues.

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed sponsoring organization and its suitability to operate the relevant top-level domain.

Sensitive Delegation Information

ICANN BOARD PAPER NO. 2016.02.03.1d

TITLE: Delegation of the ею (“eu”) domain representing the European Union in Cyrillic script to EURid vzw/asbl

PROPOSED ACTION: For Board Approval

IANA REFERENCE: 884322

EXECUTIVE SUMMARY:

As part of ICANN’s responsibilities under the IANA Functions Contract, ICANN has prepared a recommendation to authorize the delegation of the country-code top-level domain ею (“eu”), comprised of the IDN ccTLD Fast Track approved string representing the European Union, to EURid vzw/asbl.

Sensitive Delegation Information

PROPOSED RESOLUTION:

Resolved (2016.02.03.xx), as part of the exercise of its responsibilities under the IANA Functions Contract, ICANN has reviewed and evaluated the request to delegate the ею country-code top-level domain to EURid vzw/asbl. The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2016.02.03.xx), the Board directs that pursuant to Article III, Section 5.2 of the

ICANN Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

In accordance with the IANA Functions Contract, the ICANN staff has evaluated a request for ccTLD delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN staff has followed the proper procedures.

What is the proposal being considered?

The proposal is to approve a request to IANA to create the country-code top-level domain and assign the role of sponsoring organization (also known as the manager or trustee) to EURid vzw/asbl.

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, ICANN staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

What concerns or issues were raised by the community?

Staff are 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 IANA staff evaluations:

- The domain is eligible for delegation, as it is a string that has been approved by the IDN

ccTLD Fast Track process, and represents a country that is listed in the ISO 3166-1 standard;

- The relevant government has been consulted and does not object;
- The proposed sponsoring organization and its contacts agree to their responsibilities for managing this domain;
- The proposal has demonstrated appropriate local Internet community consultation and support;
- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domain is managed locally in the country, and is bound under local law;
- The proposed sponsoring organization has confirmed they will manage the domain in a fair and equitable manner;
- The proposed sponsoring organisation has demonstrated appropriate operational and technical skills and plans to operate the domain;
- The proposed technical configuration meets IANA's various 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 established by the IANA Functions Contract, the "Delegation and Redelegation Report" will be published 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 ICANN's obligations under the IANA Functions 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: IANA Services Manager
Date Noted: 18 January 2016
Email: naela.sarras@icann.org

REFERENCE MATERIALS – BOARD SUBMISSION 2016.02.03.1d

TITLE: **ADDENDUM to Summary on Delegation of the eю (“eu”) domain representing the European Union in Cyrillic script to EURid vzw/asbl**

Summary Background

IANA Staff notes that there is no controversy to proceed with the delegation of the Cyrillic “eю” string but wanted to advise Board members of a link to what could be a topic of interest.

By way of background on this request, The IDN Fast Track process received applications for the strings “eυ” and “eю” to be recognized as representing the European Union in Greek and Cyrillic scripts, respectively. Only the Cyrillic string “eю” has been approved so far and hence this delegation application.

The Greek string “eυ” was rejected by the DNS Stability Panel for confusing similarity. It then went to the Extended Process Similarity Review Panel (EPSRP) panel that still found the string “eυ” confusingly similar when written in upper case. Findings of the EPSRP panel are available here: <https://www.icann.org/en/system/files/files/epsrp-european-union-30sep14-en.pdf>

In June 2015 the ICANN Board passed a resolution asking the ccNSO to for further policy development on confusing similarity issues/clarifications. Board resolution on this issue is referenced here: <https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.a>

SIGNATURE BLOCK:

Submitted by: Naela Sarras
Position: IANA Services Manager
Date Noted: 18 January 2016
Email: naela.sarras@icann.org

Report on the Delegation of the ею (“eu”) domain representing the European Union in Cyrillic script to EURid vzw/asbl

18 January 2016

This report is being provided under the contract for performance of the Internet Assigned Numbers Authority (IANA) function between the United States Government and the Internet Corporation for Assigned Names and Numbers (ICANN). Under that contract, ICANN performs the “IANA functions”, which include receiving delegation and redelegation requests concerning TLDs, investigating the circumstances pertinent to those requests, making its recommendations, and reporting actions undertaken in connection with processing such requests.

FACTUAL INFORMATION

Country

The “EU” ISO 3166-1 code from which the application’s eligibility derives, is designated for use to represent the European Union.

String

The domain under consideration for delegation at the DNS root level is “ею”. This is represented in ASCII-compatible encoding according to the IDNA specification as “xn--e1a4c”. The individual Unicode code points that comprise this string are U+0435 U+044E.

In Bulgarian language, the string has a transliteration equivalent to “eu” in English. The string is expressed using the Cyrillic script.

Chronology of events

In August of 1999 the two-letter code “EU” was set forth on the ISO 3166-1 list maintained by the ISO 3166 Maintenance Agency (ISO 3166/MA) as the approved alpha-2 code for the European Union.

On 22 April 2002, the European Parliament and the Council of the European Union adopted Regulation 733/2002 on the implementation of the .EU top-level domain, which entered into force upon publication in the *Official Journal of the European Communities* on 30 April 2002.

On 21 May 2003, the European Commission, in consultation with the Member States, designated the European Registry for Internet Domains (EURid vzw/asbl) as the

appropriate registry operator for the .EU top level domain.
EURid vzw/asbl was registered as a non-profit association in Belgium on 27 June 2003.

The .EU top-level domain was delegated to EURid vzw/asbl in April 2005.

On 5 May 2010 an application was made to the “IDN Fast Track” process to have the strings “εU” and “eЮ” recognized as representing the European Union in Greek and Cyrillic scripts, respectively.

On 9 January 2012, a review by the IDN Fast Track DNS Stability Panel found that "the Cyrillic script applied-for string ... presents none of the threats to the stability or security of the DNS identified in Module 4 of the Fast Track implementation plan, and presents an acceptably low risk of user confusion". The request for the “eЮ” string to represent the European Union was subsequently approved.

On 14 May 2013, the European Commissions published a call for expressions of interest (2013/C 134/06) in the *Official Journal of the European Union*, inviting applications from organizations wishing to be selected as the .EU registry.

The call was closed on 20 June 2013. Only one application was received, from EURid vzw/asbl. An evaluation found that EURid’s application met the minimum requirements of the selection criteria.

In April 2014, a decision was made by the European Commission to enter into a contract with EURid vzw/asbl to continue managing the .EU top-level domain.

On 8 November 2015, EURid vzw/asbl commenced a request to ICANN for delegation of “eЮ” as a top-level domain.

Proposed Sponsoring Organization and Contacts

The proposed sponsoring organization is EURid vzw/asbl, a nonprofit association created in 2003. It is based in Belgium.

The proposed administrative contact is Marc Van Wesemael, General Manager, EURid vzw/asbl. The administrative contact is understood to be based in Belgium.

The proposed technical contact is Peter Janssen, Technical Manager, EURid vzw/asbl.

EVALUATION OF THE REQUEST

String Eligibility

The top-level domain is eligible for delegation under ICANN policy, as the string has been deemed an appropriate representation of the European Union through the ICANN Fast Track String Selection process, and the European Union is presently listed in the ISO 3166-1 standard.

Public Interest

Explicit government support for the application was provided in a letter signed by the Megan Richards, Directorate-General for Communications, Networks, Content and Technology, the European Commission.

Support was also provided by Ivaylo Moskovski, Minister of Transport, Information Technologies, and Communications, Republic of Bulgaria.

The application is consistent with known applicable local laws in the European Union. The proposed sponsoring organization undertakes to operate the domain in a fair and equitable manner.

Based in country

The proposed sponsoring organization is constituted in Belgium, a member country of the European Union. The headquarters of the European Union is located in Belgium. The proposed administrative contact is understood to be resident in Belgium. The registry is to be operated in Belgium.

Stability

The application does not involve a transfer of domain operations from an existing domain registry, and therefore stability aspects relating to registry transfer have not been evaluated.

The application is not known to be contested.

Competency

The application has provided information on the technical and operational infrastructure and expertise that will be used to operate the proposed new domain. The proposed operator is the current manager of .EU country-code top-level domain for the European Union.

Proposed policies for management of the domain have also been tendered.

EVALUATION PROCEDURE

ICANN is tasked with coordinating the Domain Name System root zone as part of a set of functions governed by a contract with the U.S. Government. This includes accepting and evaluating requests for delegation and redelegation of top-level domains.

A subset of top-level domains are designated for the local Internet communities in countries to operate in a way that best suits their local needs. These are known as country-code top-level domains (ccTLDs), and are assigned by ICANN to responsible trustees (known as “Sponsoring Organizations”) that meet a number of public-interest

criteria for eligibility. These criteria largely relate to the level of support the trustee has from its local Internet community, its capacity to ensure stable operation of the domain, and its applicability under any relevant local laws.

Through ICANN's IANA department, requests are received for delegating new ccTLDs, and re delegating or revoking existing ccTLDs. An investigation is performed on the circumstances pertinent to those requests, and, when appropriate, the requests are implemented and a recommendation for delegation or redelegation is made to the U.S. National Telecommunications and Information Administration (NTIA).

Purpose of evaluations

The evaluation of eligibility for ccTLDs, and of evaluating responsible trustees charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet's unique identifier systems.

In considering requests to delegate or redelegate ccTLDs, input is sought regarding the proposed new Sponsoring Organisation, as well as from persons and organisations that may be significantly affected by the change, particularly those within the nation or territory to which the ccTLD is designated.

The assessment is focused on the capacity for the proposed sponsoring organisation to meet the following criteria:

- The domain should be operated within the country, including having its sponsoring organisation and administrative contact based in the country.
- The domain should be operated in a way that is fair and equitable to all groups in the local Internet community.
- Significantly interested parties in the domain should agree that the prospective trustee is the appropriate party to be responsible for the domain, with the desires of the national government taken very seriously.
- The domain must be operated competently, both technically and operationally. Management of the domain should adhere to relevant technical standards and community best practices.
- Risks to the stability of the Internet addressing system must be adequately considered and addressed, particularly with regard to how existing identifiers will continue to function.

