

ICANN BOARD PAPER NO. [To be assigned by the Secretary]

TITLE: **Appointment of Andrey Kolesnikov to the Security and Stability Advisory Committee**

PROPOSED ACTION: **Resolution For Consent Agenda**

EXECUTIVE SUMMARY:

The Chair of the Security and Stability Advisory Committee (SSAC) respectfully requests the appointment of Andrey Kolesnikov as new Committee members.

COMMITTEE RECOMMENDATION:

The Committee desires the appointment of Andrey Kolesnikov to the SSAC.

PROPOSED RESOLUTION:

Whereas, the Security and Stability Advisory Committee (SSAC) reviews its membership and makes adjustments from time-to-time.

Resolution Text Superseded

PROPOSED RATIONALE:

The SSAC is a diverse group of individuals whose expertise in specific subject matters enables the SSAC to fulfil its charter and execute its mission. Since its inception, the SSAC has invited individuals with deep knowledge and experience in technical and security areas that are critical to the security and stability of the Internet's naming and address allocation systems.

The SSAC's continued operation as a competent body is dependent on the accumulation of talented subject matter experts who have consented to volunteer their time and energies to the execution of the SSAC mission.

Andrey has been active in ICANN for some years and is known to a number of SSAC members through his work as CEO of the Coordination Centre for Russian Federation Top Level Domains and more recently his involvement in IoT technologies, standards and protocols. He brings expertise in ccTLD operations, Internationalized Domain Names and IoT and a well-developed ability to network in multicultural and multilingual environments.

The SSAC believes Andrey Kolesnikov would be a significant contributing member of the SSAC.

This resolution is an organizational administrative function for which no public comment is required. The appointment of SSAC members is in the public interest and in furtherance of ICANN's mission as it contributes to the commitment of the ICANN to strengthen the security, stability, and resiliency of the DNS.

Submitted by: Ram Mohan
Position: Liaison to the ICANN Board from the Security & Stability
Advisory Committee
Date Noted: 9 April 2018
Email: mohan@afilias.info

ICANN BOARD PAPER NO. 2018.04.XX.XX [To be assigned by the Secretary]

TITLE: **Approval of GNSO Noncommercial Users
Constituency Bylaws Amendments**

PROPOSED ACTION: **For Consent Agenda**

EXECUTIVE SUMMARY:

The ICANN Bylaws (Article 11, Section C) state, " Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board." The ICANN Board follows a process through which it formally approves any GNSO Stakeholder Group and/or Constituency Charter amendments in order to support the maintenance of recognition.

In late May 2017, the Noncommercial Users Constituency (NCUC) approved amendments to its governing documents and availed itself of the four-phase Board [*Process For Amending GNSO Stakeholder Group and Constituency Charters*](#) (*hereinafter "Process"* - see Appendix A accompanying this paper).

Having determined that all necessary steps of the Process to this point have been satisfied (see Appendix B accompanying this paper), this paper reflects the recommendation of the Board's Organizational Effectiveness Committee (OEC) that the full Board approve the proposed NCUC Charter amendments.

COMMITTEE RECOMMENDATION:

Now that all but the final steps of the Board's Process have been fully satisfied, the OEC recommend that the Board approves the proposed amendments to the NCUC Charter.

The proposed amendments reflect an effort to improve the NCUC's internal processes, as well as the group's structure itself with a focus on clarifying membership eligibility matters. The NCUC also includes a new chapter detailing new mechanisms to ensure NCUC fulfillment of its obligations as part of the new ICANN Empowered Community.

PROPOSED BOARD RESOLUTION

Whereas, the ICANN Bylaws (Article 11, Section 11.5 c) state, " Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board”;

Whereas, the Board has established a *Process For Amending GNSO Stakeholder Group and Constituency Charters (hereinafter “Process”)*;

Whereas, the GNSO Noncommercial Users Constituency (NCUC), ICANN Staff, and the Organizational Effectiveness Committee (OEC) have completed all steps identified in the Process to date, including a determination that the proposed changes will not raise any fiscal or liability concerns for the ICANN organization, and the OEC has recommended that the Board approve the proposed changes.

RESOLVED (2018.04.XX.XX), the ICANN Board approves the NCUC Charter Amendments as documented in this paper and attachments. The ICANN President and CEO (or his designee) is directed to communicate this resolution with the leadership of the NCUC, and the NCUC and the ICANN President and CEO (or his designee) is directed to provide access to the updated NCUC Charter on the appropriate ICANN and NCUC web pages.

PROPOSED RATIONALE:

Why is the Board addressing this issue now?

The ICANN Bylaws (Article 11, Section 11.5 c) state, " Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board;” The ICANN Board follows a process through which it formally approves any GNSO Stakeholder Group and/or Constituency Charter amendments in order to support the maintenance of recognition.

In September 2013, the Board established a [Process For Amending GNSO Stakeholder Group and Constituency Charters](#) (“Process”) to provide a streamlined methodology for compliance with the Bylaws requirement.

In May 2017, the Noncommercial Users Constituency (NCUC) of the GNSO approved amendments to its governing documents and availed itself of the Process.

What are the proposals being considered?

The Noncommercial Users Constituency has substantially amended its existing Charter document to adjust to an evolving composition of membership and to enable it to more effectively undertake its policy development responsibilities. Among a number of amendments, the most substantial charter changes are in the following areas:

- 1) Align various provisions with the charter of the Non-Commercial Stakeholders Group;
- 2) Addition of a complete new chapter that thoroughly details new mechanisms to help the NCUC fulfill its obligations as part of the new ICANN empowered community;
- 3) Clarified areas of NCUC membership eligibility – particularly the definition of eligible membership organizations and matters regarding non-eligible organizations;
- 4) Expanded provisions obliging NCUC members to disclose instances of support from ICANN or specific parts of the ICANN community;
- 5) Expanded details on NCUC Executive Committee including: added details on the duties and expectations for regional representatives on the NCUC Executive Committee; expanded provisions for the removal of NCUC officers; creation of a new Vice Chair role – replacing the Secretary-Treasurer role; and additional details provided about the role of the NCUC Treasurer.

What stakeholders or others were consulted?

In addition to extensive community deliberations within the NCUC, the proposed amendments were subjected to a 41-day Public Comment period (24 August – 3 October 2017). When the period was completed, ICANN org produced a Summary Report for community and Board OEC review on 4 October 2017.

What significant materials did the Board review?

Board members reviewed of the proposed charter amendments, a copy of the red-lined version of the proposed charter amendments following the initial staff review prior to the public comment proceeding, and a copy of the Staff Summary Report summarizing community comments.

What factors did the Board find to be significant?

The GNSO Noncommercial Users Constituency, ICANN Staff, and the Organizational Effectiveness Committee completed all steps identified in the Process including a determination that the proposed charter amendments will not raise any fiscal or liability concerns for the ICANN organization and publication of the amendments for community review and comment. The OEC has recommended to the Board that the NCUC Charter amendments be approved.

Are there Positive or Negative Community Impacts?

The NCUC has amended its existing Charter document to adjust to an evolving composition of membership and to enable it to more effectively undertake its policy development responsibilities.

Are there fiscal impacts/ramifications on ICANN (Strategic Plan, Operating Plan, Budget); the community; and/or the public?

There are no anticipated fiscal impact/ramifications on ICANN or individual community members within the amendments supplied. The amendments supplied align with ICANN's mission and meet the public interest by way of updating the fundamental governance document for one of the ICANN Board-recognized constituency groups.

Are there any Security, Stability or Resiliency issues relating to the DNS?

There is no anticipated impact from this decision on the security, stability and resiliency of the domain name system as a result of this decision.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

The proposed amendments were subjected to a 41-day Public Comment period (24 August to 3 October 2017).

Signature Block:

Submitted by: David Olive; Benedetta Rossi

Position: Senior Vice President, Policy Development Support; Manager, Policy Support and Community Services

Date Noted: 10 April 2018

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APPENDIX A

SUMMARY OF GNSO CHARTER AMENDMENT PROCESS (Excerpts)

On 28 September 2013, the ICANN Board established a process for the amendment of GNSO Stakeholder Group and Constituency Charters. That process is as follows:

Phase I: Amendment Preparation

GNSO Stakeholder Groups (SGs) and Constituencies should formulate charter amendments through their own internal processes and notify ICANN Staff as early as practicable (at policy-staff@icann.org) upon initiation and completion (approval) of such efforts.

Phase II: Staff Review

Upon formal receipt of the proposed amendment(s) approved by the community group, ICANN staff will analyze the proposal and, within 10 business days, submit the community proposal with a report to the appropriate Board committee identifying any fiscal or liability concerns.

Phase III: Public Comments

After Board committee review of the Staff report and the proposed charter amendments, the Board committee will direct the opening of a Public Comment Forum. Upon completion of the Forum, within 30 calendar days, staff will provide a report to the Board committee summarizing the community feedback.

Phase IV: Board Review

At the next available opportunity after the delivery and publication of the staff report, the appropriate Board committee shall review the proposed charter amendments, the staff report and any community feedback and make a recommendation to the Board.

After receiving a recommendation from the committee, the Board shall either:

- I.** Recognize the proposed charter amendment by a simple majority vote; or
- II.** Reject the proposed amendment by a supermajority (2/3) vote and provide a specific rationale for its concerns.
- III.** If neither above condition is met, the Board will ask for further explanation of the proposed amendments by the community.

In its review of the proposed amendments, the ICANN Board may ask questions and otherwise consult with the affected SG or Constituency. If it is not feasible for the Board to take action on the proposed amendments after two meetings, the Board shall report to the affected SG or Constituency the circumstance(s) that prevented it from making a final action and its best estimate of the time required to reach an action. That report is deemed an "action" under this process. If it is not feasible for the Board to take action on the proposed amendments after four meetings (or after a total of six scheduled meetings), the proposed community amendments will be deemed effective.

APPENDIX B

Specific Business Constituency Charter Amendment Process Steps

A. PROCESS TO DATE

- 1) The NCUC has completed **Phase I** of the Process, voted to amend its governing Charter and formally advised Staff via email on 28 May 2017.
- 2) As part of its **Phase II** process responsibilities, ICANN staff conducted a review of the document, with policy staff examining the language, form and structure of the document and the legal team making an assessment of any potential fiscal or liability concerns in the proposed changes.
- 3) As part of its **Phase II** Process responsibilities, Staff reviewed and assessed the proposed changes and advised the OEC that the proposed changes do not appear to raise any fiscal or liability concerns for the ICANN organization.
- 4) The OEC directed staff to post the proposed amendments to an ICANN Public Comments Forum for community review and comment (**Phase III** of the Process).
- 5) A 41-day Public Comment period (24 August – 2 October 2017) was completed and staff produced a Summary Report for community and Board review on 17 October 2017, and an Issue Tracking Checklist. All issues on the Issues Tracking Checklist have been resolved.

