

AGENDA – 13 DECEMBER 2017 SPECIAL BOARD Meeting

Time, etc.	Agenda Item	Shepherd
Assembly, Roll Call & Consent Agenda Vote	1. Consent Agenda	
	1.a. Approval of Board Meeting Minutes from Regular and Organizational Meetings of 2 November 2017 & Regular Meeting of 29 October 2017	John Jeffrey
	1.b. Appointment of PTI President and Appointment of PTI Board Directors	Akram Atallah
Discussion & Decision	2. Main Agenda	
	2.a. Proposal from ICANN Org on: Options for handling Corp/Home/Mail applicants	Akram Atallah
	2.b. AOB	
	3. Executive Session – Confidential	
	3.a. President & CEO At Risk Compensation – FY18-SR1 FY18-SR2 Goals	Cherine Chalaby
	3.b. AOB	

ICANN BOARD PAPER NO. 2017-12-13.1b

TITLE: **PTI Governance Items – Appointment of PTI President;
Appointment of PTI Board Directors;**

PROPOSED ACTION: **For Decision**

EXECUTIVE SUMMARY:

As the sole member of PTI, ICANN has certain actions that it must take regarding the leadership and composition of the Board of PTI. The following items are recommended for ICANN Board action today:

- Appointment of the President of PTI
- Appointment of the Directors of the PTI Board

These are all necessary under the PTI Bylaws.

ICANN ORGANIZATION RECOMMENDATION:

The Board is recommended to take the following two actions on behalf of ICANN, the sole member of PTI:

- Appoint the new President of PTI
- Appoint of Directors of the PTI Board

BACKGROUND:

President of PTI

ICANN, as the sole member of PTI, is reserved the ability to name the President of PTI. The President of PTI, as defined in the PTI Bylaws, “shall be the general manager of the Corporation, and subject to the control of the [PTI] Board, shall supervise, direct and control the Corporation’s day-to-day activities, business and affairs. The President may delegate his or her responsibilities and powers subject to the control of the [PTI] Board. He or she shall have such other powers and duties as may be prescribed by the [PTI] Board, with the approval of the Member, or these Bylaws.”

Elise Gerich, the current President of PTI, announced her resignation earlier this year, and since that time, ICANN organization has conducted a search for the next Vice President, IANA and Technical Operations, to also serve as the new President of PTI. ICANN organization recommends that Kim Davies be appointed as the new President of PTI. The

PTI President also serves, *ex officio*, as a member of the PTI Board.

Appointment of PTI Board

In its role as the sole member of PTI, ICANN has the obligation to appoint all five members of the PTI Board.

In 2016, the ICANN Board fulfilled this appointment requirement through appointing Akram Atallah (ICANN's President, Global Domains Division), David Conrad (ICANN's Chief Technology Officer), Lise Fuhr and Jonathan Robinson to the PTI Board, alongside the *ex officio* selection of Elise Gerich as PTI President.

Under the PTI Bylaws, each of those directors was deemed as Initial Directors, and ICANN is required to make appointments to seats 1-4, as defined at Sections 5.5.1.1-5.5.1.4 of the PTI Bylaws.

For Seat 1 the ICANN Nominating Committee has recommended the appointment of Lise Fuhr. If appointed, Ms. Fuhr's term will end at the Annual Meeting of the Member in 2019.

For Seat 2, the ICANN Nominating Committee has recommended the appointment of Wei Wang. If appointed, Mr. Wang's term will end at the Annual Meeting of the Member in 2020.

For Seat 3, ICANN organization recommends the appointment of Akram Atallah. If appointed, Mr. Atallah's term will end at the Annual Meeting of the Member in 2019.

For Seat 4, ICANN organization recommends the appointment of David Conrad. If appointed, Mr. Conrad's term will end at the Annual Meeting of the Member in 2020.

The next time ICANN will have to make an appointment to the PTI Board (unless there is a vacancy) will be in 2019. At that point, all PTI Board appointments will be for three-year terms. Directors appointed to Seats 1 and 2 through the Nominating Committee process may only serve two consecutive terms. Directors serving in Seats 3 and 4 are not limited in the number of terms they may serve.

PROPOSED RESOLUTION:

Annual Meeting of the Member

Resolved (2017.12.13.xx), the ICANN Board confirms that this meeting is the Annual Meeting of the Member of Public Technical Identifiers (“PTI”).