Method of evaluation

To assess these criteria, information is requested from the applicant regarding the proposed sponsoring organisation and method of operation. In summary, a request template is sought specifying the exact details of the delegation being sought in the root

zone. In addition, various documentation is sought describing: the views of the local internet community on the application; the competencies and skills of the trustee to operate the domain; the legal authenticity, status and character of the proposed trustee; and the nature of government support for the proposal. The view of any current trustee is obtained, and in the event of a redelegation, the transfer plan from the previous sponsoring organisation to the new sponsoring organisation is also assessed with a view to ensuring ongoing stable operation of the domain.

After receiving this documentation and input, it is analysed in relation to existing root zone management procedures, seeking input from parties both related to as well as independent of the proposed sponsoring organisation should the information provided in the original application be deficient. The applicant is given the opportunity to cure any deficiencies before a final assessment is made.

Once all the documentation has been received, various technical checks are performed on the proposed sponsoring organisation's DNS infrastructure to ensure name servers are properly configured and are able to respond to queries correctly. Should any anomalies be detected, ICANN staff will work with the applicant to address the issues.

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed sponsoring organisation and its suitability to operate the relevant top-level domain.

ICANN BOARD PAPER NO. 2016.02.03.1e

TITLE: Delegation of the .澳門 (“Macao”) top-level domain representing Macao in Traditional Chinese script to the Bureau of Telecommunications Regulation (DSRT)

PROPOSED ACTION: For Board Approval

IANA REFERENCE: 833156

EXECUTIVE SUMMARY:

As part of ICANN’s responsibilities under the IANA Functions Contract, ICANN has prepared a recommendation to authorize the delegation of the country-code top-level domain .澳門 (“Macao”), comprised of the IDN ccTLD Fast Track approved string representing Macao, to the Bureau of Telecommunications Regulation (DSRT).

Sensitive Delegation Information

PROPOSED RESOLUTION:

Resolved (2016.02.03.xx), as part of the exercise of its responsibilities under the IANA Functions Contract, ICANN has reviewed and evaluated the request to delegate the .澳門 country-code top-level domain to the Bureau of Telecommunications Regulation (DSRT). The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2016.02.03.xx), the Board directs that pursuant to Article III, Section 5.2 of the ICANN Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

In accordance with the IANA Functions Contract, the ICANN staff has evaluated a request for ccTLD delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN staff has followed the proper procedures.

What is the proposal being considered?

The proposal is to approve a request to IANA to create the country-code top-level domain and assign the role of sponsoring organization (also known as the manager or trustee) to the Bureau of Telecommunications Regulation (DSRT).

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, ICANN staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

What concerns or issues were raised by the community?

Staff are 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 IANA staff evaluations:

- The domain is eligible for delegation, as it is a string that has been approved by the IDN ccTLD Fast Track process, and represents a country that is listed in the ISO 3166-1 standard;
- The relevant government has been consulted and does not object;
- The proposed sponsoring organization and its contacts agree to their responsibilities for managing this domain;
- The proposal has demonstrated appropriate local Internet community consultation and support;
- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domain is managed locally in the country, and is bound under local law;
- The proposed sponsoring organisation has confirmed they will manage the domain in a fair and equitable manner;
- The proposed sponsoring organisation has demonstrated appropriate operational and technical skills and plans to operate the domain;
- The proposed technical configuration meets IANA's various 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 established by the IANA Functions Contract, the "Delegation and Redelegation Report" will be published 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 ICANN's obligations under the IANA Functions 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: IANA Services Manager
Date Noted: 18 January 2016
Email: naela.sarras@icann.org

Report on the Delegation of the 澳門 (“Macao”) domain representing Macao in Traditional Chinese script to the Bureau of Telecommunications Regulation (DSRT)

18 January 2016

This report is being provided under the contract for performance of the Internet Assigned Numbers Authority (IANA) function between the United States Government and the Internet Corporation for Assigned Names and Numbers (ICANN). Under that contract, ICANN performs the “IANA functions”, which include receiving delegation and redelegation requests concerning TLDs, investigating the circumstances pertinent to those requests, making its recommendations, and reporting actions undertaken in connection with processing such requests.

FACTUAL INFORMATION

Country

The “MO” ISO 3166-1 code from which the application’s eligibility derives, is designated for use to represent Macao.

String

The domain under consideration for delegation at the DNS root level is “澳門”. This is represented in ASCII-compatible encoding according to the IDNA specification as “xn--mix891f”. The individual Unicode code points that comprise this string are U+6FB3 U+9580.

In Chinese, the string has a transliteration equivalent to “Macao” in English. The string is expressed using the Traditional Chinese script.

Chronology of events

On 15 May 2006, the Bureau of Telecommunications Regulation (DSRT) was established as the telecommunications regulatory body of Macao. DSRT carries out the responsibility for the coordination of distribution and management of Internet domain names and websites.

On 26 August 2010, the Government of Macao Special Administrative Region (MSAR) issued a public tender for the installation and operation of “Domain Name Administration and Registration System of Macao SAR”. The tender document explicitly included all Macao ccTLDs, both ASCII and IDN domain names.

On 2 December 2010, the Executive Chief of MSAR awarded the contract to the joint venture between “DotAsia Organisation Ltd.” and “HN Group” called HNET Asia. HNET Asia was formed as a result of the successful bid for the tender issued by DSRT.

On 18 September 2012, the IANA department completed a request to redelegate the .MO top-level domain from the University of Macau to the Bureau of Telecommunications Regulation (DSRT) as the sponsoring organization that has the oversight of the Macao ccTLDs while HNET Asia is the operating entity.

DSRT has been the sponsoring organization of the .MO ccTLD since 2012.

In April 2013, an application was made to the “IDN Fast Track” process to have the string “澳門” recognized as representing Macao.

On 10 March 2015, ICANN announced that the proposed IDN ccTLD string for Macao successfully passed the string evaluation.

On 22 July 2015, HNET Asia Ltd. (MONIC) commenced a request to ICANN for delegation of .澳門 as a top-level domain representing Macao.

Proposed Sponsoring Organization and Contacts

The proposed sponsoring organization is the Bureau of Telecommunications Regulation (DSRT). DSRT is the bureau in the Macao SAR government that has the oversight of the Macao ccTLD(s). Similar to its role with the .MO ASCII ccTLD, the DSRT will play a role in the approval and establishment of the policies that regulate the .澳門 IDN ccTLD registry, as well as the selection and authorization of the operator of MONIC. At the same time HNET Asia Ltd. will be responsible for the technical operations of the .澳門 IDN ccTLD registry. The agreement signed between DSRT and HNET Asia Ltd. outlines the responsibilities of each party as well as the term.

The proposed administrative and technical contacts are associated with the Macao Network Information Centre (MONIC) - HNET Asia. HNET Asia is a joint venture of DotAsia (the .ASIA TLD operator) and the HN Group. HNET Asia operates the Macao ccTLD(s) under a contract agreement from the government of MSAR.

The administrative and technical contacts are understood to be in Macao.

EVALUATION OF THE REQUEST

String Eligibility

The top-level domain is eligible for delegation under ICANN policy, as the string has been deemed an appropriate representation of Macao through the ICANN Fast Track String Selection process, and Macao is presently listed in the ISO 3166-1 standard.

Public Interest

Support of the application to delegate the .澳門 domain was provided by Mr. Tou Veng Keong, Director of the Bureau of Telecommunications Regulation (DSRT).

Additional support letter were provided by the following:

- Macau University of Science and Technology
- E-Commerce Association of Macao
- Information Technology Association
- IEEE Macao

In addition, the applicants stated that the public tender process was a mechanism for including the Internet community in the selection and operation of the Macao ccTLDs.

The application is consistent with known applicable local laws in Macao.

The proposed sponsoring organization undertakes to operate the domain in a fair and equitable manner.

Based in country

The proposed sponsoring organization is constituted in Macao. The proposed administrative contact is understood to be resident in Macao. The registry is to be operated in the country.

Stability

The application does not involve a transfer of domain operations from an existing domain registry, and therefore stability aspects relating to registry transfer have not been evaluated.

The application is not known to be contested.

Competency

The application has provided information on the technical and operational infrastructure and expertise that will be used to operate the proposed new domain. The proposed operator is the current manager of .MO country-code top-level domain for Macao.

The proposed operator is selected through a public tender process.

Proposed policies for management of the domain have also been tendered.

EVALUATION PROCEDURE

ICANN is tasked with coordinating the Domain Name System root zone as part of a set of functions governed by a contract with the U.S. Government. This includes accepting and evaluating requests for delegation and redelegation of top-level domains.

A subset of top-level domains are designated for the local Internet communities in countries to operate in a way that best suits their local needs. These are known as country-code top-level domains (ccTLDs), and are assigned by ICANN to responsible trustees (known as “Sponsoring Organizations”) that meet a number of public-interest criteria for eligibility. These criteria largely relate to the level of support the trustee has from its local Internet community, its capacity to ensure stable operation of the domain, and its applicability under any relevant local laws.

Through ICANN’s IANA department, requests are received for delegating new ccTLDs, and redelegating or revoking existing ccTLDs. An investigation is performed on the circumstances pertinent to those requests, and, when appropriate, the requests are implemented and a recommendation for delegation or redelegation is made to the U.S. National Telecommunications and Information Administration (NTIA).

Purpose of evaluations

The evaluation of eligibility for ccTLDs, and of evaluating responsible trustees charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet’s unique identifier systems.

In considering requests to delegate or redelegate ccTLDs, input is sought regarding the proposed new Sponsoring Organization, as well as from persons and organizations that may be significantly affected by the change, particularly those within the nation or territory to which the ccTLD is designated.

The assessment is focused on the capacity for the proposed sponsoring organization to meet the following criteria:

- The domain should be operated within the country, including having its sponsoring organization and administrative contact based in the country.
- The domain should be operated in a way that is fair and equitable to all groups in the local Internet community.
- Significantly interested parties in the domain should agree that the prospective trustee is the appropriate party to be responsible for the domain, with the desires of the national government taken very seriously.
- The domain must be operated competently, both technically and operationally. Management of the domain should adhere to relevant technical standards and community best practices.

