

ICANN BOARD PAPER NO. 2022.01.16.1a
(Subject to BFC Approval)

TITLE: IT Outsource Contract Renewal
PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

In November 2014, following a request for proposal (RFP) process and ICANN Board approval, ICANN organization (org) engaged an expert third-party outsourcing firm to augment ICANN's IT capacity. That led to a Confidential Negotiation Information contract with an annual value not to exceed Confidential Negotiation Information. In April 2018, the contract was renewed through March 2020 with Board approval following an RFP process. The value of the renewed contract was Confidential Negotiation Information for a period of Confidential Negotiation Information. The contract was renewed for a third time in May 2020 through March 2022 with Board approval. The value of the renewal contract was Confidential Negotiation Information. To date, ICANN has contracted with this same expert third-party outsourcing firm for a total of Confidential Negotiation Information.

ICANN org considered the cost and efficiency of either issuing another RFP for outsourced IT capacity or further renewing the current contract. After consulting with ICANN's procurement department, ICANN org determined it was most efficient and cost effective to renew the contract with the current firm without an RFP process.

ICANN org is now seeking a further renewal of the contract with the current firm Confidential Negotiation Information

under ICANN's Contracting and Disbursement Policy the Board is required to approve entering into the contract.

ICANN ORGANIZATION AND BOARD FINANCE COMMITTEE (BFC)

RECOMMENDATION:

Both ICANN organization and the BFC recommend that the Board authorizes the President and CEO, or his designee(s), to take all necessary actions to enter into, and make disbursement in furtherance of, a renewed contract, for the period Confidential Negotiation Information with the current expert third-party IT outsourcing firm.

PROPOSED RESOLUTION:

Whereas, ICANN organization has a need for continued third-party development, quality assurance and content management support to augment its IT capacity.

Whereas, the current firm has provided services in software engineering, quality assurance, and content management over the last several years.

Whereas, ICANN org conducted a full request for proposal when renewing the contract in 2017, the results of which lead ICANN org to determine that the current firm was still the preferred vendor.

Whereas, ICANN org considered the cost and efficiency of either issuing another RFP for outsourced IT capacity or further renewing the contract with the current firm and determined that it was more efficient and cost effective to renew the contract with the current firm.

Resolved (2022.01.16.xx), the Board authorizes the President and CEO, or his designee(s), to enter into, and make disbursement in furtherance of, a further renewed contract with current IT outsourcing firm for a term of ^{Confidential Negotiation}Information

Resolved (2022.01.16.xx), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

PROPOSED RATIONALE:

In November 2014, following ICANN Board approval, ICANN organization (org) engaged an expert third-party outsourcing firm to augment ICANN’s IT capacity.

That led to a ^{Confidential Negotiation}Information contract with an annual value not to exceed

Confidential Negotiation Information

In April 2018, the contract was renewed through March 2020

with Board approval following an RFP process. The value of the renewed

contract was ^{Confidential Negotiation}Information . The

contract was renewed for a third time in May 2020 through March 2022 with

Board approval. The value of the renewal contract was ^{Confidential} ~~Negotiation Information~~ To date, ICANN has contracted with the current firm for a total of ^{Confidential} ~~Negotiation Information~~ The relationship with the current firm has been beneficial to ICANN org and overall has been a success.

Both the initial and first renewed contracts included RFP processes. After consulting with ICANN's procurement department, ICANN org determined not to pursue the RFP process for the second and third (current) renewals due to cost of doing an RFP process and limited responses received from the first renewal RFP. The RFP for the first renewed contract concluded that the current firm is still the preferred vendor and ICANN org determined it was most efficient and cost effective to renew the contract with that firm.

Accordingly, both ICANN organization and the BFC recommended that the Board authorize the organization to enter into, and make disbursement in furtherance of, a renewed contract with the current IT outsourcing firm, covering the period of ^{Confidential Negotiation Information} ~~Confidential Negotiation Information~~ with a total cost not to exceed ^{Confidential Negotiation Information} ~~Confidential Negotiation Information~~

This decision is in the furtherance of ICANN's mission and the support of public interest to support the security, stability and resiliency of the domain name system by ensuring that there is a fully resourced engineering and IT team able to support the organization in a fiscally responsible and accountable manner.

This decision will have a fiscal impact, but the impact has already been accounted for in the FY23 budget and will be for future budgets as well.

As noted above, this action is intended to have a positive impact on the security, stability and resiliency of the domain name system.

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

Submitted by:
Position:

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16 January 2022

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ICANN BOARD PAPER NO. 2022.01.16.1b
(Subject to BFC Approval)

TITLE: IT Outsource Contract
PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

Since 2014, the ICANN organization has engaged two expert third-party outsourcing firms to partially augment ICANN’s IT capacity. One on an ongoing basis (which is the focus of another Board paper) and one on an ad hoc basis, which is the focus of this paper. Since then, the firm providing ad hoc IT support has helped ICANN Engineering build test automation, as well as augmented staff to support Contracted Parties, the ICANN Community, and Technical Services.

ICANN organization (org) is now seeking additional resources to supplement some of the resourcing gaps brought on by a competitive marketplace. While another firm remains ICANN org’s primary contractor for IT labor outsourcing, this engagement will fill a current resource gap the other firm does not fill.

ICANN org is now seeking a ^{Confidential Negotiation Information} with this ad-hoc firm, from Confidential Negotiation Information with a total cost not to exceed Confidential Negotiation Information

under ICANN’s Contracting and Disbursement Policy the Board is required to approve entering into the contract.

ICANN ORGANIZATION AND BOARD FINANCE COMMITTEE (BFC)

RECOMMENDATION:

Both ICANN organization and the BFC recommend that the Board authorizes the President and CEO, or his designee(s), to take all necessary actions to enter into, and make disbursement in furtherance of, a new contract for ad hoc IT capacity, for the period Confidential Negotiation Information

PROPOSED RESOLUTION:

Whereas, ICANN organization has a need for continued third-party ad hoc development and quality assurance support to augment its Engineering and IT capacity.

Whereas, the current firm has provided services in software engineering and quality assurance over the last several years.

Resolved (2022.01.16.xx), the Board authorizes the President and CEO, or his designee(s) to enter into, and make disbursement in furtherance of, a further renewed contract for continued third-party ad hoc IT support for a term of

Confidential Negotiation Information

Resolved (2022.01.16.xx), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

PROPOSED RATIONALE:

In order to provide supplemental support and maintain vendor competition, ICANN org has previously contracted with this firm on a smaller scale to provide ad hoc support for Engineering and IT projects. ICANN org will receive

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discounted rate on procured engineering resources assuming ICANN

signs a Confidential Negotiation Information. The value of the contract is

Confidential Negotiation Information

. The relationship

with this firm has been beneficial to ICANN org and has been a success overall.

With its procurement department, ICANN org considered the cost and efficiency of either issuing a request for proposal (RFP) for ad hoc outsourced IT capacity or further renewing the current firm's contract and determined that it was more efficient and cost effective to renew the current firm's contract. For example, the cost of switching vendors entails drafting a new RFP, vetting potential candidates, and vendor onboarding – all of which would add cost and extend project durations on an already burdened production line.

Accordingly, both ICANN organization and the BFC recommended that the Board authorize the organization to enter into, and make disbursement in furtherance of, a renewed contract for continued third-party ad hoc IT support covering the period of Confidential Negotiation Information with a total cost not to exceed Confidential Negotiation Information

This decision is in the furtherance of ICANN's mission and the support of public interest to support the security, stability and resiliency of the domain name system by ensuring that there is a fully resourced engineering and IT team able to support the organization in a fiscally responsible and accountable manner.

As noted above, this action is intended to have a positive impact on the security, stability and resiliency of the domain name system.

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

Submitted by: Ashwin Rangan & Xavier Calvez
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Chief Financial Officer
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ICANN BOARD PAPER NO. 2022.01.16.2a

TITLE: **Alternative GNSO PDP Recommendations on the Phase 1
Review of All**

Rights Protection Mechanisms (RPMs) in All gTLDs

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

EXECUTIVE SUMMARY:

In January 2021, the Generic Names Supporting Organization (GNSO) Council unanimously [approved](#) the [Final Report](#), containing thirty-five (35) final recommendations from the Phase 1 work of the Policy Development Process (PDP) Working Group on the Review of All Rights Protection Mechanisms (RPMs) in All Generic Top-Level Domains (gTLDs). Pursuant to the ICANN [Bylaws](#), the GNSO Council has transmitted the [recommendations](#) to the ICANN Board, a Bylaws-mandated [public comment](#) proceeding concerning the Phase 1 Final Report was conducted (from 7 April 2021 to 21 May 2021) and the Governmental Advisory Committee (GAC) [notified](#) of the GNSO Council’s approval of the Phase 1 Final Report. To date, the GAC has not provided advice on any public policy concerns regarding the Phase 1 Final Report. The next step under the Bylaws is for the Board to consider the final Phase 1 recommendations.