SUMMARY OF AMENDMENTS

Attached you will find a document titled *Bylaws of the Noncommercial Users Constituency (2017)*, which reflects the NCUC's proposed new bylaws documentation. The document is the culmination of extensive work by the NCUC leadership and follow-up dialogue with the ICANN staff before, during and after the ICANN58 meeting in Copenhagen.

Among a number of changes noted by staff, the amended bylaws:

- Align various provisions with the charter of the Non-Commercial Stakeholders Group;
- Add a complete new chapter that thoroughly details new mechanisms to help the NCUC fulfill its obligations as part of the new ICANN empowered community;
- Clarify areas of NCUC membership eligibility – particularly the definition of eligible membership organizations and matters regarding non-eligible organizations;
- Expand provisions obliging NCUC members to disclose instances of support from ICANN or specific parts of the ICANN community;

- Add details on the duties and expectations for regional representatives on the NCUC Executive Committee;
- Expand provisions for the removal of NCUC officers;
- Create a new Vice Chair role – replacing the Secretary-Treasurer role;
- Provide more detail about the role of the NCUC Treasurer; and
- Add more detail about the role and activities of the NCUC Policy Committee.

Reviewers of the new revised governance document should consider scrutinizing it as though it were freshly created.

Accompanying this document you will find a document titled *Bylaws of the Noncommercial Users Constituency (2017)*, which reflects the NCUC’s proposed amendments in a “clean” format. You will also find a second document attached titled *Bylaws of the Noncommercial Users Constituency (2017) – With Responses* which includes margin comments supplied by the NCUC Executive Committee following an initial review of the updated bylaws by Staff. The NCUC Executive Committee reviewed all comments and submitted an updated version of the bylaws with their comments to show which staff suggested amendments were included in their new version and reasons for those which were discarded.

Also attached is a copy of the staff Summary Report that reviews and summarizes the community feedback submitted during the public comment forum, as well as an Issue Tracking Checklist Document outlining all issues, comments or recommendations flagged during the public comment proceeding. All issues raised by commenters have been resolved through a review and written responses provided by the NCUC ExCom.

III. REPORT OF FISCAL OR LIABILITY CONCERNS

The Policy and Legal staff teams at ICANN organization reviewed the entire document before and after the ICANN59 Johannesburg meeting period. Staff has concluded that there are no fiscal or liability concerns for ICANN with the NCUC’s proposed amendments.

Both Policy and Legal staff members can be available to discuss any aspects of their work on this matter to date and to address any questions or comments that OEC members may have regarding this matter.

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ICANN BOARD PAPER NO. [To be assigned by the Secretary]

TITLE: **New GNSO Voting Thresholds to Address Post-Transition Roles and Responsibilities of the GNSO as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN Bylaws**

PROPOSED ACTION: **For Board Resolution**

EXECUTIVE SUMMARY:

During its meeting on 30 January 2018, the GNSO Council resolved unanimously (<https://community.icann.org/display/gnsocouncilmeetings/Motions+30+January+2018>) to recommend that the ICANN Board of Directors adopt the proposed changes to section 11.3.i of the ICANN Bylaws to reflect additional GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House (see <https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gnso-redline-19jun17-en.pdf>). These additional voting thresholds are intended to address all the new or additional rights and responsibilities in relation to participation of the GNSO as a Decisional Participant in the Empowered Community to fully implement these new or additional rights and responsibilities as they appear in the revised GNSO Operating Procedures published on 30 January 2018 (see <https://gnso.icann.org/en/council/op-procedures-30jan18-en.pdf>).

On 15 March 2018, the Board directed ICANN Organization to post for public comment for a period of at least 40 days the Standard Bylaw Amendment reflecting proposed additions to section 11.3.i of the ICANN Bylaws to establish additional GNSO voting thresholds (see <https://features.icann.org/new-gnso-voting-thresholds-address-post-transition-roles-and-responsibilities-gnso-decisional>.) ICANN

Organization opened a public comment period on 26 March 2018. At the close of the public comment period on 05 May 2018, per the ICANN Organization's [report](#) there were five comments. Of these comments, the Registries Stakeholder Group (RySG), the Registrars Stakeholder Group (RrSG), the Non-Commercial Stakeholder Group (NCSG), the Business Constituency (BC), and the Intellectual Property Constituency

(IPC) supported the proposed additions to section II.3.i. Although the BC restated its position that “GNSO Council is not the appropriate vehicle for GNSO to exercise Empowered Community rights and responsibilities”, and the IPC noted a reservation with regards to application of the voting threshold outside the scope of the policy development process, the BC states that it “supports the recommended voting thresholds and changes to Bylaws” and the IPC states that it “is in favor of the GNSO Council’s resolution to make needed changes to Section 11.3.i of the ICANN Bylaws, and urges for this proposal’s adoption by the ICANN Board.” The RySG also suggested a minor rewording of section II.3.i to improve clarity.

With public comment completed, the Board is now considering the proposed amendment for adoption. Per Article 2 of Annex D of the ICANN Bylaws, Standard Bylaw Amendments, if the Board of Directors approves this amendment, the Empowered Community will have an opportunity to initiate a rejection action.

ICANN ORGANIZATION RECOMMENDATION:

The ICANN Organization recommends that the ICANN Board of Directors approve the amendment of the ICANN Bylaws to include the proposed changes to section 11.3.i of the ICANN Bylaws to reflect additional GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House (see <https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gns0-redline-19jun17-en.pdf>). These additional voting thresholds are intended to address all the new or additional rights and responsibilities in relation to participation of the GNSO as a Decisional Participant in the Empowered Community to fully implement these new or additional rights and responsibilities as they appear in the revised GNSO Operating Procedures published on 30 January 2018 (see <https://gns0.icann.org/en/council/op-procedures-30jan18-en.pdf>). Furthermore, the ICANN Organizations recommends that the proposed section II.3.i. should be reworded as recommended by the RySG as detailed in the Report of the public comments. There will be an opportunity for the Empowered Community to reject the Board’s approval.

PROPOSED RESOLUTION:

Whereas, during its meeting on 30 January 2018, the GNSO Council resolved (<https://community.icann.org/display/gnsocouncilmeetings/Motions+30+January+2018>) to recommend that the ICANN Board of Directors adopt the proposed changes to section 11.3.i of the ICANN Bylaws to reflect new GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House (see <https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gnso-redline-19jun17-en.pdf>).

Whereas, the addition of voting thresholds to section 11.3.i of the ICANN Bylaws as proposed by the GNSO constitutes a “Standard Bylaw Amendment” under [Section 25.1 of the Bylaws](#).

Whereas, the ICANN Bylaws require that Standard Bylaw Amendments be published for public comment prior to the approval by the Board, and on 15 March 2018 the ICANN Board of Directors directed these proposed amendments to be posted for public comment (see <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#1.c>). The public comment was opened on 26 March 2018 and closed on 05 May 2018. Per the ICANN Organization’s [report](#) there were five comments received. Of these comments, Registries Stakeholder Group (RySG), the Registrars Stakeholder Group (RrSG), the Non-Commercial Stakeholder Group (NCSG), the Business Constituency (BC) and the Intellectual Property Constituency (IPC) supported the proposed additions to section II.3.i. Although the BC restated its position that “GNSO Council is not the appropriate vehicle for GNSO to exercise Empowered Community rights and responsibilities”, and the IPC noted a reservation with regards to application of the voting threshold outside the scope of the policy development process, the BC states that it “supports the recommended voting thresholds and changes to Bylaws” and the IPC states that it “is in favor of the GNSO Council’s resolution to make needed changes to Section 11.3.i of the ICANN Bylaws, and urges for this proposal’s adoption by the ICANN Board.” The RySG also suggested a minor rewording of section II.3.i to improve clarity.

Whereas, after taking public comments into account, the Board considered the proposed amendment for adoption.

Resolved (2018.xx.xx.xx), the ICANN Board of Directors approves the amendment of the ICANN Bylaws to include the proposed changes to section 11.3.i of the ICANN Bylaws, including the rewording for clarity proposed by the RySG, to reflect additional GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House to address all the new or additional rights and responsibilities in relation to participation of the GNSO as a Decisional Participant in the Empowered Community.

PROPOSED RATIONALE:

The action being approved today is the amendment of the ICANN Bylaws to include the proposed changes to section 11.3.i of the ICANN Bylaws to reflect additional GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House (see <https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gns-redline-19jun17-en.pdf>). These additional voting thresholds are intended to address all the new or additional rights and responsibilities in relation to participation of the GNSO as a Decisional Participant in the Empowered Community to fully implement these new or additional rights and responsibilities as they appear in the revised GNSO Operating Procedures published on 30 January 2018 (see <https://gns.icann.org/en/council/op-procedures-30jan18-en.pdf>). Per Article 2 of Annex D of the ICANN Bylaws, Standard Bylaw Amendments, the Board approval of these amendments then provides the Empowered Community an opportunity to consider if it will initiate a Rejection Action.

These Bylaw amendments are the result of a process that was initiated when on 27 May 2016 the ICANN Board adopted a set of new ICANN Bylaws that reflect changes needed to implement the IANA Stewardship Transition Proposal. Following the completion of the transition, the GNSO Council recognized that changes may need to be made to the GNSO's current Operating Procedures and related mechanisms and to the ICANN Bylaws. The goal was to give effect to the new roles and obligations of the

GNSO under the new ICANN Bylaws, including but not limited to the GNSO's participation in the Empowered Community.

The GNSO Council tasked the GNSO Rights & Obligations Under Revised Bylaws Drafting Team to put forward recommendations for changes to ICANN Bylaws and GNSO Operating Procedures to enable effective GNSO participation in ICANN activities. The GNSO Council [accepted](#) the Drafting Team's recommendations, which were translated into changes in the GNSO Operating Procedures and additional voting thresholds in section 11.3.i of the ICANN Bylaws. During its meeting on 30 January 2018, the GNSO Council resolved unanimously (<https://community.icann.org/display/gnsocouncilmeetings/Motions+30+January+2018>) to recommend that the ICANN Board of Directors adopt the proposed amendments to the ICANN Bylaws.