PTI President

Whereas, pursuant to Section 7.2 of the PTI Bylaws, ICANN as the sole member is authorized to appoint a President of PTI.

Resolved (2017.12.13.xx), the ICANN Board, in its role as sole member of PTI, hereby appoints Kim Davies as the President of PTI.

PTI Board – Directors

Whereas, ICANN, in its role as sole member of PTI, has the obligation to appoint all members of the PTI Board in accordance with Article 5 of the PTI Bylaws.

Whereas, the PTI Bylaws, at Section 5.2.1, authorizes the PTI Board to have five Directors.

Whereas, ICANN, as the sole member of PTI, must appoint four Directors to the PTI Board, with two Directors being employees of ICANN or PTI, and two Directors being the candidates identified by the ICANN Nominating Committee, pursuant to Sections 5.5.1.1-5.5.1.4 of the PTI Bylaws.

Whereas, ICANN, as the sole member of PTI, must appoint the President of PTI to the PTI Board. Kim Davies has been appointed as President of PTI.

Whereas, the ICANN Nominating Committee announced its selection of Lise Katrine Fuhr to serve in Seat 1 of the PTI Board (a two-year term) and Wei Wang to serve in Seat 2 of the PTI Board (a three-year term).

Whereas, ICANN organization recommends that Akram Atallah, ICANN’s President, Global Domains Division serve in Seat 3 of the PTI Board (a two-year term) and David Conrad, ICANN’s Chief Technology Officer, serve in Seat 3 of the PTI Board (a three-year term), as the two Directors that are employees of ICANN or PTI.

Resolved (2017.12.13.xx), ICANN, in its role as sole member of PTI, appoints:

Lise Fuhr to Seat 1 of the PTI Board, with a term ending in accordance with Section 5.5.1.1 of the PTI Bylaws;

Wei Wang to Seat 2 of the PTI Board, with a term ending in accordance with Section 5.5.1.2 of the PTI Bylaws;

Akram Atallah to Seat 3 of the PTI Board, with a term ending in accordance with Section 5.5.1.3 of the PTI Bylaws;

David Conrad to Seat 4 of the PTI Board, with a term ending in accordance with Section 5.5.1.4 of the PTI Bylaws; and

Kim Davies is appointed as a Director of PTI with a term to coincide with his service as President of PTI.

Thanks to Departing Directors

Resolved (2017.12.13.xx), the ICANN Board thanks Elise Gerich for her service as the first PTI President and as a member of the PTI Board. The ICANN Board wishes her well in her future endeavors.

Resolved (2017.12.13.xx), the ICANN Board thanks Jonathan Robinson for his service as an Initial Director on the PTI Board, including his service as the first Chair of PTI of the Board. The ICANN Board wishes him well in his future endeavors.

PROPOSED RATIONALE

The resolutions taken here today fulfill ICANN's responsibility, as the sole member of PTI, to elect the President of PTI and appoint Directors to the Board, completing the initial terms required for the first year following the IANA stewardship transition. The appointment of the PTI Board (including the PTI President) will allow the PTI Board to continue its work subcontracting arrangements between PTI and ICANN.

The appointment of the PTI President and Board are taken fully in line with the obligations as set forth in the PTI Bylaws, and respectful of the community's recommendations of the proposed composition of the Board.

These actions confirm ICANN's continued commitment to its Bylaws as adopted on 1 October 2016 and ICANN's obligations surrounding the performance of the IANA Functions that are contracted to PTI. This also directly serves ICANN's mission to ensure the stable and secure operations of the Internet's unique identifiers, and serves the public interest in the continued stable performance of the IANA functions.

None of the actions taken today are anticipated to have any impact on the security, stability or resiliency of the DNS, though PTI is essential to ICANN's security, stability and resiliency work. There are resource implications in supporting PTI, which are reflected in the PTI, IANA and ICANN Budgets.

The appointment of the PTI President and the appointment of the PTI Board are Organizational Administrative Functions for which public comments were not necessary.