BACKGROUND

On 18 February 2016, the GNSO Council [resolved](#) to initiate a two-phased PDP to review all existing RPMs in all gTLDs. The [Final Report](#) issued by the PDP Working Group is the culmination of over four years of work from Phase 1, assessing the effectiveness of the relevant RPMs established as safeguards in the 2012 New gTLD Program. These RPMs are: the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP); Sunrise and Trademark Claims services offered through the Trademark Clearinghouse (TMCH); and the Uniform Rapid Suspension (URS) dispute resolution procedure.

The PDP Working Group has classified its recommendations into three categories:

1. Recommendations for new policies or procedures to improve the RPMs launched under the 2012 New gTLD Program, to enable fulfillment of the objectives for their creation and enhance their effectiveness in the next new gTLD expansion round.

2. Recommendations to modify existing operational practices related to the Phase 1 RPMs in order to improve their effectiveness, without any changes to their underlying structures or procedures; and

3. Recommendations to maintain the status quo (i.e. retain the Phase 1 RPMs as implemented for the 2012 New gTLD Program), which will allow for similar levels of trademark protections to continue in the next new gTLD expansion round.

As the Working Group found it difficult to obtain quantitative data concerning the effectiveness of the Phase 1 RPMs, it also put forward an Overarching Data Collection final recommendation aimed at addressing this data-related gap.

ICANN PRESIDENT & CEO RECOMMENDATION:

Having been tasked to review the Phase 1 Final Report issued by the RPM PDP Working Group, ICANN's President and CEO recommends that the Board adopt the final recommendations as documented in the PDP Working Group's Final Report and approved by the GNSO Council on 21 January 2021. ICANN's President and CEO recommends that the ICANN Board directs ICANN's President and CEO, or his designee(s), to adopt a tiered approach for the work based on timing, staffing, and resourcing needed for implementation of the recommendations, as detailed in the resolution below.

PROPOSED RESOLUTION:

Whereas, on 18 February 2016, the GNSO Council [resolved](#) to initiate a two-phased PDP to review all existing trademark-related rights protection mechanisms (RPMs) in all gTLDs.

Whereas, on 9 March 2016, the GNSO Council [approved](#) the PDP [Charter](#), thereby initiating Phase 1 of the PDP that focused on the RPMs developed for the 2012 New gTLD Program.

Whereas, the PDP Working Group has followed all the necessary steps and processes required by the ICANN Bylaws, the GNSO PDP Manual and the GNSO Working Group Guidelines, including the publication of an [Initial Report](#) for [public comment](#) (on 18 March 2020) and consideration of the public comments received thereto.

Whereas, on 24 November 2020, the PDP Working Group submitted its Phase 1 [Final Report](#) to the GNSO Council for its review and action.

Whereas, the PDP Working Group has reached Full Consensus for thirty-four (34) out of the thirty-five (35) final recommendations documented in the Phase 1 Final Report, and Consensus for the remaining one (1) final recommendation (concerning Final Recommendation #1 for the TMCH).

Whereas, sixteen (16) of the thirty-five (35) recommendations in the Phase 1 Final Report recommend modifying existing operational practices as well as updating documentation and related materials concerning RPMs and the Board does not anticipate that substantial resources will be needed for implementation (TMCH Final Recommendation 4, Trademark Claims Final Recommendations 2, 5, and 6, URS Final Recommendations 1, 2, 3, 4, 5, 6, 7, 11, 12, 14, and 15, and one (1) Trademark Post Delegation Dispute Resolution Procedure (TM-PDDRP) Final Recommendation).

Whereas, nine (9) of the thirty-five (35) recommendations in the Phase 1 Final Report recommend that the status quo be maintained for future gTLD expansion rounds (e.g., no change to the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program round) and, as such, the Board anticipates that implementation of these recommendations will be integrated into any implementation work related to the next gTLD expansion round (TMCH

Final Recommendation 2, Sunrise Final Recommendations 2, 3, 4, 5, 6, and 7, and Trademark Claims Final Recommendations 3 and 4).

Whereas, six (6) of the thirty-five (35) recommendations in the Phase 1 Final Report require substantial resources for implementation (including considerations relating to timing and staffing) due to their complexity and the need to involve multiple stakeholders. Successful implementation will also depend on the willingness and availability of stakeholders to participate in the implementation work. Specifically, these recommendations call for:

- collection of data concerning the RPMs,
- developing educational materials to assist users of the RPMs, and
- creating a new complaints mechanism for URS participants.

ICANN Org estimates that fully implementing these recommendations will require a minimum of one year once implementation work begins on this set of recommendations and would require substantial internal resources from multiple ICANN organization functions in order to identify and work with relevant stakeholders to implement the recommendations, as well as to support and maintain ongoing operations and data collection. ICANN Org plans to include these recommendations as part of its ongoing work with the community on prioritization efforts relating to anticipated implementation work arising from community-developed recommendations that require ICANN Org resourcing and support (TMCH Final Recommendation 3, URS Final Recommendations 8, 9, 10, and 13, and one (1) Overarching Data Collection Final Recommendation).

Whereas, four (4) of the thirty-five (35) recommendations in the Phase 1 Final Report call for specific changes to the Applicant Guidebook and/or the Base Registry Agreement for subsequent rounds of new gTLDs (TMCH Final Recommendation 1, Sunrise Final Recommendations 1 and 8, and Trademark Claims Final Recommendation 1).

Whereas, on 21 January 2021, the GNSO Council unanimously [approved](#) all thirty-five (35) final PDP recommendations as documented in the PDP Working Group's Phase 1 [Final Report](#).

Whereas, on 19 March 2021, the GNSO Council transmitted its Bylaws-mandated [Recommendations Report](#) to the ICANN Board of Directors, recommending that the Board adopt all the final Phase 1 recommendations. The GNSO Council also requested that ICANN org convene an Implementation Review Team (IRT) to work on the implementation of these recommendations, as is the regular practice and in accordance with the [IRT Principles & Guidelines](#) approved in 2016.

Whereas, on 7 April 2021, the Phase 1 [Final Report](#) was published for [public comment](#) to inform Board action on the report, in accordance with the Bylaws.

Whereas, on 7 April 2021, the ICANN Board also [notified](#) the GAC of the GNSO Council's approval of the Phase 1 Final Report, in accordance with the Bylaws.

Whereas, the GAC has not provided advice as to whether it believes there are any public policy issues raised by these recommendations.

Resolved (2022.01.16 xx) the Board thanks the members of the PDP Working Group for their dedication and over four years of work on Phase 1 of the PDP, including its development of thirty-five (35) recommendations to enhance the RPMs that were originally developed for the 2012 New gTLD Program and to facilitate future reviews of all RPMs.

Resolved (2022.01.16 xx), the ICANN Board adopts all thirty-five (35) final Phase 1 PDP recommendations as documented in the PDP Working Group's Phase 1 Final Report.

Resolved (2022.01.16 xx), for the sixteen (16) recommendations that call for updates to existing operational practices or documentation concerning the RPMs where no substantial resources are required for implementation, the ICANN Board directs ICANN's President and CEO, or his designee(s), to proceed with the implementation of these recommendations as soon as feasible,

and to develop an implementation plan, including resources and timelines, for the recommendations that is consistent with Annex A, Section 10 of the ICANN [Bylaws](#), and to continue communication with the community on implementation.

Resolved (2022.01.16 xx), for the nine (9) recommendations affirming the status quo (i.e. maintaining the Phase 1 RPMs as implemented for the 2012 New gTLD Program), the ICANN Board directs ICANN's President and CEO, or his designee(s), to document and include these recommendations for future expansions of new gTLDs and to inform the community about the ICANN Organization's plans for how these will be implemented.

Resolved (2022.01.16 xx), for the six (6) recommendations that require substantial resourcing, and involvement of multiple stakeholders to implement, the ICANN Board directs ICANN's President and CEO, or his designee(s), to develop and to submit to the ICANN Board a plan for implementation of these recommendations containing information on estimated timing, staffing, and other resources required, and information about how implementation of these recommendations fit into its operational planning and prioritization of the anticipated implementation efforts that will require ICANN Organization resourcing and support. The Board recognizes that these six recommendations will consequently not be implemented immediately, and that implementation will proceed when resources become available as a result of the ICANN Organization's prioritization work.

Resolved (2022.01.16 xx), for the four (4) recommendations that call for specific changes to the Applicant Guidebook and/or the Base Registry Agreement and coordination with the expected Subsequent Procedures IRT, the ICANN Board directs ICANN's President and CEO, or his designee(s), to incorporate the implementation of these recommendations into the work on updates to the Applicant Guidebook for subsequent new gTLD rounds.

[Resolved \(2022.01.16 xx\), the Board directs ICANN org to provide it with an implementation timeline, to be established in agreement with the Implementation Review Team, and to report regularly on the status of work throughout the implementation period. In the event that](#)

implementation progress may be impeded or the timeline cannot be met due to unforeseen circumstances or policy questions that cannot be resolved, or causing an impasse, the Board may consider appropriate ways to facilitate next steps with the GNSO and community.