On 15 March 2018, the Board directed ICANN Organization to post for public comment for a period of at least 40 days the Standard Bylaw Amendment reflecting proposed additions to section 11.3.i of the ICANN Bylaws to establish additional GNSO voting thresholds (see <https://features.icann.org/new-gnso-voting-thresholds-address-post-transition-roles-and-responsibilities-gnso-decisional>.) ICANN Organization opened a public forum on 26 March 2018. At the close of the public comment period on 05 May 2018, per the ICANN Organization's [report](#) there were five comments received. Of these comments, the RySG, the RrSG, the NCSG, the BC, and the IPC supported the proposed additions to section II.3.i. Although BC restated its position that "GNSO Council is not the appropriate vehicle for GNSO to exercise Empowered Community rights and responsibilities", and the IPC noted a reservation with regards to application of the voting threshold outside the scope of the policy development process, the BC states that it "supports the recommended voting thresholds and changes to Bylaws" and the IPC states that it "is in favor of the GNSO Council's resolution to make needed changes to Section 11.3.i of the ICANN Bylaws, and urges for this proposal's adoption by the ICANN Board." The RySG also suggested a minor rewording of section II.3.i to improve clarity.

With the public comment completed, the Board is now considering the proposed amendment for adoption. In taking this action, the Board has considered the amendment

to the ICANN Bylaws as forwarded by the GNSO Council, the public comments, and the ICANN Organization's public comment report.

There is no anticipated fiscal impact from adopting the proposed changes to the Bylaws. Approval of the resolution will not impact the security, stability and resiliency of the domain name. This action is consistent with ICANN's mission and serves the public interest by supporting the effectiveness and ongoing improvement of ICANN's accountability and governance structures.

Signature Block:

Submitted by: Marika Konings

Position: Vice President, Policy Development Support – GNSO

Date Noted: 04 May 2018

Email: marika.konings@icann.org

ICANN BOARD PAPER NO. [To be assigned by the Secretary]

TITLE: Request to Defer Compliance Enforcement of Thick WHOIS Consensus Policy for .COM and .NET
PROPOSED ACTION: For Resolution

EXECUTIVE SUMMARY:

The Board is being asked to authorize the President and CEO to defer compliance enforcement of the [Thick WHOIS Consensus Policy](#) for an additional six months to allow more time for ICANN and the contracted parties to more clearly understand how Registration Directory Services (RDS) will be affected and modified by the European Union’s General Data Protection Regulations (GDPR). This policy applies to registrations in the .COM and .NET TLDs and the additional time and understanding will allow ICANN org, the registrars and Verisign as the registry operator for .COM and .NET, to reach agreement on amendments needed to implement the Policy.

This request follows the 29 October 2017 [Resolution](#) from the Board to defer the enforcement of the Thick WHOIS Consensus Policy by 180 days from the original [implementation dates](#). ICANN organization recommended the deferment as Verisign and the registrars could not agree on amendments to relevant registry-registrar agreements. Following the Board Resolution, the deferred dates required Verisign to begin accepting “Thick” registration data from registrars starting 28 May 2018, registrars to submit “Thick” registration data to Verisign for all new domain name registrations starting on 28 October 2018, and the migration of all existing domain registration data from “Thin” to “Thick” by 31 July 2019.

ICANN organization has been following the established [procedure](#) for considering proposed amendments to gTLD registry-registrar agreements where the registry is required to obtain ICANN approval of such amendments. This process is designed to ensure registrar input (and public input where appropriate) before ICANN organization [or Board] approves changes to a registry-registrar agreement. Verisign has [stated](#) that changes to the .COM and .NET registry-registrar agreements are required “for live thick whois data to be transferred and displayed in a legally compliant manner.” The Registrar Stakeholder Group expressed concerns about agreeing

to Verisign’s proposed amendments based on issues relating to the European Union’s General Data Protection Regulation (GDPR), which takes effect on 25 May 2018. As such, the next step outlined in the procedure is for the ICANN organization to consult with the registry operator and the Registrar Stakeholder Group to resolve these concerns.

Since April 2017, ICANN organization has facilitated multiple in-person and telephonic meetings with Verisign and the Registrar Stakeholder Group leadership, but no significant progress has been made by either party. In August 2017, the Registrar Stakeholder Group [wrote](#) to ICANN organization requesting an extension to the original Thick Whois Policy effective dates. ICANN organization previously approved Verisign’s request for an extension to an optional milestone date in the Policy for registrars to begin voluntarily submitting Thick data to the registry. This extension was granted to provide Verisign, ICANN, and the Registrar Stakeholder Group with more time to continue discussions in hopes of achieving a resolution, while still taking reasonable steps to comply with the Policy.

On 13 April 2018 Verisign [wrote](#) to ICANN requesting an extension to the Thick WHOIS Policy effective dates, stating that adhering to the current implementation deadline for Thick WHOIS would not be “prudent as it would add complexity and risk to the community’s work when the uncertainty about the collection, transfer, and data processing of WHOIS data is at its peak.”

ICANN org continues to work with the relevant European authorities and the ICANN community to develop an interim model to understand and manage the complexity and risk of GDPR while adhering to the Thick WHOIS Consensus Policy. Until the interim model is finalized additional time is required for all parties to manage and understand the associated risks before implementing the Policy.

ICANN ORGANIZATION RECOMMENDATION:

ICANN organization recommends that the Board authorize the President and CEO to defer compliance enforcement of the Thick WHOIS Consensus Policy for six months to allow additional time for the registrars and Verisign to reach agreement on amendments needed to the Registry-Registrar Agreements to implement the Policy.

PROPOSED RESOLUTION:

Whereas, the [Thick WHOIS Consensus Policy](#) requires that Verisign is to begin accepting “Thick” registration data from registrars starting 28 May 2018, all new domain name registrations must be submitted to the registry as “Thick” starting on 28 October 2018 at the latest, and all relevant registration data for existing domain names must be migrated from “Thin” to “Thick” by 31 July 2019.

Whereas, in preparation to complete the deployment to accept Thick WHOIS data, Verisign proposed amendments to the registry-registrar agreements for .COM and .NET.

Whereas, the Registrar Stakeholder Group and Verisign expressed concerns about agreeing to Verisign’s proposed amendments based on issues relating to the European Union’s General Data Protection Regulation.

Whereas, ICANN organization has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements to implement the Thick WHOIS Consensus Policy.

Whereas, Verisign and the Registrar Stakeholder Group are at an impasse and need additional time to reach agreement on the proposed amendments to the applicable registry-registrar agreements to implement the Thick WHOIS Consensus Policy.

Whereas, the deferred enforcement period will allow the ICANN organization to continue to engage with the relevant European authorities including the European Union Article 29 Working Party, data protection agencies, contracted parties, and other pertinent stakeholders to gain a better understanding of the relevant aspects of GDPR and how it relates to ICANN’s work and the organization’s policies and contracts with registries and registrars, including the Thick WHOIS Consensus Policy.

Resolved (2018.05.xx), the President and CEO, or his designee(s), is authorized to defer compliance enforcement of the Thick WHOIS Consensus Policy for six months to 30 November 2018, 30 April 2019 and 31 January 2020, respectively, to allow additional time for the registrars

and Verisign to reach agreement on amendments needed to applicable registry-registrar agreements to implement the Policy.

PROPOSED RATIONALE:

The Thick WHOIS Consensus Policy requires Verisign to begin accepting “Thick” registration data from registrars starting 28 May 2018, registrars to submit Thick registration data to the .COM, .NET, and .JOBS registries for all new domain name registrations starting on 28 October 2018, and the migration of all existing domain registration data from Thin to Thick by 31 July 2019. In preparation to complete the deployment to accept Thick WHOIS data, Verisign, the registry operator for .COM and .NET and the back-end registry services provider for .JOBS, proposed amendments to the registry-registrar agreements for .COM and .NET in order to have the legal framework necessary for Verisign to begin accepting registrar transmission of Thick data to the registry. While the Thick WHOIS Consensus Policy also applies to the .JOBS TLD, the registry operator for .JOBS, Employ Media, did not require changes to the Registry-Registrar Agreement to begin accepting Thick registration data and registrars have already started submitting Thick registration data as per the Policy to Employ Media.

The ICANN organization followed its published Registry-Registrar Agreement amendment procedure and forwarded the proposed amendments to the Registrar Stakeholder Group for review. The Registrar Stakeholder Group expressed concerns about agreeing to the proposed amendments based on issues relating to the European Union's General Data Protection Regulation (GDPR), which takes effect on 25 May 2018. As such, the next step outlined in the procedure is for the ICANN organization to consult with the registry operator and the Registrar Stakeholder Group to resolve these concerns.

ICANN organization has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements, but the parties have not yet reached agreement. Additionally, the ICANN organization is investigating whether there are potential compliance issues under its agreements with registries and registrars because of the European Union’s General Data Protection Regulation. The ICANN organization is working with registries, registrars and various

stakeholders to understand these potential compliance issues. Based on initial reviews and communications, including with some data protection agencies, ICANN organization understands that compliance with GDPR will have an impact on the WHOIS system.

On 29 June 2017, ICANN organization approved Verisign's request for an extension to an optional milestone date in the Policy for registrars to begin voluntarily submitting Thick data to the registry. This extension was granted to provide Verisign, ICANN, and the Registrar Stakeholder Group with more time to continue discussions in hopes of achieving a resolution, while still taking reasonable steps to comply with the Policy. This optional 1 August 2017 milestone date was later extended to 29 November 2017.

To allow additional time for the registrars and Verisign to reach agreement on amendments needed to the registry-registrar agreements to implement the Policy, the Board is taking action at this time to authorize the ICANN President and CEO to defer compliance enforcement of the Thick WHOIS Policy for six months. This deferred enforcement period will also allow the ICANN organization to continue to engage with the relevant European authorities including the European Union Article 29 Working Party, data protection agencies, contracted parties, and other pertinent stakeholders to gain a better understanding of the relevant aspects of GDPR and how it relates to ICANN's work and the organization's policies and contracts with registries and registrars, including the Thick WHOIS Consensus Policy.

As a result of the Board's action, ICANN organization will begin compliance enforcement of the Policy requirement for registrars to submit all new domain name registrations to the registry as Thick starting on 30 April 2019, and all relevant registration data for existing domain names must be migrated from Thin to Thick by 31 January 2020. The optional milestone date for registrars to begin voluntarily submitting Thick data to the registry will be 30 November 2018.

During this period of deferred compliance enforcement, ICANN organization will continue to work with Verisign and the Registrar Stakeholder Group to facilitate discussions on the proposed amendments. ICANN organization will also provide updates to the community on the progress to come into compliance with the Thick WHOIS Consensus Policy. During this extension period,

the Registrar Stakeholder Group has [indicated](#) that it will “continue to engage with ICANN and Verisign regarding the RRA changes, ICANN’s role under the GDPR, and steps needed to implement the Thick WHOIS transition.”