- Risks to the stability of the Internet addressing system must be adequately considered and addressed, particularly with regard to how existing identifiers will continue to function.

Method of evaluation

To assess these criteria, information is requested from the applicant regarding the proposed sponsoring organization and method of operation. In summary, a request template is sought specifying the exact details of the delegation being sought in the root zone. In addition, various documentation is sought describing: the views of the local internet community on the application; the competencies and skills of the trustee to operate the domain; the legal authenticity, status and character of the proposed trustee; and the nature of government support for the proposal. The view of any current trustee is obtained, and in the event of a redelegation, the transfer plan from the previous sponsoring organization to the new sponsoring organization is also assessed with a view to ensuring ongoing stable operation of the domain.

After receiving this documentation and input, it is analyzed in relation to existing root zone management procedures, seeking input from parties both related to as well as independent of the proposed sponsoring organization should the information provided in the original application be deficient. The applicant is given the opportunity to cure any deficiencies before a final assessment is made.

Once all the documentation has been received, various technical checks are performed on the proposed sponsoring organization's DNS infrastructure to ensure name servers are properly configured and are able to respond to queries correctly. Should any anomalies be detected, ICANN staff will work with the applicant to address the issues.

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed sponsoring organization and its suitability to operate the relevant top-level domain.

ICANN BOARD SUBMISSION NO. 2016.02.03.2a

TITLE: **Consideration of Independent Review Panel’s Final Declaration in *Merck kGaA v. ICANN***

PROPOSED ACTION: **For Board Approval**

EXECUTIVE SUMMARY:

On 11 December 2015, the Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRP filed by Merck kGaA (Merck). (See [Final Declaration](#), Attachment A to Reference Materials.) Merck’s IRP Request challenged the denial of Reconsideration Request 14-9, which in turn challenged the expert determinations overruling Merck’s legal rights objections (LROs) to new gTLD applications submitted by its former affiliate for strings incorporating the “Merck” mark.

In a unanimous decision, the Panel determined that: “Merck has not succeeded in this Independent Review Process. ICANN is the prevailing party. As per paragraph 69, Merck must pay ICANN costs in the amount of USD \$48,588.54.” (*Id.* at Section V, ¶ 1.) The Panel found that the Board’s actions did not in any way violate ICANN’s Articles of Incorporation, Bylaws, or the Applicant Guidebook (Guidebook). (For additional background on the IRP and Final Declaration, please see Reference Materials.)

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

PROPOSED RESOLUTION:

Whereas, on 11 December 2015, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRP filed by Merck kGaA (Merck) against ICANN (Final Declaration).

Whereas, in its IRP, Merck challenged the BGC’s denial of Reconsideration Request 14-9, which in turn challenged the expert determinations overruling Merck’s legal rights

objections (LROs) to new gTLD applications submitted by its former affiliate, U.S.-based Merck Sharp & Dohme Corporation, for strings incorporating the “Merck” mark (Expert Determinations).

Whereas, the Panel denied Merck’s IRP Request and, among other things, declared that the Board’s actions or inactions did not in any way violate ICANN’s Articles of Incorporation (Articles), Bylaws, or the Applicant Guidebook (Guidebook). (See Final Declaration, ¶¶ 41-68, <https://www.icann.org/en/system/files/files/irp-merck-final-declaration-11dec15-en.pdf>.)

Whereas, in accordance with Article IV, section 3.21 of ICAN’s Bylaws, the Board has considered the Panel’s Final Declaration.

Resolved (2016.02.03.xx), the Board accepts the findings of the Panel’s Final Declaration: (1) ICANN is the prevailing party in the *Merck kGaA v. ICANN* IRP; (2) the Board acted without conflict of interest in taking its decision; (3) the Board exercised due diligence and care in having a reasonable amount of facts in front of them; (4) the Board exercised independent judgment in taking the decision, believed to be in the best interests of the company; (5) the Board (including the Board Governance Committee) did not violate the Articles, Bylaws, or Guidebook; and (6) Merck shall reimburse ICANN costs in the amount of US\$48,588.54.

PROPOSED RATIONALE:

Merck kGaA (Merck) filed a request for an Independent Review Process (IRP), which arose out of its legal rights objections (LROs) to new gTLD applications submitted by its former affiliate, U.S.-based Merck Sharp & Dohme Corporation, for strings incorporating the “Merck” mark. Merck’s LROs were overruled (Expert Determinations). Merck filed Reconsideration Request 14-9 challenging the Expert Determinations. The Board Governance Committee (BGC) denied Reconsideration Request 14-9, finding that Merck had not stated proper grounds for reconsideration and that the Request failed to demonstrate that the expert panel had acted in contravention of established policy or procedure. Merck’s IRP Request challenged the denial of Reconsideration Request 14-9

and, among other things, also argued that the Board should have taken further action with respect to the Expert Determinations.

On 11 December 2015, the three-member IRP Panel (Panel) issued its Final Declaration. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board adopts the findings of the Panel, which are summarized below, and can be found in full at <https://www.icann.org/en/system/files/files/irp-merck-final-declaration-11dec15-en.pdf>.

Using the applicable standard of review, the Panel found that: (1) ICANN is the prevailing party in the *Merck kGaA v. ICANN* IRP; (2) the Board acted without conflict of interest in taking its decision; (3) the Board exercised due diligence and care in having a reasonable amount of facts in front of them; (4) the Board exercised independent judgment in taking the decision, believed to be in the best interests of the company; and (5) the Board's actions or inactions did not, in any way, violate the Articles of Incorporation (Articles), Bylaws, or Applicant Guidebook (Guidebook). (*See* Final Declaration, ¶¶ 41-68.)

More specifically, as the Panel found, the standard of review for an IRP is specifically prescribed in Article IV, Section 3.4 of the Bylaws, and “the Panel may not substitute its own view of the merits of the underlying dispute.” (*Id.* at ¶¶ 21-22.) The Panel further found that the reconsideration process is “of limited scope” as set forth in Article IV, Section 2.2 of the Bylaws, and “[n]one of th[e] three bases for the Request for Reconsideration process requires or even permits this Panel to provide for a substitute process for exploring a different conclusion on the merits.” (*Id.* at ¶ 47.) The Panel also found that: “this Panel does not, because of the precise and limited jurisdiction we have, have the power to second guess [the BGC's determination] that the Sole Panel Expert [in the legal rights objection proceedings] did not apply the wrong standards.” (*Id.* at ¶ 49.) The Panel was also clear that “a referral or appeal process for LRO decisions...was not included in the [Guidebook] and it is not open to this Panel to create it.” (*Id.* at ¶ 60.) In summary, the Panel explained that “Merck's complaints are, in short, not focused on the applicable test by which this Panel is to review Board action, but rather are focused on

the correctness of the conclusion of the Sole Panel Expert[, which] is not a basis for action by this Panel... .” (*Id.* at ¶ 50.)

Merck also claimed that ICANN discriminated against Merck through the Board’s (and the BGC’s) acceptance of the Expert Determinations because the “*Board has provided the possibility for third-party review of some prima facie erroneous expert determinations while denying the same to other, similarly situated parties, including the Claimant.*” (*Id.* at ¶ 53(emphasis in original).) In response to this claim, the Panel found that:

As to the claim of discrimination, this Panel finds that it was within the discretion of the BGC and Board...to conclude that the Sole Expert had applied the correct legal standard to the correctly found set of facts. Of course, in different cases, the BGC and Board are entitled to pursue different options depending upon the nature of the cases at issue. It is insufficient to ground an argument of discrimination simply to note that on different occasions the Board has pursued different options among those available to it. [¶] In conclusion, Merck was not discriminated against.

(*Id.* at ¶ 61.)

As required, the Board has considered the Final Declaration. As this Board has previously indicated, the Board takes very seriously the results of one of ICANN’s long-standing accountability mechanisms. Accordingly, and for the reasons set forth in this Resolution and Rationale, the Board has accepted the Panel’s Final Declaration as indicated above. Adopting the Panel’s Final Declaration will have no direct financial impact on the organization and no direct impact on the security, stability or resiliency of the domain name system. This is an Organizational Administrative function that does not require public comment.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 18 January 2016
Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2016.02.03.2b

TITLE: **Reconsideration Requests 15-19 (The ICANN Business Constituency & The ICANN Noncommercial Stakeholders Group) and 15-20 (The Internet Commerce Association)**

PROPOSED ACTION: **For Board Approval**

EXECUTIVE SUMMARY:

In Reconsideration Requests 15-19 and 15-20, (Requests 15-19 and 15-20), the Requesters seek reconsideration of ICANN Board Resolutions 2015.09.28.04 (renewal of .CAT registry agreement), 2015.09.28.05 (renewal of .TRAVEL registry agreement), and 2015.09.28.06 (renewal of .PRO registry agreement).¹ The Board Governance Committee (BGC) considered [Requests 15-19 and 15-20](#) (attached as Exhibits A and B, respectively, to the Reference Materials), concluded that the Requesters have not stated proper grounds for reconsideration, and recommended that the Board deny Requests 15-19 and 15-20. For more detail see the [BGC's Recommendation on Reconsideration Requests 15-19 and 15-20](#) (attached as Exhibit C to the Reference Materials).

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC recommends that Requests 15-19 and 15-20 be denied and that no further action be taken in response to Requests 15-19 and 15-20, as the Requesters have not stated proper grounds for reconsideration.

PROPOSED RESOLUTION:

Whereas, the ICANN Business Constituency and the ICANN Noncommercial Stakeholders Group filed Reconsideration Request 15-19, and the Internet Commerce Association filed Reconsideration Request 15-20 (collectively, "Requesters"), both of which seek reconsideration of ICANN Board Resolutions 2015.09.28.04 (renewal of .CAT registry agreement), 2015.09.28.05 (renewal of .TRAVEL registry agreement), and 2015.09.28.06 (renewal of .PRO registry agreement).