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PROPOSED RATIONALE:

Why is the Board addressing the issue?

The 2012 New gTLD Program RPMs are mechanisms that have now been in use for several years. Community feedback on the RPMs developed for the 2012 New gTLD Program indicated a need to review their application and scope, especially if there is to be further expansion of the gTLD space. As this PDP is the first time that the RPMs have been subject to a policy review by the ICANN community, there were no comprehensive studies or data collected that measured their effectiveness.

As such, on 15 March 2016, the GNSO Council chartered the PDP Working Group to conduct a review of all the RPMs in two phases. Phase 1, which recently concluded, focused on reviewing the effectiveness of all the RPMs and associated structures and procedures applicable to gTLDs that were launched under the 2012 New gTLD Program. Phase 2 will focus on reviewing the Uniform Domain-Name Dispute-Resolution Policy ([UDRP](#)), which has been an ICANN Consensus Policy since 1999.

In November 2020, the PDP Working Group completed its review of the RPMs that were developed for the 2012 New gTLD Program and submitted its Phase 1 [Final Report](#) to the GNSO Council for review and approval. The Phase 1 Final Report represents the culmination of over four years of work by the PDP Working Group.

On 21 January 2021, the GNSO Council voted to [approve](#) by a GNSO Supermajority all the thirty-five (35) recommendations contained in the Phase 1 Final Report. On 19 March 2021, the GNSO Council transmitted its Bylaws-mandated Recommendations [Report](#) to the ICANN Board of Directors, recommending adoption of all the final recommendations by the ICANN Board.

As required by Article 3, Section 6.iiii of the ICANN Bylaws, the approved recommendations were posted for [public comment](#) to inform Board action on the final recommendations.

Furthermore, under Section 11.3(i)(x) of the ICANN Bylaws, the GNSO Council's Supermajority support for these recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

What is the proposal being considered?

In 2016, the PDP Working Group was chartered to assess the effectiveness of the existing RPMs, including those established as safeguards in the New gTLD Program, and to study whether or not all the RPMs collectively fulfill the purposes for which they were created. The Board today considers the thirty-five (35) Phase 1 final recommendations from the PDP Working Group.

The [Final Report](#) contains thirty-five (35) recommendations, which were classified into three categories by the PDP Working Group: nine (9) recommendations which recommend that the status quo (e.g., the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program round) be maintained, fifteen (15) recommendations for new policies or procedures to improve the RPMs launched under the 2012 New gTLD Program, such as to enable fulfillment of the objectives for their creation and enhance their effectiveness in the next new gTLD expansion round, as well as ten (10) recommendations to modify existing operational practices to improve the effectiveness of the RPMs. As the Working Group experienced difficulties in obtaining quantitative data concerning the effectiveness of the Phase 1 RPMs, it also put forward an Overarching Data Collection Final Recommendation aimed at addressing this data-related gap.

Among the thirty-five (35) Phase 1 final recommendations, the PDP Working Group reached full consensus on thirty-four (34) recommendations and consensus on one (1) recommendation, which was the TMCH Final Recommendation #1. A Minority Statement was jointly filed by seven (7) members of the PDP Working Group with regard to this recommendation, although the

Minority Statement did not oppose the primary thrust of the recommendation but instead noted the submitters' concerns over the scope of "word marks" that can be accepted into the TMCH. The Minority Statement was included in the Phase 1 Final Report as "Annex D - Working Group Members' Minority Statement on TMCH Final Recommendation #1".

As required by Article 3, Section 6.iiii of the ICANN Bylaws, the recommendations were posted for [public comment](#) to inform Board action on the final recommendations. In considering the [Final Report](#), the Board reviewed public comments on the Phase 1 Final Report and briefings by ICANN org on the feasibility and impact of implementation of all the recommendations, including considerations regarding the timing and resourcing needs in the context of the overall prioritization of work on implementation of other community-developed recommendations and other existing activities by the ICANN Organization and community.

In its review of all the recommendations contained in the Phase 1 Final Report, the Board noted that implementation of the recommendations could be divided into several categories. These implementation categories are:

1) Recommendations where no substantial resources are needed for implementation as they can be integrated into existing work efforts - a total number of sixteen (16) recommendations:

- Implementation of 15 of the 16 recommendations in this category involves updating existing documentation and related materials concerning the relevant RPMs, such as the URS [Rules](#), URS [Procedure](#) and URS High Level [Technical Requirements](#) for Registries and Registrar, as well as the RPM [Requirements](#), [TM-PDDRP](#), and the TMCH Database Framework [Agreement](#) (TMCH Final Recommendation 4, Trademark Claims Final Recommendations 2, 5, and 6, URS Final Recommendations 1, 2, 3, 4, 5, 6, 7, 11, 14, and 15, and (1) one TM-PDDRP Final Recommendation).
- With regard to modifying existing operational practices, one of the 16 recommendations in this category involves working with registries, registrars, and URS Providers to ensure

that one another's contact details are up to date in order to ensure the efficacy of the URS process (URS Final Recommendation 12).

2) Recommendations to maintain the status quo - a total number of nine (9) recommendations:

- The recommendations in this category involve documenting and informing the community as to how the status quo (i.e. the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program application round) will be maintained in the next new gTLD expansion (TMCH Final Recommendation 2, Sunrise Final Recommendations 2, 3, 4, 5, 6, and 7, and Trademark Claims Final Recommendations 3 and 4).

3) Recommendations requiring substantial time and resources to implement - a total number of six (6) recommendations:

- Implementation of four of the six recommendations in this category involves working with RPM-related service providers to develop educational materials to assist users of the RPMs (TMCH Final Recommendation 3 and URS Final Recommendations 9, 10, and 13).
- Implementation of one recommendation in this category involves developing a new and separate complaints mechanism or mechanisms to ensure that URS providers, registries, and registrars operate in accordance with the URS Rules and fulfill their role and obligations in the URS process (URS Final Recommendation 8).
- Implementation of one recommendation in this category involves working with RPM-related service providers and ICANN-accredited registrars to collect data concerning the TMCH (one (1) Overarching Data Collection Final Recommendation).

4) Recommendations affecting subsequent round(s) of new gTLDs - a total number of four (4) recommendations:

- Implementation of these recommendations involves making specific changes to the Applicant Guidebook and/or the Base Registry Agreement for the next expansion round of new gTLDs (TMCH Final Recommendation 1, Sunrise Final Recommendations 1 and 8, and Trademark Claims Final Recommendation 1).

Annex A contains additional details on each recommendation and the scope of effort required for implementation.

Which stakeholders or others were consulted?

In accordance with the requirements of the GNSO PDP Manual, the Working Group solicited early [input](#) from ICANN's Supporting Organizations and Advisory Committees as well as the GNSO's Stakeholder Groups and Constituencies. The Working Group also sought input from registry operators, URS providers and practitioners, and other stakeholders, and conducted a data-gathering exercise to obtain specific data points for the Phase 1 RPMs.

As mandated by the GNSO's PDP Manual, the PDP Working Group published its Phase 1 [Initial Report](#) on 18 March 2020 for [public comment](#), which closed on 4 May 2020. Following a careful review of all public comments received from fifty-five (55) contributors as well as extensive discussions over a number of additional recommendations developed as a result of the public comment review, the Working Group finalized its recommendations and delivered its Phase 1 [Final Report](#) to the GNSO Council in November 2020. Several Working Group members submitted a Minority Statement pertaining to the TMCH Final Recommendation #1. The Minority Statement was included in the Phase 1 Final Report as Annex D.

As required by the ICANN Bylaws, a [public comment](#) proceeding for the final recommendations in the Phase 1 Final Report was conducted between 7 April 2021 and 21 May 2021, which allowed stakeholders to comment on the proposed recommendations prior to Board action. As further required by the Bylaws, on 7 April 2021 the ICANN Board [notified](#) the GAC of the GNSO Council's approval of the Phase 1 Final Report, to allow the GAC to provide timely advice on any public policy concerns that it may have with the recommendations.

What concerns or issues were raised by the community?

The community provided feedback through Public Comments on the Initial and Final Phase 1 Reports and correspondence. A few Working Group members also submitted a Minority Statement to the Phase 1 [Final Report](#), which raised concerns regarding the continuing confidentiality of the TMCH database and the possibility that the scope of marks accepted by the TMCH is broader than the scope of rights conferred by trademark registration. The Phase 1 Working Group considered all Public Comments filed to its Initial Report in coming to consensus on its final recommendations. The [Report of Public Comments](#) on the Phase 1 Final Report summarizes the concerns raised by commenters for the Board's consideration.

What significant materials did the Board review?

The Board reviewed the following materials:

- The 18 March 2020 Phase 1 [Initial Report](#) of the GNSO PDP on the review of all RPMs in All gTLDs.
- The 24 November 2020 Phase 1 [Final Report](#) of the GNSO PDP on the review of all RPMs in All gTLDs.
- The 10 February 2021 GNSO Council Recommendations [Report](#) regarding the adoption of the Phase 1 Final recommendations.
- The 21 January 2021 GNSO Council [resolution](#) of the RPM PDP Phase 1 [Final Report](#) recommendations.
- The 4 June 2021 Staff [Report](#) of Public Comment Proceeding on the Phase 1 final recommendations from the GNSO Review of all RPMs in all gTLDs PDP.