The Board’s deliberation on this matter included, but is not limited to, the following significant materials:

- [Board Resolution to Defer Compliance Enforcement of Thick WHOIS Consensus Policy for 180 Days](#)
- [Thick WHOIS Transition Policy for .COM, .NET and .JOBS](#)
- [Registry Registration Data Directory Services Consistent Labeling and Display Policy](#)
- [PDP Documentation](#)
- [PDP WG Final Report](#)
- [Thick WHOIS Implementation](#)
- [IRT letter to GNSO regarding implications GDPR to implement Thick WHOIS](#)
- [Public Comment period on Consistent Labeling and Display implementation proposal](#)
- [Public Comment period on Transition from Thin to Thick for .COM, .NET and .JOBS](#)
- [Letter from Patrick Kane to Akram Atallah re: Thick WHOIS for .COM and .NET – 20 June 2017](#)
- [Letter from Akram Atallah to Patrick Kane re: Thick WHOIS for .COM and .NET –29 June 2017](#)
- [Letter from Graeme Bunton to Akram Atallah re: Extension Request for Thick WHOIS Migration – 17 August 2017](#)

The Board’s action is not anticipated to have a fiscal impact on ICANN that is not already anticipated in the current budget. This resolution is an organizational administrative function for which no public comment is required. This action is in the public interest as it helps to ensure a consistent and coordinated implementation of policies in gTLDs.

Signature Block:

Submitted by: Akram Atallah

Position: President, Global Domains Division

Date Noted: XX May 2018

Email: akram.atallah@icann.org

ICANN BOARD SUBMISSION NO. [To be assigned by the Secretary]

TITLE: Registrar Data Escrow Agent Contract Approval

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The registrar community has expressed concerns utilizing the current ICANN-designated Registrar Data Escrow (RDE) agent for Data Escrow deposits. The registrar community expressly requested that a designated RDE agent with operations in the European Union be identified and offered as an alternative to the current provider under the same financial conditions (i.e., at no cost to registrars). ICANN organization understands the desire for additional regional providers that may be better suited to meet regional challenges, particularly in light of the upcoming European Union General Data Protection Regulation (GDPR). Providing for more than one option of ICANN-designated RDE agents will allow for broader choice and potential competition in service.

On 17 August 2017, ICANN org published a Request for Proposal (RFP) to identify one or more additional ICANN-designated RDE agent(s) suitable to support the ICANN org and its accredited registrars to satisfy data escrow needs. ICANN org received and evaluated eight (8) proposals. DENIC eg has been selected as the preferred provider.

Pursuant to the ICANN Contracting and Disbursement Policy the Board is being asked to authorize staff to take all steps necessary to complete the contracting of an additional ICANN-designated RDE agent.

ICANN ORGANIZATON RECOMMENDATION:

The ICANN org recommends that the ICANN Board adopt a resolution to authorize the President and CEO, or his designee(s), to enter into, and make disbursement in furtherance of, a contract for a term of 36 months with a total cost not to exceed

Confidential Negotiation Information

Confidential Negotiation Information

BACKGROUND:

In 2007, the ICANN org began implementing a Registrar Data Escrow (RDE) Program that required accredited registrars to regularly deposit a back-up copy of gTLD registration data with the ICANN org. The deposit can be made either through arrangement with ICANN org's designated RDE agent or with an ICANN-approved RDE agent pursuant to the terms of its Registrar Accreditation Agreement (RAA) and the RDE Specification.

Since 2007, ICANN org has utilized Iron Mountain Intellectual Property Management, Inc. as the sole ICANN-designated RDE agent to accept and process registrar escrow deposits on behalf of the ICANN org.

The registrar community has expressed concerns utilizing the current ICANN-designated RDE agent and a corresponding need for regional support with the same financial benefit (i.e., at no cost). The registrar community expressly requested that a designated RDE agent with operations in the European Union be identified and offered as an alternative to the current provider. ICANN org understands the desire for additional regional providers that may be better suited to meet regional challenges, particularly in light of the upcoming European Union General Data Protection Regulation (GDPR). Providing for more than one option of ICANN-designated RDE agents will allow for broader choice and potential competition in service.

Registrars are located throughout the world. Regulations on data privacy have evolved (e.g. General Data Protection Regulation (GDPR) and China's Cybersecurity Law) and in turn, the ICANN Accredited Registrars are looking for ICANN org to provide an alternative ICANN-designated RDE agent capable to support regional needs.

Accordingly, on 17 August 2017, ICANN org published a RFP to identify one or more provider(s) with the capability to offer broad global or multiregional support while enhancing efficiency, technical specifications, and customer support. Interest was received from nine (9) providers and eight (8) submitted proposals. ICANN org reviewed these proposals and evaluated them based on proposed capabilities, support for registrars and ICANN org, technical specifications, and financial value.

Based on the ICANN org evaluation of the responses to the RFP, the ICANN org has determined that DENIC eg demonstrated its ability to meet and exceed the needs

identified. Thus, as a result of the RFP, ICANN org has identified DENIC eg as the preferred provider.

PROPOSED RESOLUTION:

Whereas, members of the registrar community have expressed a need for an additional ICANN-designated Registrar Data Escrow agent with regional support capability in the European Union.

Whereas, the ICANN Global Domains Division intends to provide an additional ICANN-designated Registrar Data Escrow agent with regional support in the European Union and an understanding of the European Union General Data Protection Regulation (GDPR).

Whereas, ICANN org has published a Request For Proposal to identify an additional Registrar Data Escrow Agent.

Whereas, the ICANN org has completed the Request For Proposal and determined that DENIC eg has demonstrated its capability to support registrar data escrow services and is the preferred provider.

Resolved (2018.05.DD.xx), the Board authorizes the President and CEO, or his designee(s), to enter into, and make disbursement in furtherance of, a new DENIC eg contract for a term of 36 months with total cost not to exceed ^{Confidential Negotiation Information}

Resolved (2018.05.DD.xx), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, Section 3.5(b) and (d) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

PROPOSED RATIONALE:

The ICANN Global Domains Division understands, based upon feedback from the registrar community, the need to enhance the RDE Program and provide an additional ICANN-designated RDE agent with regional support in the European Union..

ICANN org posted a request for proposal on 17 August 2017 to to identify one or more additional ICANN-designated RDE agents with the capability to offer broad global or multiregional support. During this process the ICANN org identified service areas that could be enhanced with an additional ICANN-designated RDE agent and considered those in the RFP evaluation.

As a result, ICANN org identified DENIC eg to have a clear understanding of the needs of the registrar community and the capability to perform at the appropriate service levels. In addition, DENIC eg has broad understanding of the current industry and of the ICANN's multistakeholder model.

Taking this step towards contracting is in the fulfilment of ICANN's mission and in the public interest to ensure that ICANN org is utilizing the right third party providers, and to ensure that it is maximizing available resources in a cost-efficient and effective manner. This action will benefit ICANN's mission to ensure the security, stability and resiliency of the domain name system.

This action will have a fiscal impact on the organization, as each additional ICANN-designated RDE agent results in additional fixed cost, but it will provide ICANN org with ICANN-designated RDE agents that enhance diversity and competition.

Signature Block:

Submitted by: Akram Atallah
Position: President, Global Domains Division
Date Noted: DD May 2018
Email: akram.atallah@icann.org

ICANN BOARD SUBMISSION NO. 2018.05.13.XX

TITLE: **Consideration of Reconsideration Request 17-5**

PROPOSED ACTION: **For Consideration and Approval**

EXECUTIVE SUMMARY:

The Requestor, DotKids Foundation, seeks reconsideration of ICANN organization’s decision to take the Requestor’s .KIDS community generic top-level domain (gTLD) application off hold before the Community Priority Evaluation (CPE) Process Review was completed.¹ Specifically, the Requestor disagrees with the community priority evaluation of its application² and claims that “the findings [of the CPE Process Review] will affect the approach that the DotKids Foundation would take for the redress of the .KIDS CPE process.”³

As directed by the Board and the Board Governance Committee (BGC) in late 2016, the CPE Process Review evaluated: (i) the process by which ICANN organization interacted with the Community Priority Evaluation (CPE) Provider (Scope 1);⁴ (ii) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (iii) a compilation of the research relied upon by the CPE Provider if research existed for the evaluations that were the subject of pending Reconsideration Requests relating to the CPE process (Scope 3).⁵ In light of Scope 3, the BGC also determined that the pending Reconsideration Requests relating to CPE would be placed on hold until the CPE Process Review was completed, meaning that applications and contentions sets remained on hold during this time.⁶ The Requestor did not have a pending reconsideration request regarding CPE when the CPE Process Review was initiated and its application and the .KID/.KIDS contention set were not on hold.

On 13 December 2017, ICANN organization published the CPE Process Review reports drafted by FTI Consulting, Inc.’s Global Risk and Investigations Practice and Technology Practice.⁷

¹ Request 17-5, § 2, at Pg. 2.

² Request 17-5, § 5, at Pg. 3.

³ Request 17-5, § 7, at Pg. 6.

⁴ <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

⁵ <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

⁶ *Id.*

⁷ See <https://www.icann.org/news/announcement-2017-12-13-en>.

On 15 March 2018, in [Resolutions 2018.03.15.09 through 2018.03.15.10](#), the Board acknowledged and accepted the findings set forth in the three CPE Process Review Reports, concluded that, as a result of the findings, no overhaul or change to the CPE process for the current round of the New gTLD Program is necessary; and declared that the CPE Process Review has been completed.⁸

On 5 April 2018, the Board Accountability Mechanisms Committee evaluated Request 17-5 and all relevant materials and recommended that the Board deny Request 17-5 because: (1) the Requestor has received the relief requested and therefore Request 17-5 is moot as the CPE Process Review has been completed; and (2) ICANN organization complied with established policy(ies) when it took the .KID/.KIDS contention set off hold after the resolution of all accountability mechanisms affecting the contention set.

Pursuant to Article 4, Section 4.2(q), the Requestor has 15 days from the receipt of the BAMC's Recommendation on Request 17-5 to submit a rebuttal. On 16 April 2017, the Requestor indicated that it intended to file a rebuttal. However, no rebuttal was filed by the 20 April 2018 deadline and none has been received to date.

**BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
RECOMMENDATION:**

The BAMC recommended that Request 17-5 be denied and that no further action be taken in response to the Request because: (1) the Requestor has received the relief requested and therefore Request 17-5 is moot as the CPE Process Review has been completed; and (2) the Requestor's claims are unsupported because ICANN organization adhered to established policies and procedures when it took the .KID/.KIDS contention set off hold after the resolution of all accountability mechanisms affecting the contention set.

PROPOSED RESOLUTION:

Whereas, DotKids Foundation (the Requestor) filed Reconsideration Request 17-5 (Request 17-5) challenging ICANN organization's decision to take the Requestor's .KIDS community gTLD

⁸ <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

application off hold before the Community Priority Evaluation (CPE) Process Review was completed.⁹

Whereas, the Board previously directed the President and CEO or his designees to undertake a review of the "process by which ICANN [organization] interacted with the [Community Priority Evaluation (CPE)] Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider". (See <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.)