¹ Because Requests 15-19 and 15-20 involve the same conduct and issues, they were jointly addressed in the same BGC Recommendation and will be jointly addressed in the same Board submission. (*See* Reconsideration Request Form, Terms and Conditions; Bylaws, Art. IV, § 2.8.)

Whereas, the Board Governance Committee (“BGC”) thoroughly considered the issues raised in Reconsideration Requests 15-19 and 15-20 and all related materials.

Whereas, the BGC recommended that Reconsideration Requests 15-19 and 15-20 be denied because the Requesters have not stated proper grounds for reconsideration, and the Board agrees.

Resolved (2016.02.03.xx), the Board adopts the BGC’s Recommendation on Reconsideration Requests 15-19 and 15-20, which can be found at

<https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf>.

PROPOSED RATIONALE:

I. Brief Summary

In passing Board Resolutions 2015.09.28.04, 2015.09.28.05, and 2015.09.28.06 (collectively, the Resolutions), the ICANN Board approved the renewal of registry agreements for three legacy TLDs—.CAT, .TRAVEL, and .PRO, respectively. The three renewed registry agreements (Renewed Registry Agreements) are the result of bilateral negotiations between ICANN staff and the respective registry operators. The Renewed Registry Agreements are based on the form of the registry agreement for new gTLDs (New gTLD Registry Agreement) and include new gTLD rights protection mechanisms (RPMs) such as the Trademark Post-Delegation Dispute Resolution Procedure (Trademark PDDRP) and the Uniform Rapid Suspension system (URS), which did not exist under the legacy registry agreements.

In seeking reconsideration of the Resolutions, the Requesters note that the Generic Names Supporting Organization (GNSO) has not yet issued a consensus policy regarding the application of new gTLD rights protection mechanisms (RPMs) to legacy TLDs and suggest that the Renewed Registry Agreements represent an attempt by ICANN staff to preempt that policy development process. The Requesters further assert that, in passing the Resolutions, the Board failed to consider: (1) the details of the relevant contract negotiations, specifically email communications and other documents reflecting communications between ICANN staff and the relevant registry operators; and (2) a later-published preliminary issue report by ICANN staff regarding gTLD RPMs (Preliminary Issue Report), which recommends, among other things, that

a GNSO policy development process be undertaken to address the application of RPMs to legacy TLDs generally.

The Requesters' claims do not support reconsideration. The inclusion of the new gTLD RPMs in the Renewed Registry Agreements is part of the package of agreed-upon terms resulting from the bilateral negotiations between ICANN and each registry operator, and not, as Requesters claim, a "unilateral decision by ICANN contractual staff." The Requesters present no evidence to the contrary – i.e., that applying the new gTLD RPMs to the Renewed Registry Agreements was based on a unilateral decision by ICANN staff. The Requesters suggest that the Board should have reviewed all of ICANN staff's communications with the .CAT, .TRAVEL, and .PRO registry operators in order to confirm that the negotiations were in fact bilateral. Such contention, however, does not support reconsideration. Staff provided the Board with all material information, including the comments from the public comment forum, for consideration. In approving the Resolutions, the Board considered all material information provided by staff. No policy or procedure requires the Board to review each and every email or other written exchange between ICANN staff and registry operators during the course of the negotiations and the Requesters do not identify any particular piece of material information that the Board failed to consider. Moreover, as is publicly posted in the respective public comment reports as well as in the Board's rationales for each of the Resolutions, the registry operators specifically "expressed their interest to renew their registry agreement based on the New gTLD Registry Agreement." Indeed, not one of these registry operators has indicated that their renewal negotiations were anything but bilateral or sought reconsideration of either staff or Board action as it relates to the Renewed Registry Agreements. Further, the registry agreements each called for presumptive renewal of the agreements at their expiration so long as certain requirements were met – meaning that, if the parties took no action, the registry agreements would have renewed automatically under the same terms as the original registry agreements so as long as the registry operators were in good standing at the time of renewal as provided in the registry agreements.² At the time of renewal, these registry operators were in good standing and were

² Article IV, Section 2 of the .CAT, .TRAVEL, and .PRO registry agreements provide that the agreements shall be renewed upon the expiration of the initial term for successive terms, unless the following has occurred:

- (i) an arbitrator or court has determined that Registry has been in fundamental and material breach of Registry's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 despite notice and an opportunity to cure in accordance with Article VI hereof and (ii) following the final decision of such arbitrator or court, Registry has failed to correct the conduct found to constitute such breach....

therefore subject to the terms of the presumptive renewal. The registry operators, however, elected to enter into negotiations with ICANN based on the existing New gTLD Registry Agreement terms.

As the Requesters have not demonstrated that the Board failed to consider any material information in passing the Resolutions, they have not stated a basis for reconsideration of the Resolutions.

II. Facts

The BGC Recommendation on Reconsideration Requests 15-19 and 15-20, which sets forth in detail the facts relevant to this matter, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Requests 15-19 and 15-20 is available at <https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf>, and is attached as Exhibit C to the Reference Materials.

III. Issues

In view of the claims set forth in Requests 15-19 and 15-20, the issues for reconsideration are whether ICANN's Board failed to consider material information in passing the Resolutions approving the renewal of the registry agreements for .CAT, .TRAVEL, and .PRO.

IV. The Relevant Standards for Evaluating Reconsideration Requests

The BGC Recommendation on Reconsideration Requests 15-19 and 15-20, which sets forth the relevant standards for evaluating reconsideration requests, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Requests 15-19 and 15-20 is available at <https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf>, and is attached as Exhibit C to the Reference Materials.

.CAT Registry Agreement, *available at* <https://www.icann.org/resources/unthemed-pages/cat-agreement-2005-09-23-en>; .TRAVEL Registry Agreement, *available at* <https://www.icann.org/resources/unthemed-pages/travel-agreement-2006-04-12-en>; .PRO Registry Agreement, *available at* <https://www.icann.org/resources/unthemed-pages/pro-agreement-2010-04-22-en>.

V. Analysis and Rationale

The Requesters claim, without support, that ICANN staff unilaterally imposed the New gTLD Registry Agreement as a starting point for the Renewed Registry Agreements and, therefore, “transform[ed] the PDDRP and URS into de facto Consensus Policies without following the procedures laid out in ICANN’s Bylaws for their creation.” Contrary to what the Requesters claim, while the registry operators had a presumptive right of renewal under the terms of their existing legacy registry agreement, they chose to re-negotiate and renew their agreements based upon the New gTLD Registry Agreement terms.

The Board’s Rationales for the Resolutions as well as the public comment reports make clear that the Renewed Registry Agreements were “based on the bilateral negotiations between ICANN and the [respective] Registry Operator[s], where [the] Registry Operator[s] expressed their interest to renew their registry agreement based on the New gTLD Registry Agreements.” The Board further stated in the Rationales for the Resolutions that the “inclusion of the URS was developed as part of the proposal in bilateral negotiations,” and confirmed that the URS “has not been adopted as a consensus policy and ICANN has no ability to make it mandatory for any TLDs other than new gTLD applicants who applied during the first round,” and that “the Board’s approval of the Renewal Registry Agreements[s] for .CAT, .PRO, and .TRAVEL] is not a move to make the URS mandatory for any legacy TLDs, and it would be inappropriate to do so.” In short, the Requesters’ claim that the provisions of the New gTLD Registry Agreement were in some way imposed on the registry operators is unsupported.

Reconsideration of a Board action, the process that Requesters have invoked here, is warranted only where the Board took action without consideration of material information or with reliance upon false or inaccurate information. Here, the Requesters do not identify any material information that the Board purportedly failed to consider in passing the Resolutions. More specifically, the Requesters provide no support for their argument that the Board failed to consider “the actual record of exchanges—emails and other correspondence, as well as notes and minutes of meeting and discussions—between [ICANN] staff and officers and the personnel of these three registries that would support the conclusion that [the parties engaged in] bilateral negotiations...” The Requesters also present no support for their claim that the Board failed to consider the Preliminary Issue Report (because it “did not exist at the time of the Board’s

decision”). As a result, the BGC concluded and the Board agrees that reconsideration is not appropriate.

First, the Requesters do not identify any material information that the Board purportedly failed to consider. That is, the Requesters do not identify any evidence that the negotiations between ICANN and the registry operators were not bilateral in nature because no such evidence exists. As there is no policy or procedure that requires the Board to review each and every email or other written exchange between ICANN staff and registry operators during the course of the contract negotiations, the Requesters do not and cannot identify such a policy or procedure. The Requesters’ substantive disagreement with the Board’s actions does not mean that the Board’s actions were taken without consideration of all relevant material information.

Second, the Requesters claim that the Board failed to consider the Preliminary Issue Report, which invited community feedback regarding the inclusion of several topics in a GNSO policy development process charter, including “whether any of the new [RPMs] (such as the URS) should, like the UDRP, be Consensus Policies applicable to all gTLDs.” The Requesters claim that, in light of the Preliminary Issue Report, the Renewed Registry Agreements will “interfer[e] with the standard policy development process.” However, as the Requesters acknowledge, the Preliminary Issue Report did not exist at the time the Resolutions were approved, and thus could not constitute “material information” the Board failed to consider in approving the Resolutions. As such, no reconsideration is warranted on this basis.

In addition, the Board does not find, as the Requesters suggest, that the Renewed Registry Agreements will “interfere[e] with the standard policy development process.” As discussed above, the Board explicitly acknowledged, in the Rationales for the Resolutions, that the URS has not been adopted as consensus policy and that ICANN therefore has no ability to impose the URS (or other new RPMs applicable to new gTLDs) on legacy TLDs. The existence of certain RPMs in the Renewed Registry Agreements, therefore, has no bearing on the GNSO policy development process to determine whether (or not) any of the new RPMs should be consensus policies applicable to all gTLDs. Accordingly, reconsideration is not appropriate.

The full BGC Recommendation on Reconsideration Requests 15-19 and 15-20, which sets forth the analysis and rationale in detail and with which the Board agrees, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on

Reconsideration Requests 15-19 and 15-20 is available at <https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf>, and is attached as Exhibit C to the Reference Materials.