Signature Block:

Submitted by: Samantha Eisner

Position: Deputy General Counsel

Date Noted: 5 December 2017

Email: Samantha.eisner@icann.org

ICANN BOARD INFO PAPER NO. 2017-12-13-2a

TITLE: Options for Addressing the New gTLD Program Applications for .CORP, .HOME, and .MAIL

PROPOSED ACTION: For Board Information and Discussion

EXECUTIVE SUMMARY:

This briefing outlines potential options for the Board to consider to address open applications from the New gTLD Program for .CORP, .HOME, and .MAIL. In the 2012 round of the New gTLD Program, 24 applications were submitted for the strings .CORP, .HOME, and .MAIL. In light of the recommendations made in the JAS Report¹, SAC062², and SAC066³ concerning name collisions, the New gTLD Program Committee (NGPC) adopted a “Name Collision Management Framework” on 30 July 2014⁴. The Framework calls for ICANN to “defer delegating [these] strings indefinitely”. Since implementation of the Framework there has been no further information on name collisions or the potential risks of delegating these strings to prompt the Board to revisit this indefinite deferral.

On 2 November 2017, the ICANN Board adopted a resolution on .CORP, .HOME, and .MAIL and other collision strings⁵ which states that “the ICANN Board wishes to provide additional clarity to these applicants and the ICANN community on the issue of name collision and high-risk strings”. This resolution requested the SSAC to conduct a study and present risks posed by the delegation of .CORP, .HOME and .MAIL to the root and to provide options as how to mitigate such risks. Additionally, the Board requested the SSAC to study other possible reasons for name collision, and to suggest potential methods to mitigate those risks.

The findings and recommendations prompting the Board’s previous action on .CORP, .HOME, and .MAIL have not changed and are expected to continue to be applicable in the near term. Based on this, the organization understands that the Board does not intend to delegate the .CORP, HOME and .MAIL strings before the end of the current round of the New gTLD program.

¹ See <https://www.icann.org/en/system/files/files/name-collision-mitigation-study-06jun14-en.pdf>

² See <https://www.icann.org/en/system/files/files/sac-062-en.pdf>

³ See <https://www.icann.org/en/system/files/files/sac-066-en.pdf>

⁴ See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en#1.a>

⁵ See <https://www.icann.org/resources/board-material/resolutions-2017-11-02-en#2.a>

Contemplating this outcome, the 2 November 2017 resolution also directed the President and CEO to “provide options for the Board to consider to address the New gTLD Program applications for .CORP, .HOME, and .MAIL.”

Pursuant to this request, the ICANN org is presenting options to the Board to address the outstanding applications for .CORP, .HOME, and .MAIL. The options presented to the Board take into account two key questions:

- 1) What type of refund should be provided to the applicants?
- 2) Should the applicants receive priority over other applications for these strings in any subsequent round of the New gTLD Program?

DISCUSSION OF QUESTIONS FOR ADDRESSING NEW GTLD PROGRAM APPLICATIONS FOR .CORP, .HOME, AND .MAIL

Question 1: What type of refund should be provided to the applicants?

The Applicant Guidebook (AGB) for the New gTLD Program contemplated that not all applications would pass evaluation (Initial or Extended Evaluation), and applicants acknowledged the Terms and Conditions in the AGB establishing that “ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN’s discretion.” Before applying, all applicants were aware of the possibility that there was a potential for not passing evaluation, including the string reviews, and not being eligible for delegation. Therefore, one option is to provide a standard refund amount based on the refund schedule provided in AGB Section 1.5.1.

Providing a standard refund to the remaining applications most closely adheres to the terms that all applicants agreed to when applying to the New gTLD Program in 2012. It was forecasted in the New gTLD Program budget that 21 of the 24 applications for .CORP, .HOME, and .MAIL would be withdrawn. Four applications were withdrawn between March 2013 and June 2013 before the release of their Initial Evaluation results. In accordance with the AGB refund schedule, these applicants each received a refund of \$130,000. The cost of providing standard refunds for the remaining 20 applications still on hold versus the forecasted refund amount is broken down in Reference Table 3 of the Reference Materials.

Although the issue of name collision was described in AGB Section 2.2.1.3, applicants were not aware before the application window that the strings .CORP, .HOME, and .MAIL would be identified as high-risk, and that the delegations of such high-risk strings would be deferred indefinitely. To offset this unforeseen impact to application processing, the Board may wish to consider providing the applicants with a full refund of the \$185,000 USD application fee instead of a standard refund amount. The table below breaks down the difference in cost between providing the full refund amount versus the amount forecasted in the New gTLD Program budget.