Whereas, the Board Governance Committee (BGC) determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report; and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (collectively, the CPE Process Review). (See <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.)

Whereas, the BGC determined that the pending Reconsideration Requests relating the CPE process would be on hold until the CPE Process Review was completed. (See <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.)

Whereas, the Requestor did not have a pending accountability mechanism regarding the CPE process during the CPE Process Review and therefore, its application and the .KID/.KIDS contention were free proceed through the application and contention resolution process as called for in the Applicant Guidebook.

Whereas, on 15 March 2018, in [Resolutions 2018.03.15.08 through 2018.03.15.11](#), the Board acknowledged and accepted the findings set forth in the CPE Process Review reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to move forward with

⁹ Request 17-5, § 2, at Pg. 2.

consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review.

Whereas, the Board Accountability Mechanisms Committee (BAMC) previously determined that Request 17-5 is sufficiently stated and sent the Request to the Ombudsman for review and consideration in accordance with Article 4, Section 4.2(j) and (k) of the ICANN Bylaws.

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

Whereas, the BAMC has carefully considered the merits of Request 17-5 and all relevant materials and recommended that Request 17-5 be denied on the basis that that the Requestor has received the relief requested and therefore Request 17-5 is moot as the CPE Process Review has been completed; and that the Requestor's claims are unsupported because ICANN organization adhered to established policies and procedures when it took the .KID/.KIDS contention set off hold after the resolution of all accountability mechanisms affecting the contention set, and the Board agrees.

Whereas, the Requestor did not file a rebuttal to the BAMC Recommendation on Request 17-5 within the allotted time under Article 4, Section 4.2(q) of the Bylaws.

Resolved (2018.05.13.XX), the Board adopts the [BAMC Recommendation on Request 17-5](#).

PROPOSED RATIONALE:

1. Brief Summary

The Requestor submitted a community-based application for .KIDS (.KIDS Application), which was placed in a contention set with one other .KIDS application and an application for .KID (the .KID/.KIDS contention set).¹⁰ The Requestor participated in CPE, but did not prevail. The Requestor previously challenged the CPE Provider's evaluation of its community application in Reconsideration Request 16-6 (Request 16-6). The filing of Request 16-6 impacted the status of

¹⁰ https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus:viewcontentionsetimage/215?_csrf=2fa3a5b7-ca97-4722-bb10-02acbf6ac234.

the .KID/.KIDS contention set, which was placed on hold pending resolution of Request 16-6.¹¹ ICANN’s Board Governance Committee (BGC) issued a final determination denying Request 16-6 on 21 July 2016,¹² after which the .KID/.KIDS contention set was taken off hold.¹³

The Board previously directed the President and CEO or his designees to undertake a review of the “process by which ICANN [organization] interacted with the [Community Priority Evaluation] CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider” as part of the Board’s oversight of the New gTLD Program (Scope 1).¹⁴ The Board’s action was part of the ongoing discussions regarding various aspects of the CPE process.

Thereafter, the Board Governance Committee (BGC) determined that the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations that are the subject of pending Reconsideration Requests relating to the CPE process (Scope 3).¹⁵ Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. The BGC determined that the following pending Reconsideration Requests would be on hold until the CPE Process Review was completed: 14-30 (.LLC),¹⁶ 14-32 (.INC),¹⁷ 14-33¹⁸ (.LLP), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCK).¹⁹ The Requestor did not have a pending reconsideration request regarding the CPE process when the CPE Process Review began and therefore, its application and the .KID/.KIDS contention set proceeded through the application process and nothing was placed on hold.

¹¹ Update on Application Status and Contention Sets, *available at*

<https://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en>.

¹² Prior to 22 July 2017, the BGC was designated by the ICANN Board to review and consider Reconsideration Requests pursuant to Article 4, Section 4.2 of the Bylaws. *See* ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e), available at <https://www.icann.org/resources/pages/bylaws-2016-09-30-en#article4>.

¹³ Attachment 1, at Pg. 1-3.

¹⁴ <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

¹⁵ <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

¹⁶ Reconsideration Request 14-30 was withdrawn on 7 December 2017. *See* <https://www.icann.org/en/system/files/files/reconsideration-14-30-dotregistry-request-redacted-07dec17-en.pdf>.

¹⁷ Reconsideration Request 14-32 was withdrawn on 11 December 2017. *See* <https://www.icann.org/en/system/files/files/reconsideration-14-32-dotregistry-request-redacted-11dec17-en.pdf>.

¹⁸ Reconsideration Request 14-33 was withdrawn on 15 February 2018. *See* <https://www.icann.org/en/system/files/files/reconsideration-14-33-dotregistry-request-redacted-15feb18-en.pdf>.

¹⁹ *Id.*

On 2 October 2017, ICANN organization invited the Requestor to an ICANN Auction for the .KID/.KIDS contention set.²⁰ Between October and December 2017, ICANN organization sent the Requestor several reminders to submit certain requested information by an 8 December 2017 deadline in order to participate in the ICANN Auction.

On 6 December 2017, two days before the deadline to submit information for the ICANN Auction, the Requestor filed Reconsideration Request 17-5 (Request 17-5) challenging ICANN organization's decision to take the Requestor's .KIDS gTLD application off hold before the CPE Process Review was completed.²¹ The filing of Request 17-5 impacted the status of the .KID/.KIDS contention set, which was placed on hold pending resolution of Request 17-5, and which resulted in the cancellation of the ICANN Auction of the .KID/.KIDS contention set.²²

On 13 December 2017, ICANN organization published the three reports on the CPE Process Review.²³

On 15 March 2018, the Board acknowledged and accepted the findings set forth in the CPE Process Review reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review.²⁴

On 5 April 2018, the Board Accountability Mechanisms Committee (BAMC) evaluated Request 17-5 and all relevant materials and recommended the Board deny Request 17-5 because: (1) the Requestor has received the relief requested and therefore Request 17-5 is moot as the CPE Process Review has been completed; and (2) ICANN organization complied with established policy(ies) when it took the .KID/.KIDS contention set off hold after the resolution of all accountability mechanisms affecting the contention set. (See [BAMC Recommendation](#), attached as Attachment C to the Reference Materials.)

²⁰ Attachment 1, at Pg. 3.

²¹ Request 17-5, § 2, at Pg. 2.

²² Update on Application Status and Contention Sets, *available at* <https://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en>.

²³ See <https://www.icann.org/news/announcement-2017-12-13-en>.

²⁴ <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

2. Facts and Recommendation

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

On 5 April 2018, the BAMC recommended that Request 17-5 be denied on the basis that: (1) the Requestor has received the relief requested and therefore Request 17-5 is moot as the CPE Process Review has been completed; and (2) ICANN organization complied with established policy(ies) when it took the .KID/.KIDS contention set off hold after the resolution of all accountability mechanisms affecting the contention set and therefore Request 17-5 does not set forth a proper basis for reconsideration for the reasons set forth in the [BAMC Recommendation](#), which are incorporated here. (See [BAMC Recommendation](#), attached as Attachment C to the Reference Materials.)

3. Issues

The issues for reconsideration are:

- Whether Request 17-5 is moot because the CPE Process Review reports are complete and published; and
- Whether ICANN organization complied with applicable Commitments, Core Values, and established policies when it took the .KID/.KIDS contention set off “Hold” status and resumed processing the contention set in accordance with the New gTLD Program by scheduling an ICANN Auction after the Requester’s Reconsideration Request 16-6 was denied in July 2016.

4. The Relevant Standards for Evaluating Reconsideration Requests

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

- (i) One or more Board or Staff actions or inactions that contradict ICANN’s Mission, Commitments, Core Values and/or established ICANN policy(ies);

- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

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

5. Analysis and Rationale

The Board has reviewed and thoroughly considered Request 17-5 and all relevant materials, including the [BAMC Recommendation](#). The Board finds the analysis set forth in the [BAMC Recommendation](#), which is incorporated here, to be sound.

A. The Requestor has Received the Relief Requested, and Therefore Request 17-5 is Moot.

The BAMC concluded and the Board agrees that the Requestor has received the relief requested in Request 17-5, which renders Request 17-5 moot and reconsideration unnecessary. ([BAMC Recommendation](#), Pgs. 13-14.)

The Requestor asked ICANN organization to “place the [.KIDS] application on hold until the CPE review reports are complete and published.”²⁵ This is precisely what ICANN organization has done. Immediately following ICANN organization’s receipt of Request 17-5, ICANN organization cancelled the .KID/.KIDS contention set Auction, and placed the .KID/.KIDS contention set on hold, because string contention sets are only eligible to enter into an Auction if, among other things, there is no pending ICANN Accountability Mechanism relevant to the string.²⁶

On 13 December 2017, while the .KID/.KIDS contention set was on hold pending resolution of Request 17-5, ICANN organization published three reports in connection with the CPE Process Review.²⁷ On 15 March 2018, the ICANN Board acknowledged and accepted the findings set forth in the three CPE Process Review reports, and declared that the CPE Process Review was complete.²⁸ Accordingly, the relief requested in Request 17-5 has been rendered moot by virtue of the Board’s [Resolution 2018.03.15.10](#) declaring that the CPE Process Review has been completed.

B. ICANN Complied with Its Commitments When it Moved Forward with Processing the .KID/.KIDS Contention Set By Scheduling an Auction.

The Requestor suggested that other community applicants “not explicitly identified in the CPE process review (e.g., the .SPA CEP/IRP by Donuts) have been put on hold we believe due to the ongoing CPE process review,” such that the Requestor asserts that taking its application and the .KID/.KIDS off hold before the CPE Process Review is complete “is therefore counter to the established processes.”²⁹ This Requestor’s position conflates multiple issues and relies on inaccurate facts. The .SPA string and contention set were put on hold due to the ongoing Cooperative Engagement Process, not the CPE Process Review. Further, the Requestor does not indicate which “established processes” it believes ICANN organization violated by taking the

²⁵ Request 17-5, § 8, at Pg. 6.

²⁶ See Application Details, “Application Status,” available at <https://gtldresult.icann.org/applicationstatus/applicationdetails/161>; see also <http://newgtlds.icann.org/en/applicants/auctions>.

²⁷ See <https://www.icann.org/news/announcement-2017-12-13-en>.

²⁸ <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

²⁹ Request 17-5, § 7, at Pg. 6.

.KID/.KIDS contention off hold following the resolution of Request 16-6 in July 2016,³⁰ nor does the Requestor provide any evidence of such a process violation, because none exists.

To the extent the Requestor is referring to ICANN organization's commitment to

[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties),³¹

this argument does not support reconsideration.