VI. Decision

The Board had the opportunity to consider all of the materials submitted by or on behalf of the Requesters or that otherwise relate to Reconsideration Requests 15-19 and 15-20. Following consideration of all relevant information provided, the Board reviewed and has adopted the BGC's Recommendation on Reconsideration Requests 15-19 and 15-20 (<https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf>), which shall be incorporated by reference here and deemed a part of this Rationale and is attached as Exhibit C to the Reference Materials to the Board Paper on this matter.

Adopting the BGC's recommendation has no direct financial impact on ICANN and will not 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
Dated Noted: 18 January 2016
Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2016.02.03.2c

TITLE: **Consideration of Expert Determination Re: Objection to Application for .HOSPITAL**

PROPOSED ACTIONS: **For Board Approval**

EXECUTIVE SUMMARY:

Ruby Pike, LLC (Ruby Pike) invoked the Cooperative Engagement Process (CEP) regarding the Expert Determination upholding the Independent Objector's (IO) limited public interest (LPI) objection to its application for .HOSPITAL (.HOSPITAL Expert Determination). Ruby Pike contends that the .HOSPITAL Expert Determination deviates from the eight other health-related LPI expert determinations and that the outlying result is, at a minimum, as inconsistent and unreasonable as the string confusion objection determinations for which ICANN has taken action in the Final Review of Perceived Inconsistent or Unreasonable String Confusion Objection (SCO) Expert Determinations (SCO Final Review Mechanism). (See Letter from J. Genga to A. Stathos, dated 15 April 2015, attached as Attachment A to Ref. Mat.; [NGPC Resolutions 2014.10.12.NG02 - 2014.10.12.NG03](#).) As part of the CEP, Ruby Pike asks that the Board act, as it has done previously, to take action on the 'inconsistent and unreasonable' .HOSPITAL Expert Determination. (See *id.* at 8.)

Accordingly, as part of the CEP, which provides for the possibility of bringing a matter to the Board's attention (<https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>), the Board Governance Committee (BGC) has considered this matter. The BGC consider various options to recommend to the Board including, doing nothing further, reversing the Expert Determination or sending the Objection proceeding resulting in the .HOSPITAL Expert Determination for re-evaluation. The BGC has recommended that the matter be considered by the full Board and that the Objection proceeding resulting in the .HOSPITAL Expert Determination be re-evaluated. This paper and the related Reference Materials, address the issues relevant to the Board's consideration of this matter. Additionally, an analysis associated with other potentially impacted contention sets is attached as Attachment B to the Reference Materials for the Board's consideration.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC recommends that the Board consider the concerns raised by Ruby Pike regarding the .HOSPITAL Expert Determination and that the .HOSPITAL Objection be re-evaluated.

PROPOSED RESOLUTION:

Whereas, on 16 December 2013, an Expert Panel upheld the Independent Objector's (IO) Limited Public Interest (LPI) objection to Ruby Pike, LLC's (Ruby Pike) application for .HOSPITAL (.HOSPITAL Expert Determination).

Whereas, Ruby Pike contends that the .HOSPITAL Expert Determination deviates from the expert determinations from all other health-related LPI objection and that the outlying result is, at a minimum, as inconsistent and unreasonable as the string confusion objection determinations for which ICANN has directed re-evaluation.

Whereas, Ruby Pike initiated a Cooperative Engagement Process (CEP) regarding the .HOSPITAL Expert Determination upholding the IO's LPI objection to Ruby Pike's application for .HOSPITAL.

Whereas, as part of the CEP, the Board has been asked to evaluate this matter and to take action to deal with what Ruby Pike believes to be the inconsistent and unreasonable .HOSPITAL Expert Determination.

Whereas, the Board Governance Committee (BGC): (i) has carefully considered the .HOSPITAL Expert Determination and Ruby Pike's arguments about it; (ii) agrees with Ruby Pike that the Objection proceedings leading to the .HOSPITAL Expert Determination should be re-evaluated, particularly in comparison to the other eight health-related LPI expert determinations; and (iii) recommends that the Board send the .HOSPITAL Objection back for re-evaluation by a new three-party expert panel.

Whereas, the Board has carefully considered the BGC's recommendation and the information and arguments Ruby Pike has presented, as well the .HOSPITAL Expert Determination in comparison to the other eight health-related LPI expert determinations.

Whereas, after consideration, the Board finds that the .HOSPITAL Expert Determination is seemingly inconsistent with the Expert Determinations resulting from all other health related

LPI objections.

Whereas, as set out in the Applicant Guidebook, ICANN has reserved the right to individually consider any application for a new gTLD to determine whether approval would be in the best interest of the Internet community.

Resolved (2016.02.03.xx), the Board has identified the .HOSPITAL Expert Determination as not being in the best interest of the New gTLD Program and the Internet community.

Resolved (2016.02.03.xx), the Board directs the President and CEO, or his designee(s), to take all steps necessary to address the perceived inconsistency and unreasonableness of the .HOSPITAL Expert Determination by sending all of the materials for the relevant objection proceeding back to the International Centre of Expertise of the International Chamber of Commerce (ICC), which should in turn establish a new three-member expert panel to re-evaluate those materials in accordance with the criteria for LPI objections as set forth in the Applicant Guidebook. In doing so, the new three-member expert panel should also review as background the "Related LPI Expert Determinations" referenced in the following chart.

Related LPI Expert Determinations	String
Independent Objector v. DotHealth, LLC	.HEALTH
Independent Objector v. Goose Fest, LLC	.HEALTH
Independent Objector v. Afilias Limited	.HEALTH
Independent Objector v. Silver Glen, LLC	.HEALTHCARE
Independent Objector v. HEXAP SAS	.MED
Independent Objector v. Medistry LLC	.MED
Independent Objector v. Charleston Road Registry Inc.	.MED
Independent Objector v. Steel Hill, LLC	.MEDICAL

PROPOSED RATIONALE:

The Board's action today, addressing how to deal with inconsistent and/or unreasonable Expert Determinations from the New gTLD Program LPI process, is part of the Board's role to provide general oversight of the New gTLD Program. The action being approved today is to direct re-evaluation of the .HOSPITAL LPI objection proceeding which resulted in the .HOSPITAL Expert Determination. Pursuant to the Applicant Guidebook (Guidebook), the Board has the discretion to individually consider an application for a new gTLD. (Guidebook Module 6.3, <http://newgtlds.icann.org/en/applicants/agb/terms-04jun12-en.pdf>.) The Board's action arises from Ruby Pike's arguments that the .HOSPITAL Expert Determination deviates from all other health-related LPI expert determinations and that the result is inconsistent and unreasonable such that it warrants further action. (See Letter from J. Genga to A. Stathos, dated 15 April 2015, at 8, attached as Attachment A to the Reference Materials.) As set forth in further detail in the Reference Materials, which are incorporated herein by reference, Ruby Pike, an affiliate of Donuts, Inc., argues that the Board (via the NGPC) has previously taken steps to address other inconsistent and unreasonable results by initiating a re-evaluation of a certain string confusion objection (SCO) expert determinations (SCO Final Review Mechanism) and should do so here as well. (See *id.*)

The Board notes that when it provided for a limited SCO Final Review Mechanism for just a very few expert determinations from string confusion objection proceedings, the NGPC specifically considered, but excluded its application to other forms of objections.

The NGPC considered whether it was appropriate, as suggested by some commenters, to expand the scope of the proposed review mechanism to include other Expert Determinations, such as some resulting from Community and Limited Public Objections, as well as other String Confusion Objection Expert Determinations, and possibly singular and plural versions of the same string. The NGPC determined that to promote the goals of predictability and fairness, establishing a review mechanism more broadly may be more appropriate as part of future community discussions about subsequent rounds of the New gTLD Program. Applicants have already taken action in reliance on many of the Expert Determinations, including signing Registry Agreements, transitioning to delegation, withdrawing their applications, and requesting refunds. Allowing these actions to be undone now would not only delay consideration of all applications, but would raise issues of unfairness for those that have already acted in reliance on the Applicant Guidebook.

(See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12->

[en#2.b.\)](#)

Here, although not directly on point, the Board is uniquely swayed, as was the BGC, by Ruby Pike's assertions that the .HOSPITAL Expert Determination is inconsistent with the other eight health-related LPI Expert Determinations, thereby rendering it potentially unreasonable, and thereby warranting re-evaluation. As part of its deliberations, the Board took into consideration the following factors, which the BGC had previously evaluated in making its recommendation:

- The .HOSPITAL Expert Determination is inconsistent with the results of the eight other health related LPI objections that resulted in expert determinations, all of which were filed by the IO. The materials submitted by the IO and the Applicant to the Expert Panels in each instance were very similar and, in some instances, nearly identical (*i.e.*, .HOSPITAL, .MEDICAL, and .HEALTHCARE).
- The .HOSPITAL Expert Determination is the only LPI objection, out of the total of ten LPI objections that resulted in expert determinations, where the expert determination was in favor of the objector rather than the applicant.
- The .HOSPITAL Determination is the only LPI expert determination with a split panel decision.
- The .HOSPITAL Determination is the only LPI expert determination where a dissenting opinion was issued.
- Four of the nine health related LPI objections filed by the IO were against applications by subsidiaries of Donuts, Inc. (Steel Hill, LLC (.MEDICAL); Goose Fest, LLC (.HEALTH); Silver Glen, LLC (.HEALTHCARE); and Ruby Pike, LLC (.HOSPITAL). The objections filed by the IO in all four objections are virtually identical. The .HOSPITAL Determination is the only determination in favor of the objector.
- The .HOSPITAL Expert Panel is the only health related LPI expert panel that evaluated the sufficiency of certain protections and safeguards as part of its determination while other expert panels deferred to ICANN to implement and enforce such safeguards as necessary. (*See*

<http://newgtlds.icann.org/sites/default/files/drsp/06dec13/determination-2-1-1492-32589-en.pdf>.)