What factors did the Board find to be significant?

As noted in the GNSO Council Recommendations [Report](#), the PDP Working Group's fifteen (15) recommendations for new policies or procedures, ten (10) recommendations to modify

existing operational practice, and one (1) recommendation for overarching data collection are expected to have operational, financial, and/or other impact on registries and registrars who have to implement new requirements and improvements to existing processes; RPM-related service providers, including the TMCH Validation Provider, TMCH Database Provider, URS Providers, and TM-PDDRP Provider; and ICANN org, which will have to, among other things, update its documentation and related materials concerning the TMCH and the Applicant Guidebook for future expansions of new gTLDs, and collaborate with the RPM-related service providers and Contracted Parties to implement the new policies and procedures.

In addition to the thirty-five (35) Phase 1 final recommendations, the Phase 1 [Final Report](#) included a substantial amount of implementation guidance, which are intended to provide supplemental and/or clarifying information to assist with implementation of the recommendations. The Board understands from the GNSO Council Recommendations [Report](#) that substantial time and effort will be needed to translate the recommendations into policy language and operational requirements, as well as the complexity of implementing these recommendations with the involvement of various stakeholders.

The Board also understands that some of the PDP Working Group's Phase 1 recommendations will affect future expansion round(s) of new gTLDs. In particular, the PDP Working Group proposed specific changes to the Applicant Guidebook and/or the Base Registry Agreement. As such, the Board's adoption of these recommendations means that they will need to be factored into preparations for future expansion of the gTLD space, including coordination with the SubPro IRT should the Board decide to adopt the recent PDP recommendations from the GNSO's New gTLD SubPro PDP.

The ICANN Organization has preliminarily estimated that implementing the Phase 1 final recommendations could take a minimum of two (2) years from Board adoption. However, a significant factor that is likely to impact the final implementation timeline is the Board's decision

regarding the SubPro PDP recommendations, including implementation considerations based on the outcomes of the Operational Design Phase currently underway for SubPro.

Are there positive or negative community impacts?

Adopting the final recommendations will have a positive impact on ICANN in that it will contribute to ensuring that ICANN addresses policy questions and operational issues identified through experience with the RPMs developed for the 2012 New gTLD Program. Board adoption of the recommendations will facilitate a coherent and uniform mechanism for future reviews of all RPMs and allow for opportunities for continuous improvement of these policies and processes. However, community bandwidth and resources will be required to ensure that implementation of the recommendations are consistent with what the PDP Working Group intended, in addition to other ongoing work in the community.

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

Implementing the Phase 1 recommendations is expected to have operational, financial, and/or other impact on registries and registrars who will implement new requirements and improvements to existing processes; RPM-related service providers, including the TMCH Validation Provider, TMCH Database Provider, URS Providers, and TM-PDDRP Provider; and ICANN org, which will have to, among other things, update its documentation and related materials concerning the TMCH and the Applicant Guidebook for future expansions of new gTLDs, and collaborate with the RPM-related service providers and Contracted Parties to implement the new policies and procedures, update existing documentation and develop or enhance educational materials to assist users of the RPMs.

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

None at this time.

Is this decision in the public interest and within ICANN’s mission?

This action is within ICANN's Mission and mandate and in the public interest as set forth in the ICANN Bylaws. The multistakeholder policy development process of bottom-up, consensus policies and guidelines helps advance the stable and secure operation of the Internet's unique identifier systems.

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?

As required by the ICANN Bylaws and the GNSO’s policy procedures, the recommendations were the subject of [public comment](#) as discussed above.

Signature Block:

Submitted by:

Position:

Date Noted:

Email:

ANNEX A: OVERVIEW OF RPM PHASE 1 RECOMMENDATIONS AND IMPLEMENTATION WORK

RECOMMENDATION	RECOMMENDATION SYNOPSIS	RECOMMENDATION CATEGORIES	IMPACTED DOCUMENTS	ACTION	SCOPE OF WORK	IMPLEMENTATION CONSIDERATIONS
Uniform Rapid Suspension (URS)						
URS Final Recommendation #1	<p>Amend URS Rule 3(b), URS Procedure paragraph 3.3 and, where necessary, a URS Provider’s Supplemental Rules</p> <p>Complainant must only be required to insert publicly-available WHO S/RDDS data in initial Complaint allow update to Complaint within 2-3 calendar days</p>	New Policies and Procedures	URS Rules and Procedure Supplemental Rules	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents	No significant resources needed implementation can commence upon adoption of recommendation
URS Final Recommendation #2	<p>Amend URS Rule 15(a)</p> <p>URS Panelists have discretion to decide whether to publish/redact registration data in the Determination URS party has the right to request redaction</p>	New Policies and Procedures	URS Rules	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents	No significant resources needed implementation can commence upon adoption of recommendation
URS Final Recommendation #3	<p>Amend URS Rules to incorporate in full Rule #11 of the UDRP Rules regarding "Language of Proceedings"</p>	New Policies and Procedures	URS Rules	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents consider developing potential guidance to assist URS	No significant resources needed implementation can commence upon adoption of recommendation

					Examiners in deciding whether to deviate from the default language in the context of a particular proceeding	
URS Final Recommendation #4	<p>Amend URS Rule 4(b) and URS Procedure paragraph 4.2</p> <p>Provider must translate Notice of Complaint into the language of the Registration Agreement</p>	New Policies and Procedures	URS Rules and Procedure	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents	No significant resources needed implementation can commence upon adoption of recommendation
URS Final Recommendation #5	<p>Amend URS Procedure paragraph 6.2</p> <p>Clearly define what "Default Period" means registrant must not change public and non-public registration data elements during the Default Period</p>	New Policies and Procedures	URS Procedure	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents	No significant resources needed implementation can commence upon adoption of recommendation
URS Final Recommendation #6	<p>Amend URS Rule 6(a) and URS Procedure paragraph 7</p> <p>Provider maintains and publishes list of Examiners and their qualifications (CVs) identify how often each one has been appointed and link to their decisions</p>	New Policies and Procedures	URS Rules and Procedure	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents	No significant resources needed implementation can commence upon adoption of recommendation

URS Final Recommendation #7	Amend URS Rule 6 Provider publishes and reasonably enforces an effective Examiner Conflict of Interest Policy	New Policies and Procedures	URS Rules	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents	No significant resources needed implementation can commence upon adoption of recommendation
URS Final Recommendation #8	CANN org to establish a compliance mechanism(s) including an avenue for any party in the URS process to file complaints and seek resolution	New Policies and Procedures	N/A <i>Note that URS Rules and Procedures may potentially be impacted by the establishment of such new compliance mechanism(s)</i>	Establish New Compliance Mechanism	CANN org to work with RT on developing a compliance mechanism(s) and metrics for measuring performance of URS Providers Registries and Registrars in the URS process	Requires substantial time and resources to implement recommendation is subject to prioritization efforts
URS Final Recommendation #9	Develop uniform set of educational materials for guidance on what is needed to meet the "clear and convincing" burden of proof	New Policies and Procedures	N/A	Develop Educational Materials	CANN org to work with RT on developing educational materials and their translations determine whether it would be helpful to solicit input from the broader multistakeholder community including URS Providers/experts	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts

URS Final Recommendation #10	Develop informational materials to assist Complainants and Respondents including FAQs forms reference materials to explain Providers' services & practices	New Policies and Procedures	N/A	Develop Educational Materials	CANN org to work with RT and URS Providers on developing educational materials and their translations	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts
URS Final Recommendation #11	Amend URS Rules and Procedure Providers to send notices to Respondent after Registry/Registrar has forwarded registration data	Operational Fix	URS Rules and Procedure	Modify Existing Documents	CANN org to work with RT and URS Providers to update URS documents	No significant resources needed implementation can commence upon adoption of recommendation
URS Final Recommendation #12	CANN org Registries Registrars and URS Providers to take steps to ensure that contact details are up to date	Operational Fix	N/A	Modify Existing Operational Practice	CANN org to work with multiple parties to obtain accurate/up-to-date contact data and ensure one another's contact details are correct/up-to-date	No significant resources needed implementation can commence upon adoption of recommendation
URS Final Recommendation #13	Providers to require that Examiners document their rationale in sufficient detail	Operational Fix	N/A	Develop Educational Materials	CANN org to work with RT and URS Providers/Examiners to develop a set of basic guidance for documenting their rationale for a Determination	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts

<p>URS Final Recommendation #14</p>	<p>Amend High Level Technical Requirements for Registries and Registrar, Registry Requirement 10, if necessary</p> <p>RT to review implementation issues with respect to Registry Requirement 10 in the "URS High Level Technical Requirements for Registries and Registrars "</p>	<p>Operational Fix</p>	<p>URS High Level Technical Requirements for Registries and Registrar</p>	<p>Modify Existing Documents</p>	<p>CANN org to work with RT on reviewing implementation issues with respect to Registry Requirement 10 and potentially updating URS documents</p> <p><i>Note that some direct engagement with contracted parties to further investigate the implementation on issues may be helpful The IRT will likely include members from the contracted parties</i></p>	<p>No significant resources needed implementation can commence upon adoption of recommendation</p>
<p>URS Final Recommendation #15</p>	<p>Amend Title of URS High Level Technical Requirements for Registries and Registrar</p> <p>Remove "Technical" in title of "URS High Level Technical Requirements for Registries and Registrars"</p>	<p>Operational Fix</p>	<p>URS High Level Technical Requirements for Registries and Registrar</p>	<p>Modify Existing Documents</p>	<p>CANN org to work with RT and URS Providers to update URS documents</p>	<p>No significant resources needed implementation can commence upon adoption of recommendation</p>
<p>Trademark</p>						

Clearinghouse (TMCH)						
TMCH Final Recommendation #1	<p>Amend AGB, Module 5 TMCH</p> <p>Only “word marks” that meet one of the following requirements are eligible for the mandatory Sunrise and Trademark Claims RPMs</p> <ul style="list-style-type: none"> a Nationally or regionally registered word marks from all jurisdictions b Word marks validated by a court of law or other judicial proceeding c or Word marks that are protected by a statute or treaty that is in effect at the time the mark is submitted to the TMCH and that are listed with a national or regional trademark office <p>Geographical indications protected designations of origin and other signs protected by quality schemes for distinguishing or indicating the geographic source or quality of goods or services are not eligible for the mandatory Sunrise and Trademark Claims RPMs (unless they are also trademarks as defined</p>	New Policies and Procedures	Applicant Guidebook (AGB)	Modify Existing Documents	CANN org to work with SubPro RT to update AGB RPM/SubPro RTs to coordinate their efforts to ensure consistency	Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins

	in (a) or (b)) TMCH Validation Provider(s) registry operators and other third parties may provide ancillary services to intellectual property rights-holders these other forms of intellectual property must be held in a separate ancillary database					
TMCH Final Recommendation #2	Maintain current "TM +50" and "exact match" rules NOT to limit the Scope of Applicability of Sunrise & Claims RPMs for trademarks containing dictionary term(s)	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required
TMCH Final Recommendation #3	Validation Provider primarily responsible for educating users about its services RT to work with Validation Provider and consider enhancing existing educational materials	Operational Fix	N/A	Develop Educational Materials	CANN org to work with RT and the TMCH Validation Provider (Deloitte) on enhancing existing educational materials	Requires substantial time and resources to implement subject to prioritization efforts
TMCH Final Recommendation #4	Database Provider must maintain industry-standard levels of redundancy and uptime	Operational Fix	TMCH Database Framework Agreement	Modify Existing Documents	CANN org to work with the Database Provider (BM) on updating the	No significant resources needed implementation can commence upon adoption of recommendation

					public version of the Agreement	
Sunrise						
Sunrise Final Recommendation #1	Amend Registry Agreement Registry Agreement for future new gTLDs to include a provision stating that a Registry Operator shall not operate its TLD in such a way as to have the effect of intentionally circumventing the mandatory RPMs or restricting brand owners' reasonable use of the Sunrise RPM	New Policies and Procedures	Registry Agreement	Modify Existing Documents	CANN org to work with SubPro RT and Contracted Parties on creating a new Base Registry Agreement or complete the Global Amendment of the current 2017 Base Registry Agreement in advance of the application submission window RPM/SubPro RTs to coordinate their efforts to ensure consistency	Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins
Sunrise Final Recommendation #2	Maintain current mandatory Sunrise Period for all new gTLD	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required
Sunrise Final Recommendation #3	Maintain current requirement for the Sunrise Period including 30-day minimum period for Start Date Sunrise and 60-day minimum period End Date Sunrise	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required

Sunrise Final Recommendation #4	Maintain current availability of Sunrise registrations only for identical matches matching process should not be expanded	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required
Sunrise Final Recommendation #5	NOT to limit the scope of Sunrise Registrations to the categories of goods/services for which trademark was registered	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required
Sunrise Final Recommendation #6	NOT to create a challenge mechanism relating to Premium/Reserved Names	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required
Sunrise Final Recommendation #7	NO mandatory publication of the Reserved Names lists	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required
Sunrise Final Recommendation #8	Amend AGB, Module 5 TMCH SDRP not intended to allow challenges to Sunrise registrations on grounds of invalid Trademark Record Registry Operator to immediately suspend domain name registration to allow registrant to file challenge under the TMCH's dispute resolution procedure	Operational Fix	Applicant Guidebook (AGB)	Modify Existing Documents	CANN org to work with SubPro RT to update AGB RPM/SubPro RTs to coordinate their efforts to ensure consistency	Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins
Trademark Claims						

Trademark Claims Final Recommendation #1	Current mandatory Claims Period remain uniform for all gTLDs in subsequent rounds with exception for those exempted pursuant to Spec 13 Brand TLDs & Section 6 of Spec 9 RO Code of Conduct	New Policies and Procedures	Registry Agreement	Modify Existing Documents	CANN org to work with SubPro RT and Contracted Parties on creating a new Base Registry Agreement or complete the Global Amendment of the current 2017 Base Registry Agreement in advance of the application submission window RPM/SubPro RTs to coordinate their efforts to ensure consistency	Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins
Trademark Claims Final Recommendation #2	Amend RPM Requirements Trademark Claims Notice to be delivered both in English and the language of the registration agreement	New Policies and Procedures	RPM Requirements	Modify Existing Documents	CANN org to work with RT and TMCH Service Providers to update RPM documents	No significant resources needed implementation can commence upon adoption of recommendation
Trademark Claims Final Recommendation #3	Maintain current requirement for a mandatory Claims Period when the TLD opens for general registration if RO offers a Limited Registration Period RO must maintain	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required

	current requirement to provide the Claims Services					
Trademark Claims Final Recommendation #4	Maintain current exact matching criteria for the Claims Notice	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required
Trademark Claims Final Recommendation #5	Maintain current requirement to send the Claims Notice before a registration is completed CANN org can work with Registrars to address all relevant implementation issues	Operational Fix	N/A	Modify Existing Operational Practice	CANN org to work RT and registrars to consider ways in which to address operational issues related to the current 48-hour expiration period of the Claims Notice	No significant resources needed implementation can commence upon adoption of recommendation
Trademark Claims Final Recommendation #6	Amend RPM Requirements Revise language of Trademark Claims Notice to improve the understanding of recipients reflect more specific information about the trademark(s) for which it is being issued and communicate its meaning and implications	Operational Fix	RPM Requirements	Modify Existing Documents	CANN org to work with RT and TMCH Service Providers to update RPM documents determine whether it would be helpful to solicit input from resources internal and/or external to the CANN community	No significant resources needed implementation can commence upon adoption of recommendation
Trademark Post Delegation Dispute Resolution Procedure (TM-						

PDDRP)						
TM-PDDRP Final Recommendation	Amend TM-PDDRP Rule 3(g) Multiple disputes filed by unrelated entities against the same Registry Operator may be initially submitted as a joint Complaint or may at the discretion of the Panel be consolidated upon request	New Policies and Procedures	TM-PDDRP Rules	Modify Existing Documents	CANN org to work with RT and TM-PDDRP Providers to update TM-PDDRP documents	No significant resources needed implementation can commence upon adoption of recommendation
Overarching Data Collection						
Overarching Data Collection Final Recommendation	For future new gTLD rounds CANN org to collect data concerning the TMCH on at least an annual basis and make the data available to future RPM review teams CANN org to also collect data concerning trademark owners' and registrants' experience with RPMs CANN-accredited registrars must provide CANN org with periodic reports of the number of Claims Notices that were sent out to prospective registrants CANN org to explore developing a mechanism in consultation with the	New Policies and Procedures	N/A <i>Note that agreements/c ontracts between ICANN, TMCH Validation Provider, URS Providers, and Registrars may be impacted by this data collection requirement</i>	Collect Data	CANN org to work with RT TMCH Providers and registrars to collect TMCH related data CANN org and URS providers to explore developing a mechanism to enable publication of URS data in a uniform format CANN org to collect data concerning trademark owners' and registrants' experience with the	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts

	URS Providers to enable publication and search of all URS Determinations in a uniform format				RPMs	
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ICANN BOARD PAPER NO. 2022.01.16.2a

TITLE: **GNSO PDP Recommendations on the Phase 1 Review of All Rights Protection Mechanisms (RPMs) in All gTLDs**

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

EXECUTIVE SUMMARY:

In January 2021, the Generic Names Supporting Organization (GNSO) Council unanimously [approved](#) the [Final Report](#), containing thirty-five (35) final recommendations from the Phase 1 work of the Policy Development Process (PDP) Working Group on the Review of All Rights Protection Mechanisms (RPMs) in All Generic Top-Level Domains (gTLDs). Pursuant to the ICANN [Bylaws](#), the GNSO Council has transmitted the [recommendations](#) to the ICANN Board, a Bylaws-mandated [public comment](#) proceeding concerning the Phase 1 Final Report was conducted (from 7 April 2021 to 21 May 2021) and the Governmental Advisory Committee (GAC) [notified](#) of the GNSO Council's approval of the Phase 1 Final Report. To date, the GAC has not provided advice on any public policy concerns regarding the Phase 1 Final Report. The next step under the Bylaws is for the Board to consider the final Phase 1 recommendations.