Difference between Full and Forecasted Refund Costs	
Full refund amount (20 x \$185,000)	\$3,700,000
Forecasted refund amount (20 x \$65,000)	\$1,300,000
Difference between forecasted and full (\$1,300,000 - \$3,700,000)	-\$2,400,000

The Board may also wish to consider that, in the 2000 proof-of-concept application round, ICANN offered the option of an application fee credit to certain eligible applicants.⁶ The AGB defined the requirements for 2000 proof-of-concept round applicants to receive an application fee credit in Section 1.5.1 of the AGB. Applicants from the 2000 proof-of-concept round that received an application fee credit confirmed that they did not have any “legal claims arising from the 2000 proof-of-concept process.” Accordingly, other/new applicants could apply for the string in the 2012 application round, which could result in an applicant from the 2000 proof-of-concept round being placed into direct contention with other applications.

Finally, the Board may wish to consider that providing a full refund or any similar alternative may constitute a change to the AGB and New gTLD Program rules. In Section 1.2.11 and the Terms and Conditions of the application, the AGB provides for ICANN “to make reasonable updates and changes to the Applicant Guidebook at any time”. However, should the Board move forward with changing the AGB, doing so will likely have an impact stretching beyond the applications for .CORP, .HOME, and .MAIL. The Board may wish to consider that such a change could require input from the community, and a public comment may be required before proceeding.

⁶ See <http://archive.icann.org/en/tlds/app-index.htm>.

Question 2: Should the applicants receive priority over other applicants for these strings in any subsequent round of the New gTLD Program?

The AGB does not account for applications that are not eligible for delegation to be provided priority in any subsequent round of the New gTLD Program. As such, the Board is not required to grant priority in a subsequent round to applicants from the 2012 round. Not granting priority avoids potential complexity associated with establishing procedures and rules for granting priority. ICANN has not offered priority to any other current applicants; doing so now may have implications for other applicants in the New gTLD Program who were not eligible to proceed but may wish to have priority in a subsequent round. The Board may also wish to consider that granting priority may require input from the community through public comment and may even be an issue that should be addressed through the policy development process. Finally, by not granting priority to these applications in a subsequent round other potential registries can be considered who may be better suited to running the TLDs.

However, because the applicants for .CORP, .HOME, and .MAIL have already expressed their intent to run these TLDs, the Board may wish to provide these applicants priority in a subsequent round of the New gTLD Program to account for the fact that it was unforeseen that delegation of these strings would be deferred indefinitely. If the Board does not grant priority, and it is later determined that the strings are delegable, these applicants would be required to compete against applicants who had not participated in the 2012 New gTLD Program.

THE OPTIONS FOR ADDRESSING NEW GTLD PROGRAM APPLICATIONS FOR .CORP, .HOME, AND .MAIL

Based on the two questions above, the ICANN org has provided four (4) options for the Board's consideration. A table of pros/cons has also been provided in the Reference Materials accompanying this briefing.

- **Option 1:** Applicants receive standard refund upon withdrawal and no priority in the next round.
- **Option 2:** Applicants receive standard refund upon withdrawal but priority in the subsequent round.

- **Option 3:** Applicants receive full refund upon withdrawal but no priority in the subsequent round.
- **Option 4:** Applicants receive full refund upon withdrawal and priority in the subsequent round.

NEXT STEPS

The Board is being asked to consider the options above. If the Board is interested in pursuing any of the options, the ICANN org can prepare a resolution paper for the Board's meeting in January 2018, directing the President and CEO to implement the desired option.

Signature Block:

Submitted by: Akram Atallah

Position: President, Global
Domains Division

Date Noted: XX December 2017

Email: akram.atallah@icann.org

REFERENCE MATERIALS – BOARD INFO PAPER NO. 2017.12.13.2a

TITLE: Options for Addressing the New gTLD Program Applications for .CORP, .HOME, and .MAIL