- Because there are no other competing applications of the .HOSPITAL TLD, this action would not impact other .HOSPITAL applications and therefore would not contradict the NGPC's concern that expanding that re-review would delay consideration of competing applications. (See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>)

Given these circumstances, the Board is persuaded, as was the BGC, that, consistent with the manner in which the Board had addressed previous inconsistent or unreasonable expert determinations, a re-evaluation of the objection proceedings against Ruby Pike's application for .HOSPITAL is warranted at this time. The re-evaluation proceeding will be administered in accordance with the ICC Expert Rules for Administration of Expert Proceedings, which include the following:

- The review panel will consist of three members appointed by the ICC (the "Review Panel").
- The only issue subject to review shall be the .HOSPITAL objection proceedings and the resulting Expert Determination.
- The record on review shall be limited to the documentary evidence admitted into evidence during the original proceeding. No additional documents, briefs or other evidence may be submitted for consideration, except that the Review Panel shall also consider the identified "Related LPI Expert Determinations" in the above chart as part of its review of the .HOSPITAL objection proceeding and resulting Expert Determination.
- The standard of review to be applied by the Review Panel is: whether the original Expert Panel could have reasonably come to the decision reached in the underlying .HOSPITAL LPI objection proceeding through an appropriate application of the standard of review as set forth in the Guidebook.
- ICANN will pay the applicable fees of the Review Panel.

- The possible outcomes of the review are: (1) the original .HOSPITAL Expert Determination is supported by the standard of review and reference to the identified Related LPI Expert Determinations, and will stand as is; or (2) the original .HOSPITAL Expert Determination reasonably cannot be supported based on the standard of review and reference to the identified Related LPI Expert Determinations, and will be reversed. The Review Panel will submit a written determination including an explanation and rationale for its determination.

There will be a fiscal impact associated with the adoption of this resolution, but nothing that will not or cannot be covered by the existing New gTLD Program budget. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

This is an Organizational Administrative Action not requiring public comment.

Submitted By: Amy A. Stathos, Deputy General Counsel

Dated Noted: 26 January 2016

Email: amy.stathos@icann.org

ICANN BOARD SUBMISSION NO. 2016.02.03.2d

TITLE: **Ombudsman Report Regarding Complaint by Hu Yi Global Information Resources (applicant for .招聘 (“recruitment” in Chinese))**

PROPOSED ACTION: **For Board Approval**

EXECUTIVE SUMMARY:

Hu Yi Global Information Resources Company (Hu Yi) submitted the only application for the new gTLD .招聘 (meaning “recruitment” in Chinese) (Application). Employ Media LLC filed a String Confusion Objection against the Application. Hu Yi did not provide a response to the objection within the allotted time period and was therefore deemed to be in default, resulting in Employ Media prevailing in its objection. Much later, Hu Yi and Employ Media reached an agreement and requested that ICANN permit Employ Media’s objection to be withdrawn. ICANN explained that there is no mechanism within the Applicant Guidebook (Guidebook), dispute resolution procedures, or the New gTLD Program processes to allow an objection to be withdrawn after the conclusion of the proceedings.

Hu Yi filed a complaint with the Ombudsman who subsequently investigated the matter, and issued an Ombudsman Report on 25 November 2015 (*see* Ombudsman Report, Attachment A to Reference Materials). The Ombudsman has recommended that the complaint be sustained and that the matter go back to the appropriate ICANN person or body for consideration, and the Application be revived and proceed. In coming to this conclusion, the Ombudsman considered several factors, including the linguistic and cultural differences at issue here, Hu Yi’s efforts to try and resolve the issue within a reasonable period following the Objection proceedings, Employ Media’s subsequent request to withdraw its objection to, and later support for, the Application, as well as the fact that there are no other applicants for the string in question.

OMBUDSMAN RECOMMENDATION:

The Ombudsman recommends to the Board that the Application be “revived” and be permitted to proceed through the remainder of the new gTLD application process.

PROPOSED RESOLUTION:

Whereas, a String Confusion Objection was filed against Hu Yi Global Information Resources Company's (Hu Yi's) application for the new gTLD .招聘 (meaning "recruitment" in Chinese) (Application).

Whereas, the International Centre for Dispute Resolution (ICDR) sustained the objection because the ICDR "determined that the Applicant is deemed to be in default as it has failed to file a timely Response to the Objection."

Whereas, Hu Yi filed a complaint with the Ombudsman on 9 June 2015 explaining that Employ Media LLC no longer objected to its Application for .招聘 .

Whereas, the Ombudsman issued a report to the ICANN Board regarding Hu Yi's complaint, and set out facts based on his investigation and made specific recommendations in his report.

Whereas, the Board reviewed the Ombudsman Report and thoroughly considered his recommendations.

Resolved (2016.02.03.xx), the Board directs the President, Global Domains Division, or his designee(s), to change the status of the Application from "Will Not Proceed" to "Evaluation Complete," and to permit Hu Yi's Application for .招聘 to proceed through the remainder of the new gTLD application process.

PROPOSED RATIONALE:

The ICANN Ombudsman reports directly to the ICANN Board. The Ombudsman is an important Accountability Mechanism found in ICANN's Bylaws. The purpose of the Ombudsman is to help evaluate whether members of the ICANN community have been treated fairly. The Ombudsman acts as a neutral in attempting to resolve complaints using alternative dispute resolution (ADR) techniques. Where, in the course of an investigation of a complaint, the Ombudsman forms an opinion that there has been an issue of administrative fairness, the Ombudsman may notify the Board of the circumstances.

The Ombudsman has issued a report to the Board regarding the closing out of Hu Yi Global Information Resources Company's (Hu Yi's) application for the new gTLD .招聘 (meaning "recruitment" in Chinese) (Application) as a result of the default determination issued on the String Confusion Objection. The Ombudsman has recommended that the Board "revive" (or

cause to be revived) the Application and permit it to proceed through the remainder of the new gTLD application process. Hu Yi is the only applicant for the new gTLD .招聘 (“recruitment” in Chinese); and Employ Media LLC is the only entity that filed an objection to the Application. Since its initial filing of the objection, Employ Media has explicitly indicated to ICANN and to the Ombudsman that it no longer objects to the Application. Thus, the Ombudsman determined that permitting the Application to proceed would have no impact on any other applicant and would have no impact on any objector (because there is none). In addition, the Board understands that there are no further evaluation or objection proceedings to which the Application would need to be subjected. The next step in the application process is the contracting phase.

In light of the unique set of circumstances presented here (namely, the fact that the objection was sustained only on procedural grounds, and that the objector later explicitly rescinded the objection and in fact supported the Application), and after a review of the Ombudsman Report, the Board has determined to follow the Ombudsman’s recommendation, and direct the President, Global Domains Division or his designee(s) to proceed with processing Hu Yi’s Application for the gTLD .招聘 through the remainder of the new gTLD application process. Taking this action will have a positive impact on ICANN’s accountability to the community, as it is appropriate to review all applicable circumstances and recommendations resulting from one of ICANN’s long-standing Accountability Mechanisms when taking decisions that have significant impact on applicants.

This decision has no direct financial impact on ICANN and will not 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
Dated Noted: 18 January 2016
Email: amy.stathos@icann.org

ICANN BOARD PAPER NO. 2016.02.03.2e

TITLE: GAC Advice: Dublin Communiqué (October 2015)

PROPOSED ACTION: For Board Approval

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered additional advice on the New gTLD Program in the [Dublin Communiqué](#) issued 21 October 2015. Most of the advice addresses new gTLD-related matters including safeguards for new gTLDs, future rounds of the New gTLD Program, protections for IGO names and acronyms at the top and second levels, and Community Priority Evaluation. The advice also addresses use of two-letter country codes and country names at the second level.

The Board is being asked to approve an iteration of the GAC-Board Scorecard to address the GAC’s advice in the Dublin Communiqué. The draft Scorecard is attached to this briefing paper.

STAFF RECOMMENDATION:

Staff recommends that the Board adopt the attached Scorecard to address the GAC’s advice in the October 2015 Dublin Communiqué.

PROPOSED RESOLUTION:

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN 55 meeting in Dublin, Ireland and issued a [Communiqué](#) on 21 October 2015 (“Dublin Communiqué”).

Whereas, the ICANN Board New gTLD Program, which was decommissioned in October 2015, previously adopted a series of scorecards to respond to certain items of the GAC’s advice concerning the New gTLD Program. The Board has developed another iteration of the scorecard to respond to the advice in the Dublin Communiqué.

Resolved (2016.02.03.xx), the Board adopts the scorecard titled “GAC Advice – Dublin Communiqué 21 October 2015: Actions and Updates (xx February 2016)” [INSERT

LINK TO GAC ADVICE SCORECARD] in response to items of GAC advice in the Dublin Communiqué.

PROPOSED RATIONALE:

[Article XI, Section 2.1](#) of the ICANN Bylaws permit 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.” The GAC issued advice to the Board on various matters, including the New gTLD Program, in its Dublin Communiqué (21 October 2015). 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 policies. 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. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The ICANN Board New gTLD Program Committee (NGPC) previously addressed items of the GAC’s advice concerning new gTLDs issued in Communiqués from Beijing (April 2013), Durban (July 2013), Buenos Aires (November 2013), Singapore (March 2014), London (June 2014), Los Angeles (October 2014), Singapore (February 2015), and Buenos Aires (June 2015). The NGPC was decommissioned in October 2015, and the Board continues to maintain general oversight and governance over the New gTLD Program and provide strategic and substantive guidance on New gTLD-related topics as the current round of the Program comes to a conclusion. The Board is taking action to address the new advice from the GAC in the Dublin Communiqué related to the New gTLD Program, as well as other advice. The Board’s actions are described in scorecard dated xx February 2016 **[INSERT LINK TO GAC ADVICE SCORECARD]**.