BACKGROUND

On 18 February 2016, the GNSO Council [resolved](#) to initiate a two-phased PDP to review all existing RPMs in all gTLDs. The [Final Report](#) issued by the PDP Working Group is the culmination of over four years of work from Phase 1, assessing the effectiveness of the relevant RPMs established as safeguards in the 2012 New gTLD Program. These RPMs are: the Trademark Post-Delegation Dispute Resolution Procedure (TM-PDDRP); Sunrise and Trademark Claims services offered through the Trademark Clearinghouse (TMCH); and the Uniform Rapid Suspension (URS) dispute resolution procedure.

The PDP Working Group has classified its recommendations into three categories:

1. Recommendations for new policies or procedures to improve the RPMs launched under the 2012 New gTLD Program, to enable fulfillment of the objectives for their creation and enhance their effectiveness in the next new gTLD expansion round.
2. Recommendations to modify existing operational practices related to the Phase 1 RPMs in order to improve their effectiveness, without any changes to their underlying structures or procedures; and
3. Recommendations to maintain the status quo (i.e. retain the Phase 1 RPMs as implemented for the 2012 New gTLD Program), which will allow for similar levels of trademark protections to continue in the next new gTLD expansion round.

As the Working Group found it difficult to obtain quantitative data concerning the effectiveness of the Phase 1 RPMs, it also put forward an Overarching Data Collection final recommendation aimed at addressing this data-related gap.

ICANN PRESIDENT & CEO RECOMMENDATION:

Having been tasked to review the Phase 1 Final Report issued by the RPM PDP Working Group, ICANN's President and CEO recommends that the Board adopt the final recommendations as documented in the PDP Working Group's Final Report and approved by the GNSO Council on 21 January 2021. ICANN's President and CEO recommends that the ICANN Board directs ICANN's President and CEO, or his designee(s), to adopt a tiered approach for the work based on timing, staffing, and resourcing needed for implementation of the recommendations, as detailed in the resolution below.

PROPOSED RESOLUTION:

Whereas, on 18 February 2016, the GNSO Council [resolved](#) to initiate a two-phased PDP to review all existing trademark-related rights protection mechanisms (RPMs) in all gTLDs.

Whereas, on 9 March 2016, the GNSO Council [approved](#) the PDP [Charter](#), thereby initiating Phase 1 of the PDP that focused on the RPMs developed for the 2012 New gTLD Program.

Whereas, the PDP Working Group has followed all the necessary steps and processes required by the ICANN Bylaws, the GNSO PDP Manual and the GNSO Working Group Guidelines, including the publication of an [Initial Report](#) for [public comment](#) (on 18 March 2020) and consideration of the public comments received thereto.

Whereas, on 24 November 2020, the PDP Working Group submitted its Phase 1 [Final Report](#) to the GNSO Council for its review and action.

Whereas, the PDP Working Group has reached Full Consensus for thirty-four (34) out of the thirty-five (35) final recommendations documented in the Phase 1 Final Report, and Consensus for the remaining one (1) final recommendation (concerning Final Recommendation #1 for the TMCH).

Whereas, sixteen (16) of the thirty-five (35) recommendations in the Phase 1 Final Report recommend modifying existing operational practices as well as updating documentation and related materials concerning RPMs and the Board does not anticipate that substantial resources will be needed for implementation (TMCH Final Recommendation 4, Trademark Claims Final Recommendations 2, 5, and 6, URS Final Recommendations 1, 2, 3, 4, 5, 6, 7, 11, 12, 14, and 15, and one (1) Trademark Post Delegation Dispute Resolution Procedure (TM-PDDRP) Final Recommendation).

Whereas, nine (9) of the thirty-five (35) recommendations in the Phase 1 Final Report recommend that the status quo be maintained for future gTLD expansion rounds (e.g., no change to the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program round) and, as such, the Board anticipates that implementation of these recommendations will be integrated into any implementation work related to the next gTLD expansion round (TMCH

Final Recommendation 2, Sunrise Final Recommendations 2, 3, 4, 5, 6, and 7, and Trademark Claims Final Recommendations 3 and 4).

Whereas, six (6) of the thirty-five (35) recommendations in the Phase 1 Final Report require substantial resources for implementation (including considerations relating to timing and staffing) due to their complexity and the need to involve multiple stakeholders. Successful implementation will also depend on the willingness and availability of stakeholders to participate in the implementation work. Specifically, these recommendations call for:

- collection of data concerning the RPMs,
- developing educational materials to assist users of the RPMs, and
- creating a new complaints mechanism for URS participants.

ICANN Org estimates that fully implementing these recommendations will require a minimum of one year once implementation work begins on this set of recommendations and would require substantial internal resources from multiple ICANN organization functions in order to identify and work with relevant stakeholders to implement the recommendations, as well as to support and maintain ongoing operations and data collection. ICANN Org plans to include these recommendations as part of its ongoing work with the community on prioritization efforts relating to anticipated implementation work arising from community-developed recommendations that require ICANN Org resourcing and support (TMCH Final Recommendation 3, URS Final Recommendations 8, 9, 10, and 13, and one (1) Overarching Data Collection Final Recommendation).

Whereas, four (4) of the thirty-five (35) recommendations in the Phase 1 Final Report call for specific changes to the Applicant Guidebook and/or the Base Registry Agreement for subsequent rounds of new gTLDs (TMCH Final Recommendation 1, Sunrise Final Recommendations 1 and 8, and Trademark Claims Final Recommendation 1).

Whereas, on 21 January 2021, the GNSO Council unanimously [approved](#) all thirty-five (35) final PDP recommendations as documented in the PDP Working Group's Phase 1 [Final Report](#).

Whereas, on 19 March 2021, the GNSO Council transmitted its Bylaws-mandated [Recommendations Report](#) to the ICANN Board of Directors, recommending that the Board adopt all the final Phase 1 recommendations. The GNSO Council also requested that ICANN org convene an Implementation Review Team (IRT) to work on the implementation of these recommendations, as is the regular practice and in accordance with the [IRT Principles & Guidelines](#) approved in 2016.

Whereas, on 7 April 2021, the Phase 1 [Final Report](#) was published for [public comment](#) to inform Board action on the report, in accordance with the Bylaws.

Whereas, on 7 April 2021, the ICANN Board also [notified](#) the GAC of the GNSO Council's approval of the Phase 1 Final Report, in accordance with the Bylaws.

Whereas, the GAC has not provided advice as to whether it believes there are any public policy issues raised by these recommendations.

Resolved (2022.01.16.xx), the Board thanks the members of the PDP Working Group for their dedication and over four years of work on Phase 1 of the PDP, including its development of thirty-five (35) recommendations to enhance the RPMs that were originally developed for the 2012 New gTLD Program and to facilitate future reviews of all RPMs.

Resolved (2022.01.16.xx), the ICANN Board adopts all thirty-five (35) final Phase 1 PDP recommendations as documented in the PDP Working Group's Phase 1 Final Report.

Resolved (2022.01.16.xx), for the sixteen (16) recommendations that call for updates to existing operational practices or documentation concerning the RPMs where no substantial resources are required for implementation, the ICANN Board directs ICANN's President and CEO, or his designee(s), to proceed with the implementation of these recommendations as soon as feasible,

and to develop an implementation plan, including resources and timelines, for the recommendations that is consistent with Annex A, Section 10 of the ICANN [Bylaws](#), and to continue communication with the community on implementation.

Resolved (2022.01.16.xx), for the nine (9) recommendations affirming the status quo (i.e. maintaining the Phase 1 RPMs as implemented for the 2012 New gTLD Program), the ICANN Board directs ICANN's President and CEO, or his designee(s), to document and include these recommendations for future expansions of new gTLDs and to inform the community about the ICANN Organization's plans for how these will be implemented.

Resolved (2022.01.16.xx), for the six (6) recommendations that require substantial resourcing, and involvement of multiple stakeholders to implement, the ICANN Board directs ICANN's President and CEO, or his designee(s), to develop and to submit to the ICANN Board a plan for implementation of these recommendations containing information on estimated timing, staffing, and other resources required, and information about how implementation of these recommendations fit into its operational planning and prioritization of the anticipated implementation efforts that will require ICANN Organization resourcing and support. The Board recognizes that these six recommendations will consequently not be implemented immediately, and that implementation will proceed when resources become available as a result of the ICANN Organization's prioritization work.