The BGC identified certain Reconsideration Requests that would be on hold until the completion of the CPE Process Review,³² which meant the related string and/or contentions sets would also remain on hold. Each of the Reconsideration Requests placed on hold raised claims relating to CPE, and each was pending at the time the CPE Process Review was commenced. Because the Requestor did not have a pending Reconsideration Request (or any other accountability mechanism) at the time the CPE Process Review was commenced, there was no reason to leave the Requester's .KIDS Application or the .KID/.KIDS contention set on hold.

Contrary to the Requestor's claims and consistent with its commitment to "[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly,"³³ ICANN organization treated the Requester's .KIDS Application and the .KID/.KIDS contention set the same way it treated other gTLD applications and contention sets that had no pending Accountability Mechanism when the CPE Process Review started. Specifically, *none* of the applications or contention sets that were in active status when the CPE Process Review commenced, including the Requester's .KIDS Application and .KID/.KIDS contention set, were placed on hold in connection with the CPE Process Review. If the BAMC were to adopt the Requestor's position, ICANN organization would have had to "single out" the Requester's

³⁰ *See id.*

³¹ ICANN Bylaws, 22 July 2017, Art. 1, § 1.2(a)(v).

³² <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>. The reconsideration requests on hold pending completion of the CPE Process Review are: 14-30 (.LLC) (withdrawn on 7 December 2017, *see* <https://www.icann.org/en/system/files/files/dotregistry-llc-withdrawal-redacted-07dec17-en.pdf>), 14-32 (.INC) (withdrawn on 11 December 2017, *see* <https://www.icann.org/en/system/files/files/reconsideration-14-32-dotregistry-request-redacted-11dec17-en.pdf>), 14-33 (.LLP) (withdrawn on 15 February 2018, *see* <https://www.icann.org/en/system/files/files/reconsideration-14-33-dotregistry-request-redacted-15feb18-en.pdf>), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCK).

³³ ICANN Bylaws, 22 July 2017, Art. 1, § 1.2(a)(v).

.KIDS Application and “mak[e] an unjustified prejudicial distinction between or among different parties” to place it on hold without placing all of the other active gTLD applications that had undergone CPE on hold as well, which itself would comprise a violation of this commitment.³⁴

The Requestor’s claim that it was treated differently than the applicant for .SPA is factually incorrect and does not support reconsideration. The Requestor asserts that ICANN organization placed the .SPA contention set “on hold, we believe due to the ongoing CPE [P]rocess [R]eview.”³⁵

In fact, the .SPA application was placed on hold on 20 January 2016 when the applicant for .SPA initiated a CEP proceeding, nine months before the Board directed ICANN organization’s President or his designee to commence the CPE Process Review.³⁶ The CEP is an accountability mechanism; accordingly Donuts Inc.’s initiation of CEP caused the .SPA contention set to be placed on hold.³⁷ As such, there is no evidence that the .SPA CEP “ha[s] been put on hold we believe due to the ongoing CPE process review” as the Requestor stated.³⁸

Ultimately, the “on hold” status of the .SPA contention set does not reflect inconsistent or discriminatory application of established policy or procedure, because the .SPA contention set is on hold as a result of Donuts Inc.’s initiation of CEP and *not* as a result of an ICANN organization determination to place the contention set on hold pending completion of the CPE Process Review.³⁹ ICANN organization applied its policies consistently, insofar as both the Requestor’s .KIDS Application and Donuts Inc.’s application for .SPA were placed on hold as a result of pending Accountability Mechanisms (albeit different Accountability Mechanisms), not the CPE Process Review. Reconsideration is not warranted on these grounds.

Finally, the Requestor suggests that it did not receive notice from ICANN organization indicating that the .KID/.KIDS contention set had been taken off hold until 2 October 2017.⁴⁰

While the Requestor does not specifically assert that reconsideration is warranted on these

³⁴ *Id.*

³⁵ Request 17-5, § 7, at Pg. 6.

³⁶ See <https://www.icann.org/en/system/files/files/irp-cep-status-15nov17-en.pdf>.

³⁷ <http://newgtlds.icann.org/en/applicants/auctions>.

³⁸ Request 17-5, § 7, at Pg. 6.

³⁹ Request 17-5, § 7, at Pg. 6.

⁴⁰ Request 17-5, § 4, at Pg. 2.

grounds, the BAMC addressed the Requestor's claims in the [BAMC's Recommendation](#), as the Requestor is mistaken, and the Board agrees. The Board finds the analysis set forth in the [BAMC Recommendation](#), which is incorporated here, to be sound. (See [BAMC's Recommendation](#), Pgs. 17-18.)

Ultimately, the Requestor has not identified any element of ICANN's Mission, Commitments, Core Values, or established ICANN policy(ies) violated by ICANN organization's correspondence with the Requestor, as none were violated. Accordingly, reconsideration is not warranted.

Pursuant to Article 4, Section 4.2(q), the Requestor has 15 days from the receipt of the BAMC's Recommendation on Request 17-5 to submit a rebuttal, which expired on 20 April 2018. On 16 April 2017, the Requestor indicated that it intended to file a rebuttal. (See Attachment D to the Reference Materials.) However, no rebuttal was filed by the 20 April 2018 deadline, and none has been filed to date.

While the Bylaws specify that Board's final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the BAMC, in this instance, the 135 days expired on same day at the deadline for the Requestor to submit a rebuttal. The Board previously scheduled a meeting on 17 April 2017 to consider Request 17-5 before the 135-day deadline. However, as the Requestor indicated that he intended to submit a rebuttal, the Board cancelled the 17 April 2018 meeting because the Board felt that it was important to issue a final determination on a full and complete record and allow the Requestor the opportunity to submit his rebuttal. As such, this is the first practical opportunity that the Board has to consider this matter.

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures, by having a process in place by which a person or entity materially affected by an action of the ICANN Board or Staff may request reconsideration of that action or inaction by the Board. Adopting the BAMC's Recommendation has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

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

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 27 April 2018
Email: amy.stathos@icann.org

ICANN BOARD PAPER NO. [To be assigned by the Secretary]

TITLE: Request for Additional Input on New KSK Roll Plan

PROPOSED ACTION: For Resolution

EXECUTIVE SUMMARY:

In September 2017, ICANN org decided to postpone rolling the DNS root KSK based on unexpected data we had received. In February 2018, ICANN org proposed a plan to the community to resume the rollover on 11 October 2018. The ICANN community reviewed the plan and the large majority of the responses were favorable.

The public responses to the plan came from many constituencies, but not RSSAC or SSAC. Getting input from those groups would be useful to ICANN org and the broader community.

STAFF RECOMMENDATION:

ICANN org staff recommends that the Board request input from RSSAC and SSAC about their views on the “Updated Plan for Continuing the Root KSK Rollover” and use that input in future deliberations on the plan.

PROPOSED RESOLUTION:

Whereas, ICANN org has updated the full plan documents in response to suggestions from the community and created “Updated Plan for Continuing the Root KSK Rollover” (published at <<https://www.icann.org/resources/pages/ksk-rollover-operational-plans>>) ;

Whereas, the Board often requests input from RSSAC on matters that relate to the stability of the root zone, and often requests input from SSAC on matters that relate to the security and stability of the DNS;

Resolved (2018.xx.xx), that the Board requests RSSAC and SSAC to provide the Board input on “Updated Plan for Continuing the Root KSK Rollover” and associated plan documents, and report back to the Board by 10 August 2018 if possible.

RATIONALE:

The plan to roll the DNS root KSK was temporarily paused on 27 September 2017 due to unexpected input that caused the community to question how ready validating resolvers were for the roll that was coming just a few weeks later. For months after that, ICANN org analyzed the data that became available that caused the temporary pause and found that continuing the process of the root KSK roll would be warranted.

Based on that research, ICANN org asked the technical community to recommend a plan of action. The suggestion from that community was that ICANN should proceed with the KSK roll procedure in an orderly fashion.

With that input, ICANN org created a summary plan, titled “Plan for Continuing the Root KSK Rollover”, to roll the root KSK on 11 October 2018. ICANN org published the summary plan for community review on 1 February 2018 (see <https://www.icann.org/public-comments/ksk-rollover-restart-2018-02-01-en>). The time allowed for comments was extended beyond the normal 45 days to allow presentations about the plan at ICANN 61 in San Juan and IETF 101 in London and to request more community input at those fora.

The community response received by 2 April 2018 was strongly in favor of the published plan (with some suggestions of additional outreach that ICANN org could do before October 2018). Based on the community response, ICANN org created the “Updated Plan for Continuing the Root KSK Rollover” and also revised the original KSK roll plan documents to show which steps had already been taken, and which steps still needed to be taken using the revised dates. These plan documents are available at <https://www.icann.org/resources/pages/ksk-rollover-operational-plans>.

The community input on the proposed plan came from a variety of Advisory Committees, Stakeholder Groups, organizations, and individuals, but comments were not received from either RSSAC or SSAC. RSSAC is a respected advisor on stability of the root zone, and SSAC is a respected advisor on matters that relate to the security and stability of the DNS. The Board is taking action at this time to request input from the RSSAC and the SSAC about the Updated Plan for Continuing the Root KSK Rollover

so that this input may be taken into account as part of the Board's deliberations on whether or not to approve the Updated Plan.

The request for input from the RSSAC and SSAC is not anticipated to have any fiscal impact on the ICANN organization that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC and SSAC.

This decision is in the public interest and within ICANN's mission, as it supports ICANN org's work to ensure the stable and secure operation of the Internet's unique identifier systems.

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

Signature Block:

Submitted by: Paul Hoffman

Position: Principal Technologist,
Office of the CTO

Date Noted:

Email: paul.hoffman@icann.org

ICANN BOARD PAPER NO. 2018-05-XX.XX

TITLE: Addressing RySG Request for Refund of TMCH
Registry RPM Access Fee

PROPOSED ACTION: For Board Resolution

EXECUTIVE SUMMARY:

Since March 2017, ICANN organization has been in discussion with the Registries Stakeholder Group (RySG) regarding a request to offset new gTLD registry fees. Part of this discussion included a request by the RySG to refund the \$5,000¹ Trademark Clearinghouse (TMCH) one-time registry Rights Protection Mechanism (RPM) access fee.² The RySG contends that the one-time fee of \$5,000 was an “overcharge” and could have been covered by the new gTLD application fees. The RySG is requesting a refund of this fee from the remaining New gTLD Program funds.³

The TMCH is a global repository for trademark data and was established by ICANN org in March 2013. The TMCH mechanism functions by authenticating information from trademark holders and providing this information to registries and registrars. The need for the TMCH was foreseen during the development of the New gTLD Program, and the Applicant Guidebook (AGB) Terms and Conditions included language stating that the “Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services...”⁴ The TMCH fees for registries were first defined in the 2 July 2013 version of the New gTLD Registry Agreement (RA).⁵ Section 6.4 includes provisions for a one-time RPM access fee of \$5,000 in addition to a \$0.25 fee per Sunrise and Claims registration.⁶

¹ All dollar amounts in this paper refer to the United States dollar.