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

- [GAC Beijing Communiqué](#) (April 2013); [GAC Durban Communiqué](#) (July 2013); [GAC Buenos Aires Communiqué](#) (November 2013); [GAC Singapore Communiqué](#) (as amended) (March 2014); [GAC London Communiqué](#) (June 2014); [GAC Los Angeles Communiqué](#) (October 2014); [GAC Singapore Communiqué](#) (February 2015); [GAC Buenos Aires Communiqué](#) (June 2015); [GAC Dublin Communiqué](#) (October 2015)
- Applicant responses to GAC advice: <http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3: <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>
- 9 November 2015 [letter](#) from the Registry Stakeholder Group to the ICANN Board regarding the GAC's advice in the Dublin Communiqué regarding the use of two-character country codes

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 on the New gTLD Program 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: Jamie Hedlund

Position: Vice President, Strategic Programs, Global Domains Division

Date Noted: 19 January 2016

Email: jamie.hedlund@icann.org

ICANN BOARD PAPER NO. 2016.02.03.2f

TITLE: Board Governance Committee Recommendation
Regarding Implementation of Public Interest
Commitments for .DOCTOR Registry Agreement

PROPOSED ACTION: For Board Approval

EXECUTIVE SUMMARY:

At its 6 May 2015 meeting, the Board Governance Committee (BGC) recommend that “the NGPC again review the proposed implementation of a public interest commitment for the .DOCTOR TLD, and to re-evaluate the NGPC’s 12 February 2015 determination.” The BGC’s recommendation was in response to [Reconsideration Request 15-3](#) filed by Brice Trail, LLC (an entity related to Donuts Inc.) – one of the contending applicants for the .DOCTOR TLD. Brice Trail’s Reconsideration Request challenges staff and NGPC actions relating to the implementation of the GAC’s Buenos Aires advice about .DOCTOR. In the [Buenos Aires Communiqué](#) (20 November 2013), the GAC [advised](#) the Board to “recategorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, therefore ascribing these domains exclusively to legitimate medical practitioners. The GAC notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected.”

On 5 February 2014, the NGPC addressed the GAC’s advice in an iteration of the [Scorecard](#) stating: “With respect to the additional advice in the Buenos Aires Communiqué on the Category 1 Safeguards, the NGPC accepts the advice to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors and ensure that the domains in the .doctor TLD are ascribed exclusively to legitimate medical practitioners.”

To implement the NGPC’s 5 February 2014 action in the Scorecard, staff informed the three applicants for the .DOCTOR TLD that in addition to the eight PICs for “highly regulated” TLDs, an additional PIC would be required for the .DOCTOR Registry

Agreement to ensure that domains in the TLD are ascribed exclusively to legitimate medical practitioners. The additional PIC would read as follows: “Registry Operator will ensure that the domains in the TLD are ascribed exclusively to legitimate medical practitioners.”

Brice Trail asserts that the implementation of the GAC’s advice will unfairly limit registrations in the TLD to “legitimate medical practitioners” at the exclusion of other potential registrants of .DOCTOR domains – such as professors, doctors of law and other credentialed parties, those who perform repairs or have “doctor” in their business name (e.g., “Rug Doctor,” “Computer Doctor”) and directories, review sites, commentators and services that provide information about medical and other types of doctors. Brice Trail contends that implementation of the GAC’s advice singles out the .DOCTOR TLD for treatment widely disparate from that given all other similarly situated TLDs, and severely limits expressive activity in the TLD, which has no historical precedent or basis.

Moreover, Brice Trail argues that the staff and NGPC actions violate ICANN policy and GAC advice against discrimination, and that Brice Trail should only be required to implement the eight safeguards associated with highly regulated TLDs. As an alternative, Brice Trail requested that ICANN consider a “compromise solution, namely to require a registrant to demonstrate ‘legitimate medical practitioner’ status only if the registrant holds itself out as a medical practitioner. An obstetrician applying for OBSTRETICS.DOCTOR, for example, would have to demonstrate his or her qualification to practice medicine.” Brice Trail notes that the benefit of this solution is that it “would help protect against abuse of medical uses of the domain by non-practitioners (the very conduct the GAC seeks to prevent), and at the same time avoid potential discrimination against other legitimate, nonmedical uses of the domain (conduct also opposed by the GAC).”

At the NGPC’s direction, staff asked applicants how they would implement the compromise PIC suggested by Donuts if the NGPC were to accept such a compromise. Staff asked the applicants to address how they would handle registrations from individuals or companies that are not medical practitioners but provide a medical service, such as owning a medical practice, clinic or a hospital.

- One applicant responded that without prejudice, it would not submit a response to the request.
- The second applicant stated that only the standard eight Category 1 PICs for “highly regulated” TLDs should be imposed. The applicant noted that it would add a provision in its Acceptable Use and Anti-Policy that would make it a violation for a registrant to falsely hold themselves out as a medical practitioner.
- The third applicant was supportive of the NGPC’s original resolution, requiring the registry operator to ensure that general domains in the TLD are ascribed exclusively to legitimate medical practitioners. The applicant indicated that it would have a third-party agency validate the identity of registrants before any domain name is activated. The applicant noted, however, that it would like to offer a pre-decided set of reserved generic names, such as skin.doctor and london.doctor, to be allocated by the registry operator for the benefit of the TLD. The names would be allocated on a case-by-case basis to individuals or entities that the registry determines will benefit the namespace, and who would be contractually prohibited from representing themselves to be qualified medical practitioners in their use of the domain name.

STAFF RECOMMENDATION:

Based on the responses from the applicants for the .DOCTOR string, none of the proposed business models of the applicants would be consistent with the PIC requiring the registry operator to ensure that domains in the TLD are ascribed exclusively to legitimate medical practitioners. In previous discussions, the NGPC reached a general consensus that all names in the .DOCTOR TLD should not be limited to medical practitioners. Based on the additional information from applicants and previous deliberations of the NGPC, staff recommends that the Board consider adopting one of the following courses of action:

1. Do not require an additional Public Interest Commitments (PICs) for the .DOCTOR Registry Agreement. As a result, the .DOCTOR Registry Agreement

would be subject to the eight additional safeguards like all other “highly regulated” TLDs. This approach would address the issues raised by Brice Trail in the Reconsideration Request, and it also would allow the other applicants to operate the .DOCTOR TLD as proposed. However, this approach arguably raises questions about whether it is consistent with the GAC’s advice in the November 2013 Buenos Aires Communiqué.

2. Taking into account the responses from the applicants and the GAC advice, require an additional PIC above and beyond the eight safeguards required for all “highly regulated” TLDs. The additional PIC would require a registrant to demonstrate “legitimate medical practitioner” status only if the registrant holds itself out as a medical practitioner. This approach adopts the compromise solution suggested by Brice Trail in its Reconsideration Request and would allow the other applicants to operate the .DOCTOR TLD as proposed. The additional PIC, however, potentially raises implementation issues, such as: what does it mean to “demonstrate” legitimate medical practitioner status? And, what, if anything, would a hospital or medical group have to do to register a name in the TLD?

PROPOSED RESOLUTION:

Whereas, at its 6 May 2015 meeting, the Board Governance Committee (BGC) recommend that “the NGPC again review the proposed implementation of a public interest commitment for the .DOCTOR TLD, and to re-evaluate the NGPC’s 12 February 2015 determination.”

Whereas, the NGPC was decommissioned on 22 October 2015 and the Board continues to maintain general oversight and governance over the New gTLD Program and provide strategic and substantive guidance on New gTLD-related topics as the current round of the Program comes to a conclusion.

Resolved (2016.02.03.xx), the Board reaffirms the NGPC’s acceptance of the GAC’s [advice](#) issued in the Buenos Aires Communiqué (20 November 2013) regarding .DOCTOR, and clarifies that the President and CEO, or his designee(s), is directed to

PROPOSED RATIONALE:

In response to a recommendation from the Board Governance Committee (BGC), the Board is taking action at this time to clarify the proposed implementation of public interest commitments for the .DOCTOR TLD. The .DOCTOR TLD was included as one of the [Category 1 strings](#) requiring additional safeguards in the GAC's [Beijing Communiqué](#) (11 April 2013). ICANN initiated a public comment period (23 April 2013) to solicit input on how the ICANN Board New gTLD Program Committee (NGPC) should address the GAC's safeguard advice in the Beijing Communiqué.

On 29 October 2013, the NGPC sent a [letter](#) to the GAC about its proposed implementation of the Category 1 Safeguard advice in the Beijing Communiqué. The NGPC proposed to modify the text of the Category 1 Safeguards as appropriate to meet the spirit and intent of the advice in a manner that allowed the requirements to be implemented as Public Interest Commitments (PICs) in Specification 11 of the New gTLD Registry Agreement. The NGPC also proposed to distinguish the list of strings between those that the NGPC considered to be associated with market sectors or industries that have highly-regulated entry requirements in multiple jurisdictions, and those that do not. The Category 1 Safeguards in the PIC would apply to the TLDs based on how the TLD string was categorized (i.e. the highly-regulated TLDs would have eight additional PICs, and the others would have three additional PICs). In the NGPC's October 2013 proposal, .DOCTOR was *not* proposed to be classified as "highly-regulated".

In the GAC's [Buenos Aires Communiqué](#) (20 November 2013), the GAC [advised](#) the Board "to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, therefore ascribing these domains exclusively to legitimate medical practitioners. The GAC notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected." The NGPC considered the GAC's Buenos Aires advice, and in the iteration of the [Scorecard from 5 February 2014](#), the NGPC (1) adopted the proposed [implementation](#) of Category 1 Safeguards that was sent to the GAC in October 2013; and (2) accepted the GAC's Buenos Aires advice to "re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors and ensure that the domains in the .doctor TLD are ascribed exclusively to legitimate medical practitioners."

One of the contending applicants for the .DOCTOR TLD raised some concerns in [Reconsideration Request 15-3](#) about the proposed implementation of the GAC's advice and with respect to what Public Interest Commitments will be required in the .DOCTOR Registry Agreement. At its 6 May 2015 meeting, the Board Governance Committee began discussions about Reconsideration Request 15-3, and postponed making a final determination on the Reconsideration Request. The BGC recommend that "the NGPC again review the proposed implementation of a public interest commitment for the .DOCTOR TLD, and to re-evaluate the NGPC's 12 February 2015 determination." The NGPC has since been decommissioned and the Board continues to maintain general oversight and governance over the New gTLD Program and provide strategic and substantive guidance on New gTLD-related topics as the current round of the Program comes to a conclusion.