Resolved (2022.01.16.xx), for the four (4) recommendations that call for specific changes to the Applicant Guidebook and/or the Base Registry Agreement and coordination with the expected Subsequent Procedures IRT, the ICANN Board directs ICANN's President and CEO, or his designee(s), to incorporate the implementation of these recommendations into the work on updates to the Applicant Guidebook for subsequent new gTLD rounds.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

The 2012 New gTLD Program RPMs are mechanisms that have now been in use for several years. Community feedback on the RPMs developed for the 2012 New gTLD Program indicated a need to review their application and scope, especially if there is to be further expansion of the gTLD space. As this PDP is the first time that the RPMs have been subject to a policy review by the ICANN community, there were no comprehensive studies or data collected that measured their effectiveness.

As such, on 15 March 2016, the GNSO Council chartered the PDP Working Group to conduct a review of all the RPMs in two phases. Phase 1, which recently concluded, focused on reviewing the effectiveness of all the RPMs and associated structures and procedures applicable to gTLDs that were launched under the 2012 New gTLD Program. Phase 2 will focus on reviewing the Uniform Domain-Name Dispute-Resolution Policy ([UDRP](#)), which has been an ICANN Consensus Policy since 1999.

In November 2020, the PDP Working Group completed its review of the RPMs that were developed for the 2012 New gTLD Program and submitted its Phase 1 [Final Report](#) to the GNSO Council for review and approval. The Phase 1 Final Report represents the culmination of over four years of work by the PDP Working Group.

On 21 January 2021, the GNSO Council voted to [approve](#) by a GNSO Supermajority all the thirty-five (35) recommendations contained in the Phase 1 Final Report. On 19 March 2021, the GNSO Council transmitted its Bylaws-mandated Recommendations [Report](#) to the ICANN Board of Directors, recommending adoption of all the final recommendations by the ICANN Board.

As required by Article 3, Section 6.iii of the ICANN Bylaws, the approved recommendations were posted for [public comment](#) to inform Board action on the final recommendations.

Furthermore, under Section 11.3(i)(x) of the ICANN Bylaws, the GNSO Council's Supermajority support for these recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

What is the proposal being considered?

In 2016, the PDP Working Group was chartered to assess the effectiveness of the existing RPMs, including those established as safeguards in the New gTLD Program, and to study whether or not all the RPMs collectively fulfill the purposes for which they were created. The Board today considers the thirty-five (35) Phase 1 final recommendations from the PDP Working Group.

The [Final Report](#) contains thirty-five (35) recommendations, which were classified into three categories by the PDP Working Group: nine (9) recommendations which recommend that the status quo (e.g., the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program round) be maintained, fifteen (15) recommendations for new policies or procedures to improve the RPMs launched under the 2012 New gTLD Program, such as to enable fulfillment of the objectives for their creation and enhance their effectiveness in the next new gTLD expansion round, as well as ten (10) recommendations to modify existing operational practices to improve the effectiveness of the RPMs. As the Working Group experienced difficulties in obtaining quantitative data concerning the effectiveness of the Phase 1 RPMs, it also put forward an Overarching Data Collection Final Recommendation aimed at addressing this data-related gap.

Among the thirty-five (35) Phase 1 final recommendations, the PDP Working Group reached full consensus on thirty-four (34) recommendations and consensus on one (1) recommendation, which was the TMCH Final Recommendation #1. A Minority Statement was jointly filed by seven (7) members of the PDP Working Group with regard to this recommendation, although the Minority Statement did not oppose the primary thrust of the recommendation but instead noted the submitters' concerns over the scope of "word marks" that can be accepted into the TMCH. The Minority Statement was included in the Phase 1 Final Report as "Annex D - Working Group Members' Minority Statement on TMCH Final Recommendation #1".

As required by Article 3, Section 6.iii of the ICANN Bylaws, the recommendations were posted for [public comment](#) to inform Board action on the final recommendations. In considering the

[Final Report](#), the Board reviewed public comments on the Phase 1 Final Report and briefings by ICANN org on the feasibility and impact of implementation of all the recommendations, including considerations regarding the timing and resourcing needs in the context of the overall prioritization of work on implementation of other community-developed recommendations and other existing activities by the ICANN Organization and community.

In its review of all the recommendations contained in the Phase 1 Final Report, the Board noted that implementation of the recommendations could be divided into several categories. These implementation categories are:

1) Recommendations where no substantial resources are needed for implementation as they can be integrated into existing work efforts - a total number of sixteen (16) recommendations:

- Implementation of 15 of the 16 recommendations in this category involves updating existing documentation and related materials concerning the relevant RPMs, such as the URS [Rules](#), URS [Procedure](#) and URS High Level [Technical Requirements](#) for Registries and Registrar, as well as the RPM [Requirements](#), [TM-PDDRP](#), and the TMCH Database Framework [Agreement](#) (TMCH Final Recommendation 4, Trademark Claims Final Recommendations 2, 5, and 6, URS Final Recommendations 1, 2, 3, 4, 5, 6, 7, 11, 14, and 15, and (1) one TM-PDDRP Final Recommendation).
- With regard to modifying existing operational practices, one of the 16 recommendations in this category involves working with registries, registrars, and URS Providers to ensure that one another's contact details are up to date in order to ensure the efficacy of the URS process (URS Final Recommendation 12).

2) Recommendations to maintain the status quo - a total number of nine (9) recommendations:

- The recommendations in this category involve documenting and informing the community as to how the status quo (i.e. the current rules as applied to the gTLDs delegated under the 2012 New gTLD Program application round) will be maintained in

the next new gTLD expansion (TMCH Final Recommendation 2, Sunrise Final Recommendations 2, 3, 4, 5, 6, and 7, and Trademark Claims Final Recommendations 3 and 4).

3) Recommendations requiring substantial time and resources to implement - a total number of six (6) recommendations:

- Implementation of four of the six recommendations in this category involves working with RPM-related service providers to develop educational materials to assist users of the RPMs (TMCH Final Recommendation 3 and URS Final Recommendations 9, 10, and 13).
- Implementation of one recommendation in this category involves developing a new and separate complaints mechanism or mechanisms to ensure that URS providers, registries, and registrars operate in accordance with the URS Rules and fulfill their role and obligations in the URS process (URS Final Recommendation 8).
- Implementation of one recommendation in this category involves working with RPM-related service providers and ICANN-accredited registrars to collect data concerning the TMCH (one (1) Overarching Data Collection Final Recommendation).

4) Recommendations affecting subsequent round(s) of new gTLDs - a total number of four (4) recommendations:

- Implementation of these recommendations involves making specific changes to the Applicant Guidebook and/or the Base Registry Agreement for the next expansion round of new gTLDs (TMCH Final Recommendation 1, Sunrise Final Recommendations 1 and 8, and Trademark Claims Final Recommendation 1).

Annex A contains additional details on each recommendation and the scope of effort required for implementation.

Which stakeholders or others were consulted?

In accordance with the requirements of the GNSO PDP Manual, the Working Group solicited early [input](#) from ICANN’s Supporting Organizations and Advisory Committees as well as the GNSO’s Stakeholder Groups and Constituencies. The Working Group also sought input from registry operators, URS providers and practitioners, and other stakeholders, and conducted a data-gathering exercise to obtain specific data points for the Phase 1 RPMs.

As mandated by the GNSO’s PDP Manual, the PDP Working Group published its Phase 1 [Initial Report](#) on 18 March 2020 for [public comment](#), which closed on 4 May 2020. Following a careful review of all public comments received from fifty-five (55) contributors as well as extensive discussions over a number of additional recommendations developed as a result of the public comment review, the Working Group finalized its recommendations and delivered its Phase 1 [Final Report](#) to the GNSO Council in November 2020. Several Working Group members submitted a Minority Statement pertaining to the TMCH Final Recommendation #1. The Minority Statement was included in the Phase 1 Final Report as Annex D.

As required by the ICANN Bylaws, a [public comment](#) proceeding for the final recommendations in the Phase 1 Final Report was conducted between 7 April 2021 and 21 May 2021, which allowed stakeholders to comment on the proposed recommendations prior to Board action. As further required by the Bylaws, on 7 April 2021 the ICANN Board [notified](#) the GAC of the GNSO Council’s approval of the Phase 1 Final Report, to allow the GAC to provide timely advice on any public policy concerns that it may have with the recommendations.

What concerns or issues were raised by the community?

The community provided feedback through Public Comments on the Initial and Final Phase 1 Reports and correspondence. A few Working Group members also submitted a Minority Statement to the Phase 1 [Final Report](#), which raised concerns regarding the continuing confidentiality of the TMCH database and the possibility that the scope of marks accepted by the TMCH is broader than the scope of rights conferred by trademark registration. The Phase 1 Working Group considered all Public Comments filed to its Initial Report in coming to

consensus on its final recommendations. The [Report of Public Comments](#) on the Phase 1 Final Report summarizes the concerns raised by commenters for the Board's consideration.

What significant materials did the Board review?