Option 1 – Applicants receive <u>standard</u> refund upon withdrawal and <u>no</u> priority in the next round.		Option 2 – Applicants receive <u>standard</u> refund upon withdrawal but <u>priority</u> in the subsequent round.		Option 3 – Applicants receive <u>full</u> refund upon withdrawal but <u>no</u> priority in the subsequent round		Option 4 - Applicants receive <u>full</u> refund upon withdrawal and <u>priority</u> in the subsequent round.	
Pro	Con	Pro	Con	Pro	Con	Pro	Con
Adheres to AGB. Can be implemented using existing policy and processes.	Does not accommodate applicants for unforeseen delays in application processing.	Accommodates applicants for the unforeseen delays in application processing.	Priority requires development of procedures and must align with policies for subsequent round. May require public comment.	Accommodates applicants for the unforeseen delays in application processing.	The cost of full refunds for all 20 applications differs by \$2.4 million from forecasted amount.	Accommodates applicants for the unforeseen delays in application processing.	The cost of full refunds for all 20 applications differs by \$2.4 million from forecasted amount.
Refund amount forecasted in New gTLD Program budget.		Refund amount forecasted in New gTLD Program budget.	Priority might need to be addressed through the policy development process.		Full refund may constitute a change of the AGB. May require public comment.		Priority requires development of procedures and must align with policies for subsequent round. May require public comment.
							Priority might need to be addressed through the policy development process.
							Full refund may constitute a change of the AGB. May require public comment.

REFERENCE MATERIALS – BOARD INFO PAPER NO. 2017.12.13.2a

TITLE: Options for Addressing the New gTLD Program Applications for .CORP, .HOME, and .MAIL

Reference Table 1. Breakdown of .HOME, .CORP, .MAIL Applications as of 6 December 2017

TLD	On-hold Applications	Withdrawn Applications¹	Total Applications
HOME	10	1	11
CORP	5	1	6
MAIL	5	2	7
Total	20	4	24

Reference Table 2. Applicant Guidebook-defined Refund Schedule

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 Days of a GAC Early Warning	80%	\$148,000
After posting of applications until posting of Initial Evaluation results	70%	\$130,000
After posting Initial Evaluation results	35%	\$65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	\$37,000
After the applicant has entered into a registry agreement with ICANN	0%	None

¹ These four withdrawals were completed between March 2013 and June 2013. In accordance with the standard refund schedule defined in the AGB, because the applications were withdrawn before the release of their Initial Evaluation results, the applicants each received a refund of \$130,000.

Reference Table 3. Comparison of Standard, Forecasted and Full Refund Costs

Option	Program Processes Completed	Eligible Refund Amount	# Applications	Total by Process
Standard Refund	Only Initial Evaluation	\$65,000	5	\$325,000
	Objections or Extended Evaluation	\$37,000	15	\$555,000
Standard refund amount				\$880,000
Forecasted refund amount (20 x \$65,000)				\$1,300,000
Difference between forecasted and standard (\$1,300,000 - \$880,000)				+\$420,000
Full Refund	Only Initial Evaluation	\$185,000	5	\$925,000
	Objections or Extended Evaluation	\$185,000	15	\$2,775,000
Full refund amount (20 x \$185,000)				\$3,700,000
Forecasted refund amount (20 x \$65,000)				\$1,300,000
Difference between forecasted and full (\$1,300,000 - \$3,700,000)				-\$2,400,000

Directors and Liaisons,

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

13 December 2017 – Special Meeting of the ICANN Board of Directors - at 21:00 UTC. This Board meeting is estimated to last approximately 90 minutes.

<https://www.timeanddate.com/worldclock/fixetime.html?msg=Special+Meeting+of+the+ICANN+Board&iso=20171213T21&p1=1440&ah=2>

Some other time zones:

13 December 2017 - 01:00pm PST Los Angeles

13 December 2017 - 04:00pm EST Washington, D.C.

13 December 2017 - 10:00pm CEST Brussels

14 December 2017 - 06.00am JST Tokyo

SPECIAL MEETING OF THE ICANN BOARD

Agenda

- Approval of Board Meeting Minutes
 - a) 2 Nov Regular Meeting
 - b) 2 Nov Organizational Meeting
 - c) 29 Oct Regular Meeting
- Appointment of PTI President
- Appointment of PTI Board Member
- Discussion of Options for Handling .Home/.Corp/.Mail new gTLD Applications
- AOB

Note: 30 minutes at the end of this Board Meeting is reserved for private session.

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

Contact Information Redacted

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

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

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

John Jeffrey

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