² See *Correspondence on this topic*: <https://www.icann.org/en/system/files/correspondence/diaz-to-atallah-et-al-14mar17-en.pdf>;

<https://www.icann.org/en/system/files/correspondence/atallah-to-diaz-29aug17-en.pdf>;

<https://www.icann.org/en/system/files/correspondence/diaz-to-atallah-03oct17-en.pdf>;

<https://www.icann.org/en/system/files/correspondence/atallah-to-diaz-22dec17-en.pdf>.

³ See: <https://www.icann.org/en/system/files/correspondence/diaz-to-atallah-03oct17-en.pdf>.

⁴ See: <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>.

⁵ The fees were not defined in the RA version included in the AGB, nor in the RA version available prior to the start of the application period. For the 2 July 2013 version of the RA, see:

<http://newgtlds.icann.org/en/applicants/agb/agreement-approved-02jul13-en.pdf>.

⁶ For the latest version of the RA, see: <https://www.icann.org/resources/pages/registries/registries-agreements-en>.

The Board is being asked to address the RySG's request for a refund of the TMCH one-time registry RPM access fee, and whether a refund is reasonable.

ICANN ORG RECOMMENDATION:

ICANN org recommends that the Board refund the TMCH one-time RPM access fee as soon as practicable. This recommendation is based largely on the fact that the RPM access fee was not specified in the 2011 version of the AGB, prior to the opening of the application period. Considering that it is now nearly six years since new gTLD applications were submitted, that the New gTLD Program is more than 95% complete, and that it could require several additional years before all risks and liabilities are fully known and quantified, it seems that refunding, as soon as practical, the one-time registry RPM access fee to all registries that have paid the fee to ICANN would be reasonable.

BACKGROUND:

Trademark Clearinghouse Definition

The Trademark Clearinghouse (TMCH or Clearinghouse) is a global repository for trademark data that was established in March 2013. The TMCH mechanism functions by authenticating information from trademark holders and providing this information to registries and registrars. By registering a trademark with the Clearinghouse, trademark holders have access to Sunrise registration with new gTLD registries and notification from the Clearinghouse when a domain name matching a trademark has been registered. The authentication and database administration functions of the Clearinghouse are separated. Deloitte serves as the authentication service provider, and IBM serves as the technical database (Trademark Clearinghouse Database) administrator.⁷

TMCH Requirements for Registries

Requirements in the Applicant Guidebook

⁷ See: <https://www.icann.org/news/announcement-3-2012-06-01-en>.

The Applicant Guidebook (AGB) defines in Section 5.4 that each registry is expected to implement at a minimum Trademark Claims service and a Sunrise period.⁸ A Sunrise period allows trademark holders an advance opportunity to register domain names corresponding to their marks before names are generally available to the public. New gTLD registries are required to offer this service for at least 30 days. The Claims service makes potential registrants aware of existing trademark rights and also notifies trademark holders of any relevant names that have been registered. This period runs for at least 90 days.⁹

The AGB notes in the “Trademark Clearinghouse” section of the Terms and Conditions that “[t]he Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services...” And further, that the “[c]osts should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services...”¹⁰

Requirements in the Registry Agreement

The New gTLD Registry Agreement (RA) defines the requirements for rights protection mechanisms in Specification 7, which states that the defined mechanisms must be implemented in accordance with the “Trademark Clearinghouse Requirements”, which, among other things, provides information on integration testing, sunrise services, registration mechanisms, and claims services.¹¹

The RA also defines the fees associated with the TMCH in Section 6.4, which states that a registry is to pay a one-time RPM access fee of \$5,000 and also a \$0.25 transactional fee per Sunrise Registration and Claims registrations.¹² Upon execution of the RA with ICANN org, every registry is required to pay the \$5,000 RPM access fee.¹³

⁸ See: <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>.

⁹ See: <https://newgtlds.icann.org/en/about/trademark-clearinghouse/faqs>.

¹⁰ See: <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>. See “Trademark Clearinghouse” of the Terms and Conditions, sections 2.4.1 and Section 8.

¹¹ See: <http://newgtlds.icann.org/en/about/trademark-clearinghouse/rpm-requirements-14may14-en.pdf>.

¹² See: <https://www.icann.org/resources/pages/registries/registries-agreements-en>.

¹³ See: <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>.

It should be noted, however, that these fees were first defined in the 2 July 2013 version of the RA.¹⁴

Background on the TMCH Costs and Fees

ICANN org pays for ongoing TMCH operations from New gTLD Program funds, which cover the costs for registrar access to the TMCH as well as general support for all registries and registrars. Since 2013, ICANN has paid \$2,000,000 for TMCH operations, including the Trademark Clearinghouse Database (TMDB). ICANN org expects to pay another \$2,000,000 over the next four years for continued operations.

The costs associated with the TMCH/TMDB can be broken down into three groups:

- Fees paid to the TMDB administrator by ICANN org for registrar access:
 - A one-time initial start-up fee of \$400,000 for access to sunrise and claims services;
 - A yearly fee of \$400,000 for ongoing access to sunrise and claims services, which increased to \$500,000 per year with the TMDB administrator contract renewal in 2017;
- Fees paid to the TMDB administrator by the registry operator but passed through ICANN org:
 - A one-time RPM access fee of \$5,000 per each TLD;
 - A \$0.25 fee for successful registration of domain name related to a trademark record.
- Fees paid by the trademark holders to the trademark validators:
 - A \$150 (approximate) fee per registration, with \$11 of each registration fee passed along by the trademark validator to the TMDB administrator for sunrise and claims services

¹⁴ The fees were not defined in the RA version included in the AGB, nor in the RA version available prior to the start of the application period. For the 2 July 2013 version of the RA, *see*: <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-02jul13-en.pdf>.

The amount of the TMCH one-time RPM access fee was determined through negotiations with the TMCH service providers. ICANN org has stated publicly that this is a pass-through fee, which is collected by ICANN and paid to the TMDB administrator.¹⁵ The requirement for the fee was inserted into the Proposed Final New gTLD Registry Agreement (Section 6.4), which was published for public comment in April 2013 and approved by the Board in July 2013.¹⁶ The fee was also noted in the Trademark Clearinghouse Statement of Work (SOW), which was published in July 2013.¹⁷

PROPOSED RESOLUTION:

Whereas, the Trademark Clearinghouse (TMCH) is a global repository for trademark data established by ICANN org in March 2013.

Whereas, the need for the TMCH was foreseen during the development of the New gTLD Program and the Applicant Guidebook (AGB).

Whereas, the TMCH fees for registries are defined in Section 6.4 of the Registry Agreement, which states that a registry is to pay a one-time RPM access fee of \$5,000 and also a \$0.25 transactional fee per Sunrise Registration and Claims registrations.

Whereas, in October 2017, the RySG requested a refund of the one-time RPM access fee of \$5,000 for each registry that accessed the TMCH from remaining New gTLD Program funds.

Whereas, the ICANN Board has determined that while the concept for the TMCH was foreseen in the AGB, the pricing and fees were not. The \$5,000 fee was first defined in the 2013 version of the RA, and was not specified in the RA version included with the AGB or the version made available prior to the application period.

Whereas, the New gTLD Program is nearly complete, and there is more clarity surrounding the availability of the remaining New gTLD Program funds, but it could

¹⁵ See: <https://newgtlds.icann.org/en/about/trademark-clearinghouse/faqs>.

¹⁶ See: New gTLD Registry Agreement: <https://www.icann.org/public-comments/base-agreement-2013-04-29-en>.

¹⁷ See: <https://newgtlds.icann.org/en/about/trademark-clearinghouse/database-platform-sow-02jul13-en.pdf>.

take several additional years before all risks and liabilities are fully known and quantified.

Resolved (2018.05.XX), the ICANN Board directs the President and CEO or his designee(s) to take all steps necessary to provide a refund of \$5,000, as soon as practicable, to the contracted registries or registry operators (including those that have terminated their contracts or whose TLD delegation has been revoked) that have paid to ICANN the one-time RPM access fee as defined in Section 6.4 of the RA.

PROPOSED RATIONALE:

Why is the Board addressing the issue now?

In October 2017, the RySG requested a refund of the one-time RPM access fee of \$5,000 for each registry. The RySG contends that “[a]ll other systems and programs related to the New gTLD Program were funded from application fees. The TMCH should have been no different and there was no reason to “double-charge” registries for this one piece of the program.” The RySG also contends that the one-time RPM access fee was not provided for in the AGB [as published prior to the opening of the application window] and that “ICANN added [the fee] on its own after all applications were accepted and without community input”.¹⁸ Based on this, the RySG requests refunding of the “overcharge” from the remaining New gTLD Program funds.¹⁹

What are the options being considered? What factors did the Board find significant?

In considering the RySG request, the Board contemplated a range of options, including maintaining the status quo (no refund), refunding now, or deferring consideration of the request until the end of the New gTLD Program. In weighing these options, the Board considered a number of factors, including: Is providing a refund consistent with the AGB or RA? Is it consistent with other New gTLD Program Funding Approaches? Does providing a refund now allow ICANN org to account for other risks/costs?

With regard to not providing a refund, the Board considered that the TMCH fee provision seeks to cover costs associated with providing TMCH services. Indeed, the

¹⁸ For the draft January 2012 version of the AGB, *see*:

<https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>.

¹⁹ *See*: <https://www.icann.org/en/system/files/correspondence/diaz-to-atallah-03oct17-en.pdf>.

primary argument in favor of this approach is that the concept for the TMCH was foreseen in the AGB, and the RA—agreed to by the registries—contains provisions for the TMCH fees.

However, the Board also considered that, while the concept for the TMCH was foreseen in the AGB, the pricing and fees were not. The \$5,000 fee was first defined in the 2013 version of the RA, and was not specified in the RA version included with the AGB or the version made available prior to the application period. Additionally, funding the TMCH by collecting pass-through fees from registry operators is not consistent with the approach used to fund other operational services in support of the New gTLD program operations. Other aspects of the program were paid for directly out of application fees.

As such, the Board considered the option of providing the refund, and whether that could be done now or should be done at the close of the New gTLD Program. The Board considered that it may be prudent to wait to consider this request until the close of the New gTLD Program. This option allows for completion of the risk assessment and quantification effort currently underway, prior to providing the refund to the registries. If—at the close of the New gTLD Program—it has been determined that all risks and other costs have been accounted for, then the Board could consider at that time to provide a refund of the \$5,000 RPM access fee to all registries. The Board also considered that many requests for refunding or offsetting fees have been and/or will be received and that other aspects of ICANN org's New gTLD Program operations that may require additional funding over the next few years.