With this action, the Board clarifies that to implement the GAC advice that the NGPC accepted in February 2014, the following eight Category 1 Safeguards should be included in the .DOCTOR Registry Agreement:

1. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to comply with all applicable laws, including those

- that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
2. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars at the time of registration to notify registrants of the requirement to comply with all applicable laws.
 3. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.
 4. Registry Operators will proactively create a clear pathway for the creation of a working relationship with the relevant regulatory or industry self-regulatory bodies by publicizing a point of contact and inviting such bodies to establish a channel of communication, including for the purpose of facilitating the development of a strategy to mitigate the risks of fraudulent and other illegal activities.
 5. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.
 6. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring a representation that the registrant possesses any necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD.
 7. If a Registry Operator receives a complaint expressing doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with

- relevant national supervisory authorities, or their equivalents regarding the authenticity.
8. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to report any material changes to the validity of the registrants' authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Rationale Text Superseded

In adopting its response to the BGC recommendation, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- [GAC Beijing Communiqué](#) (April 2013); [GAC Durban Communiqué](#) (July 2013); [GAC Buenos Aires Communiqué](#) (November 2013); [GAC Singapore](#)

[Communiqué](#) (as amended) (March 2014); [GAC London Communiqué](#) (June 2014); [GAC Los Angeles Communiqué](#) (October 2014); [GAC Singapore Communiqué](#) (February 2015); [GAC Buenos Aires Communiqué](#) (June 2015)

- Applicant responses to GAC advice: <http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3:
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>
- [Reconsideration Request 15-3](#)
- Other correspondence related to implementation of the Category 1 Safeguard Advice from the GAC

The adoption of the Board’s resolution will have a positive impact on the community because it will provide greater clarity to the GAC, the applicants and the community about the implementation of the Public Interest Commitments applicable to the .DOCTOR TLD. This clarification will also allow the contending applicants for the .DOCTOR TLD to move forward with resolving the contention set.

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: Jamie Hedlund

Position: Vice President, Strategic Programs, Global Domain Division

Date Noted: 19 January 2016

Email: jamie.hedlund@icann.org

ICANN BOARD PAPER NO. 2016.02.03.2g

TITLE: **Establishing a Set of KPIs for Board Performance and Improvement Efforts (ATRT2 Rec. 1, 2 & 3)**

PROPOSED ACTION: **For Board Approval**

EXECUTIVE SUMMARY:

On June 26, 2014, the Board approved the ATRT2 recommendations (2014.06.26.14), which included Recommendations 1, 2 and 3 that directly relate to the Board’s performance and improvement efforts. ICANN has been progressing toward implementation of these recommendations since they were approved by the Board. As a final step in implementing these three ATRT2 Recommendations, the Board is now being asked to adopt an initial set of key performance indicators (KPIs), attached in Exhibit A to the Reference Materials, to measure those efforts. Note, however, as these measurement efforts become part of the standard operating procedures for the Board, the BGC has made clear that it will continue to develop a more comprehensive, richer set of KPIs with which the Board can measure its effectiveness over time, and which will be assessed, evaluated and revised as circumstances dictate.

BOARD GOVERNANCE COMMITTEE (BGC) RECOMMENDATION

The BGC recommends that the Board adopt the initial set of KPIs attached as Attachment A to the Reference Materials to this Board Paper, and to continue ongoing improvement efforts to develop a more comprehensive, richer set of KPIs with which the Board can measure its effectiveness over time.

PROPOSED RESOLUTION:

Whereas, on 26 June 2014, the ICANN Board accepted the recommendations of the Final Report of the Second Accountability and Transparency Review Team (ATRT2) published on December 31, 2013.

Whereas Recommendation 1 stated “The Board should develop objective measures for determining the quality of ICANN Board members and the success of Board improvement efforts, and analyze those findings over time.”

Whereas Recommendation 2 stated “The Board should develop metrics to measure the effectiveness of the Board’s functioning and improvement efforts, and publish the materials used for training to gauge levels of improvement.”

Whereas Recommendation 3 stated “The Board should conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time and should regularly assess Directors’ compensation levels against prevailing standards.”

Whereas, the Board Governance Committee (BGC) considered ATRT2 Recommendations and provided the Board with recommendations on implementation, including among other things the development of Key Performance Indicators to help measure the Board’s function and improvement efforts.

Whereas the Board recognizes the importance of measuring how well the Board functions, including its logistical aspects, and of measuring the Board’s improvement efforts.

Whereas, the Board is engaged, through the BGC, in an ongoing process to review the Board’s working practices and develop comprehensive and holistic KPIs and other relevant metrics with which the Board can measure its effectiveness and improvement over time.

Whereas the BGC has recommended that the Board accept a first set of KPIs specifically in response to the ATRT2 recommendations, with the understanding that additional and more comprehensive KPIs will continue being developed and modified over time as part of the BGC and the Board’s standard operating procedures and activities.

Resolved (2016.02.03.xx) the Board approves the KPIs set forth in Attachment 1 to the Reference Materials to this Board Paper, and agrees with the BGC that the Board should continue to develop a more comprehensive, richer set of KPIs and other relevant metrics with which the Board can measure its effectiveness and improvement over time.

PROPOSED RATIONALE:

The implementation of recommendations from the Second Accountability and Transparency Review Team (ATRT2) began in June 2014, shortly after the Board accepted the recommendations. The initial Implementation Plan scheduled the completion of Recommendations 1, 2 and 3 in June 2015, which was later revised to February 2016, to allow Board Governance Committee (BGC) to further discuss the overall process, including

the development of Key Performance Indicators (KPIs) to help measure the efforts called for in ATRT2 Recommendations 1, 2 and 3.

The BCG is working with the Board to review comprehensively the Board's performance and improvement efforts and to develop relevant and substantive KPIs to measure both. The first set of KPIs (see Attachment A to the Reference Materials to this Paper) that the Board has approved today was developed directly in response to the ATRT2 recommendations. However, the Board is dedicated to pursuing the development of even more meaningful KPIs as an ongoing effort to help improve the metrics by which the Board measures its performance overtime. Accordingly, the Board now considers this effort as part of its ongoing activities to help enhance its performance, which the BGC is tasked with in Section I.A of its charter (see <https://www.icann.org/resources/pages/charter-06-2012-02-25-en>).

With respect to ATRT 2 Recommendation 1, the Board has previously stated that it is difficult to determine the quality of individual Board members as this terminology could be interpreted in many different ways. In accepting this recommendation, the Board agreed to measure its improvement efforts (training programs) over time, which is what the first approved KPIs address.

With respect to ATRT 2 Recommendation 2, which is partly redundant to Recommendation 1, the proposed first KPIs measure the Board's current logistical functioning.

With respect to ATRT 2 Recommendation 3, the Board has previously indicated that it does not have access to the information related to the Board candidate pools, and in particular as it relates to the Nominating Committee candidates, that would allow for assessment or measurement by the Board of Board candidate qualifications.

Adopting this initial set of KPIs will have no direct fiscal impact on ICANN or the community that is not already budgeted, and will not have an impact on the security, stability and resiliency of the domain name system.

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

Submitted by: Melissa King / Vinciane Koenigsfeld
Position: VP Board Operations / Board Operations Content Manager
Date Noted: 26 January 2016
Email: melissa.king@icann.org; vinciane.koenigsfeld@icann.org

Pages 77 - 126 removed - Resolution and Rationale
Text Superseded

Directors and Liaisons,

Attached below please find the Notice of date and time for a Meeting of the ICANN Board of Directors:

3 February 2016 – Meeting of the ICANN Board of Directors - at 8:00 UTC (4:00pm in Singapore) – This Board meeting is estimated to last 90 minutes.

Note: timing of Board Meeting subject to change upon revisions to the overall Workshop schedule.

<http://www.timeanddate.com/worldclock/fixedit.html?msg=Regular+Meeting+of+the+ICANN+Board&iso=20160203T16&p1=236&ah=1&am=30>

Some other time zones:

3 February 2016 – 12:00am PST Los Angeles, CA

3 February 2016 – 3:00am EST Washington, D.C.

3 February 2016 – 9:00am CET Brussels

3 February 2016 – 4:00pm CST Taipei

3 February 2016 – 7:00pm AEDT Sydney

Consent Agenda

- **Approval of Board Meeting Minutes from 21 October 2015 and 22 October 2015 and Approval of Final New gTLD Program Committee Meeting Minutes from 18 October 2015**
- **RSSAC Co-Chair Appointments**
- **Redelegation of the .TG domain representing Togo to the Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P)**
- **Delegation of the .eu (“eu”) domain representing the European Union in Cyrillic script to EURid vzw/asbl**

- Delegation of the .澳門 (“Macao”) domain representing Macao in Traditional Chinese script to the Bureau of Telecommunications Regulation (DSRT)

Main Agenda

- Consideration of Independent Review Panel’s Final Declaration in *Merck kGaA v. ICANN*
- Reconsideration Requests 15-19 (the ICANN Business Constituency & the ICANN Noncommercial Stakeholder Group) and 15-20 (The Internet Commerce Association)
- Consideration of Expert Determination Re: Objection to Application for .HOSPITAL
- Ombudsman Report Regarding Complaint by Hu Yi Global Information Resources (applicant for .招聘 (“recruitment” in Chinese))
- GAC Advice: Dublin Communiqué (October 2015)
- Board Governance Committee Recommendation Regarding Implementation of Public Interest Commitments for .DOCTOR Registry Agreement
- Establishing a Set of KPIs for Board Performance and Improvement Efforts (ATRT2 Rec. 1, 2 & 3)
- USG IANA Stewardship Transition – Additional FY16 Expenses and Funding
- AOB

Executive Session – Confidential

- President and CEO FY16 SR1 At-Risk Compensation
- AOB

MATERIALS -- Once materials are available, you can find them Contact Information Redacted

Contact Information Redacted

If you have trouble with access, please let us know and we will work with you to assure that you can use the BoardVantage Portal for

this meeting.

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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