However, the Board also considered that the New gTLD Program is largely complete, and there is already more clarity surrounding the availability of New gTLD Program funds and that it could require several additional years before all risks and liabilities are fully known and quantified. The Board also weighed, as noted above, that the fees were first defined in the 2013 version of the RA, and not in the RA version included with the AGB or made available prior to the application period. Additionally, refunding the fees is also consistent with the approach used to fund other operational services in support of the New gTLD Program, as it would be using application fees to cover the cost of the

TMCH for registries. For these reasons, the Board has determined that the option to refund the fee to the registries is the most reasonable.

What significant materials did the Board review?

In adopting this resolution, the Board has reviewed, in addition to the options provided by ICANN org, various materials, including, but not limited to:

- Applicant Guidebook, Section 5.4 and Terms & Conditions (“Trademark Clearinghouse”) (<https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>)
- January 2012 version of the Applicant Guidebook (<https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>)
- Registry Agreement Section 6.4 (<https://www.icann.org/resources/pages/registries/registries-agreements-en>)
- New gTLD Program Trademark Clearinghouse Microsite (<https://newgtlds.icann.org/en/about/trademark-clearinghouse>)
- Trademark Clearinghouse Requirements (<http://newgtlds.icann.org/en/about/trademark-clearinghouse/rpm-requirements-14may14-en.pdf>)
- RySG to Akram Atallah, 14 March 2017 (<https://www.icann.org/en/system/files/correspondence/diaz-to-atallah-et-al-14mar17-en.pdf>)
- Akram Atallah to RySG, 29 August 2017 (<https://www.icann.org/en/system/files/correspondence/atallah-to-diaz-29aug17-en.pdf>)
- RySG to Akram Atallah, 3 October 2017 (<https://www.icann.org/en/system/files/correspondence/diaz-to-atallah-03oct17-en.pdf>)

- Akram Atallah to RySG, 22 December 2017
(<https://www.icann.org/en/system/files/correspondence/atallah-to-diaz-22dec17-en.pdf>)

Are there fiscal impacts or ramifications on ICANN?

The Board's action will have a fiscal impact on ICANN. The total estimated cost of providing all registries a refund of the fee would be \$6,210,000 (1242 registries x \$5,000). The remaining funds as of the publication of the FY18 Operating Plan and Budget were \$95,800,000.

Are there positive or negative community impacts?

Taking this action will help support ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems. This action benefits the ICANN community as it provides transparency regarding use of the New gTLD Program remaining funds.

Signature Block:

Submitted by: Akram Atallah

Position: President, Global
Domains Division

Date Noted: XX May 2018

Email: akram.atallah@icann.org

ICANN BOARD PAPER NO. 2018.05.13. xx

TITLE: **Consideration of the Temporary Specification for gTLD Registration Data (Implementation of GDPR Interim Compliance Model)**

PROPOSED ACTION: **For Resolution**

EXECUTIVE SUMMARY:

The Board is being asked to take three actions related to ICANN org’s work to develop, and cause compliance with the proposed interim model for compliance with ICANN agreements and policies in relation to the European Union’s General Data Protection Regulation (GDPR).

First, the Board is being asked to adopt a resolution approving the “Temporary Specification for gTLD Registration Data”, which is attached to this briefing paper (Attachment A). In previous Board meetings, information calls, and workshop sessions, the Board has discussed possible options for implementing the Interim Model (May 25). Among the options considered is the possibility of the Board adopting a temporary specification utilizing the procedure for Temporary Policies established in the Registry Agreement and the Registrar Accreditation Agreement. The proposed Temporary Specification would establish temporary requirements for continued compliance with existing ICANN contractual requirements and community-developed policies in relation to the GDPR.

Implementation details of the Temporary Specification may be adjusted based on input from the community, the Article 29 Working Party, and as a result of the Board-GAC Bylaws Consultation process (discussed further below). As a result, the proposed Board resolution includes language reserving the right for the Board to make adjustments to the implementation based on these inputs.

A summary of the terms of the Temporary Specification is attached to this briefing paper (Attachment B), and details about the procedural steps for adopting a temporary policy or

specification are included in the “Background” section of this briefing paper. A working draft of a summary comparison of the Temporary Specification to the “Calzone Model” is included in the chart attached as Attachment C.

Second, the Board is being asked to take action to “immediately implement the Consensus Policy development process set forth in ICANN’s Bylaws” to consider the Temporary Specification. This action is a required step the Board must take when acting to adopt a temporary policy or specification given that the Temporary Specification requirements are only effective for up to one year while the policy development work is ongoing. Members of the Board Caucus Group on GDPR matters have had initial conversations with the leadership of the GNSO Council and the leadership of the existing Policy Development Working Group looking at the next generation of WHOIS/Registration Data Directory Services. There are various possible paths that the GNSO Council could take as managers of the Consensus Policy Development Process, and in this regard, the proposed resolution also includes an action to work with the GNSO Council on how best to launch a Policy Development Process and ICANN org recommends that the Board send a letter to the GNSO Council outlining the proposed high-level scope of the work.

Third, the proposed resolutions confirm that the Chair of the ICANN Board will confer with the GAC Chair as to an appropriate time and agenda for the Bylaws Consultation meeting between the GAC and the Board with regard to elements of the Temporary Specification that are inconsistent or could be viewed as inconsistent with certain items of GAC advice in the San Juan Communiqué.

BACKGROUND

This would be the first time that the Board has taken an action to adopt a temporary specification. The ability to adopt a temporary policy or specification is an emergency measure that the Board can take if it reasonably determines that certain modifications to requirements in ICANN’s agreements with registries and registrars are needed in order to maintain the security and stability of the DNS or registry/registrar services. Registries

and registrars are required to comply with and implement all specifications or policies established by the Board on a temporary basis.

There are several procedural steps required for the Board to adopt a temporary policy of specification, namely:

- At least two-thirds of the Board must vote to approve the temporary specification;
- The changes in the specification must be “justified” and “immediate temporary establishment of a specification or policy... is necessary to maintain the stability or security of Registrar Services, Registry Services or the DNS or the Internet” ;
- The Board must state the period of time for which the temporary specification is adopted;
- The Board “shall immediately implement the Consensus Policy development process set forth in ICANN’s Bylaws”;
- The Board must “issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary [Specification] and why the Board believes such Temporary [Specification] should receive the consensus support of Internet stakeholders”. A working draft of the advisory statement is provided in Attachment D [TO BE PROVIDED], and;
- If the time period of effectiveness of the Temporary Specification exceeds 90 calendar days, the Board must reaffirm its temporary adoption every 90 days for a total period not to exceed 1 year. The specification would only be in effect until it becomes consensus policy. If, after one year, this does not occur, registries and registrars would no longer be required to comply with the specification, at which point in time, the Board would need to consider the options available given the situation.

(See Specification 1 of the [Registry Agreement](#) and the [Consensus and Temporary Policies Specification](#) of the 2013 Registrar Accreditation Agreement.)

ICANN ORG RECOMMENDATION:

ICANN org recommends that the Board adopts the Temporary Specification for gTLD Registration Data to establish temporary requirements for how ICANN and gTLD registries and registrars could continue to comply with existing ICANN contractual requirements and community-developed policies in light of the GDPR. ICANN org also recommends that the Board take the companion actions of initiating the policy development process and moving forward with the Board-GAC Bylaws Consultation Process.

PROPOSED RESOLUTION:

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PROPOSED RATIONALE:

Rationale Text Superseded

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Signature Block:

Submitted by:

Position:

Date Noted:

Email:

AGENDA – 13 May 2018 REGULAR BOARD Meeting – 45 minutes

Last Updated 6 May

etc.	Agenda Item	Shepherd
/, & ote	1. Consent Agenda	
n	1.a. Board Meeting Minutes from 15 March 2018	John Jeffrey
	1.b. Appointment of Andrey Kolesnikov to the Security and Stability Advisory Committee	Ram Mohan
	1.c. Approval of GNSO Noncommercial Users Constituency Bylaws Amendments	Khaled Koubaa
	1.d. New GNSO Voting Thresholds to address post-transition roles and responsibilities of the GNSO as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN Bylaws	Matthew Shears
	1.e. Deferral of transition to Thick WHOIS Policy Implementation	Chris Disspain
	1.f. Registrar Data Escrow Agent Contract Approval	Ron da Silva

AGENDA – 13 May 2018 REGULAR BOARD Meeting – 45 minutes

Last Updated 6 May

	1.g. Getting Additional Input on New KSK Roll Plan	Kaveh Ranjbar	
n	2. Main Agenda		
n	2.a. Options for Addressing RySG Request for Refund of TMCH Registry RPM Access Fee	Ron da Silva	
	2.b. Consideration of Temporary Specification for gTLD Registration Data & Other GDPR Implementation Matters	Becky Burr	
	2.c. Consideration of Reconsideration Request 17-5	Chris Disspain	
	2.d. AOB		

Directors and Liaisons,

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

14 May 2018 – Regular Meeting of the ICANN Board of Directors - at 00:00 UTC (13 May 2018 at 17:00 PDT Vancouver). This Board meeting is estimated to last approximately 60 minutes.

<https://www.timeanddate.com/worldclock/fixetime.html?msg=Regular+Meeting+of+the+ICANN+Board&iso=20180514T00&p1=%3A&ah=1>

Some other time zones:

13 May 2018 – 17:00 PDT Vancouver/Los Angeles

14 May 2018 – 02:00 CEST Brussels

14 May 2018 – 09:00 JST Tokyo

REGULAR MEETING OF THE ICANN BOARD

Consent Agenda:

- Approval of Board Meeting Minutes
 - 15 MARCH 2018
- Appointment of Member to the Security and Stability Advisory Committee
- Approval of GNSO Noncommercial Users Constituency Bylaws Amendments
- New GNSO Voting Thresholds to address post-transition roles and responsibilities of the GNSO as a Decisional Participant in the Empowered Community - Proposed Changes to ICANN Bylaws
- Deferral of transition to Thick WHOIS Policy Implementation
- Registrar Data Escrow Agent Contract Approval
- Consideration of Reconsideration Request 17-5
- Getting Additional Input on New KSK Roll Plan

Main Agenda

- Options for Addressing RySG Request for Refund of TMCH Registry RPM Access Fee
- Consideration of Temporary Specification for gTLD Registration Data & Other GDPR Implementation Matters
- Any Other Business

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

General Counsel & Secretary, ICANN

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Contact Information Redacted