The Board reviewed the following materials:

- The 18 March 2020 Phase 1 [Initial Report](#) of the GNSO PDP on the review of all RPMs in All gTLDs.
- The 24 November 2020 Phase 1 [Final Report](#) of the GNSO PDP on the review of all RPMs in All gTLDs.
- The 10 February 2021 GNSO Council Recommendations [Report](#) regarding the adoption of the Phase 1 Final recommendations.
- The 21 January 2021 GNSO Council [resolution](#) of the RPM PDP Phase 1 [Final Report](#) recommendations.
- The 4 June 2021 Staff [Report](#) of Public Comment Proceeding on the Phase 1 final recommendations from the GNSO Review of all RPMs in all gTLDs PDP.

What factors did the Board find to be significant?

As noted in the GNSO Council Recommendations [Report](#), the PDP Working Group's fifteen (15) recommendations for new policies or procedures, ten (10) recommendations to modify existing operational practice, and one (1) recommendation for overarching data collection are expected to have operational, financial, and/or other impact on registries and registrars who have to implement new requirements and improvements to existing processes; RPM-related service providers, including the TMCH Validation Provider, TMCH Database Provider, URS Providers, and TM-PDDRP Provider; and ICANN org, which will have to, among other things, update its documentation and related materials concerning the TMCH and the Applicant Guidebook for future expansions of new gTLDs, and collaborate with the RPM-related service providers and Contracted Parties to implement the new policies and procedures.

In addition to the thirty-five (35) Phase 1 final recommendations, the Phase 1 [Final Report](#) included a substantial amount of implementation guidance, which are intended to provide supplemental and/or clarifying information to assist with implementation of the recommendations. The Board understands from the GNSO Council Recommendations [Report](#) that substantial time and effort will be needed to translate the recommendations into policy language and operational requirements, as well as the complexity of implementing these recommendations with the involvement of various stakeholders.

The Board also understands that some of the PDP Working Group's Phase 1 recommendations will affect future expansion round(s) of new gTLDs. In particular, the PDP Working Group proposed specific changes to the Applicant Guidebook and/or the Base Registry Agreement. As such, the Board's adoption of these recommendations means that they will need to be factored into preparations for future expansion of the gTLD space, including coordination with the SubPro IRT should the Board decide to adopt the recent PDP recommendations from the GNSO's New gTLD SubPro PDP.

The ICANN Organization has preliminarily estimated that implementing the Phase 1 final recommendations could take a minimum of two (2) years from Board adoption. However, a significant factor that is likely to impact the final implementation timeline is the Board's decision regarding the SubPro PDP recommendations, including implementation considerations based on the outcomes of the Operational Design Phase currently underway for SubPro.

Are there positive or negative community impacts?

Adopting the final recommendations will have a positive impact on ICANN in that it will contribute to ensuring that ICANN addresses policy questions and operational issues identified through experience with the RPMs developed for the 2012 New gTLD Program. Board adoption of the recommendations will facilitate a coherent and uniform mechanism for future reviews of all RPMs and allow for opportunities for continuous improvement of these policies and processes. However, community bandwidth and resources will be required to ensure that

implementation of the recommendations are consistent with what the PDP Working Group intended, in addition to other ongoing work in the community.

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

Implementing the Phase 1 recommendations is expected to have operational, financial, and/or other impact on registries and registrars who will implement new requirements and improvements to existing processes; RPM-related service providers, including the TMCH Validation Provider, TMCH Database Provider, URS Providers, and TM-PDDRP Provider; and ICANN org, which will have to, among other things, update its documentation and related materials concerning the TMCH and the Applicant Guidebook for future expansions of new gTLDs, and collaborate with the RPM-related service providers and Contracted Parties to implement the new policies and procedures, update existing documentation and develop or enhance educational materials to assist users of the RPMs.

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

None at this time.

Is this decision in the public interest and within ICANN's mission?

This action is within ICANN's Mission and mandate and in the public interest as set forth in the ICANN Bylaws. The multistakeholder policy development process of bottom-up, consensus policies and guidelines helps advance the stable and secure operation of the Internet's unique identifier systems.

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?

As required by the ICANN Bylaws and the GNSO's policy procedures, the recommendations were the subject of [public comment](#) as discussed above.

Signature Block:

Submitted by:

Position:

Date Noted:

Email:

ANNEX A: OVERVIEW OF RPM PHASE 1 RECOMMENDATIONS AND IMPLEMENTATION WORK

RECOMMENDATION	RECOMMENDATION SYNOPSIS	RECOMMENDATION CATEGORIES	IMPACTED DOCUMENTS	ACTION	SCOPE OF WORK	IMPLEMENTATION CONSIDERATIONS
Uniform Rapid Suspension (URS)						
URS Final Recommendation #1	Amend URS Rule 3(b), URS Procedure paragraph 3.3 and, where necessary, a URS Provider’s Supplemental Rules Complainant must only be required to insert publicly-available	New Policies and Procedures	URS Rules and Procedure; Supplemental Rules	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.

	WHOIS/RDDS data in Initial Complaint; allow update to Complaint within 2-3 calendar days.					
URS Final Recommendation #2	<p>Amend URS Rule 15(a)</p> <p>URS Panelists have discretion to decide whether to publish/redact registration data in the Determination; URS party has the right to request redaction.</p>	New Policies and Procedures	URS Rules	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.
URS Final Recommendation #3	<p>Amend URS Rules to incorporate in full Rule #11 of the UDRP Rules regarding "Language of Proceedings".</p>	New Policies and Procedures	URS Rules	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents; consider developing potential guidance to assist URS Examiners in deciding whether to deviate from the default language in the context of a particular proceeding.	No significant resources needed; implementation can commence upon adoption of recommendation.
URS Final Recommendation #4	<p>Amend URS Rule 4(b) and URS Procedure paragraph 4.2</p> <p>Provider must translate Notice of Complaint into the language of the</p>	New Policies and Procedures	URS Rules and Procedure	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.

	Registration Agreement.					
URS Final Recommendation #5	<p>Amend URS Procedure paragraph 6.2</p> <p>Clearly define what “Default Period” means; registrant must not change public and non-public registration data elements during the Default Period.</p>	New Policies and Procedures	URS Procedure	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.
URS Final Recommendation #6	<p>Amend URS Rule 6(a) and URS Procedure paragraph 7</p> <p>Provider maintains and publishes list of Examiners and their qualifications (CVs); identify how often each one has been appointed and link to their decisions.</p>	New Policies and Procedures	URS Rules and Procedure	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.
URS Final Recommendation #7	<p>Amend URS Rule 6</p> <p>Provider publishes and reasonably enforces an effective Examiner Conflict of Interest Policy.</p>	New Policies and Procedures	URS Rules	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.
URS Final Recommendation #8	<p>ICANN org to establish a compliance mechanism(s), including an avenue for any party in the URS process to file complaints and seek resolution.</p>	New Policies and Procedures	<p>N/A</p> <p><i>Note that URS Rules and Procedures may potentially be impacted by the</i></p>	Establish New Compliance Mechanism	ICANN org to work with IRT on developing a compliance mechanism(s) and metrics for measuring performance	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts.

			<i>establishment of such new compliance mechanism(s).</i>		of URS Providers, Registries, and Registrars in the URS process.	
URS Final Recommendation #9	Develop uniform set of educational materials for guidance on what is needed to meet the “clear and convincing” burden of proof.	New Policies and Procedures	N/A	Develop Educational Materials	ICANN org to work with IRT on developing educational materials and their translations; determine whether it would be helpful to solicit input from the broader multistakeholder community, including URS Providers/experts.	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts.
URS Final Recommendation #10	Develop informational materials to assist Complainants and Respondents, including FAQs, forms, reference materials to explain Providers’ services & practices.	New Policies and Procedures	N/A	Develop Educational Materials	ICANN org to work with IRT and URS Providers on developing educational materials and their translations.	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts.
URS Final Recommendation #11	Amend URS Rules and Procedure Providers to send notices to Respondent after Registry/Registrar has forwarded registration	Operational Fix	URS Rules and Procedure	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.

	data.					
URS Final Recommendation #12	ICANN org, Registries, Registrars, and URS Providers to take steps to ensure that contact details are up to date.	Operational Fix	N/A	Modify Existing Operational Practice	ICANN org to work with multiple parties to obtain accurate/up-to-date contact data and ensure one another's contact details are correct/up-to-date.	No significant resources needed; implementation can commence upon adoption of recommendation.
URS Final Recommendation #13	Providers to require that Examiners document their rationale in sufficient detail.	Operational Fix	N/A	Develop Educational Materials	ICANN org to work with IRT and URS Providers/Examiners to develop a set of basic guidance for documenting their rationale for a Determination.	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts.
URS Final Recommendation #14	Amend High Level Technical Requirements for Registries and Registrar, Registry Requirement 10, if necessary IRT to review implementation issues with respect to Registry Requirement 10 in the "URS High Level Technical Requirements for	Operational Fix	URS High Level Technical Requirements for Registries and Registrar	Modify Existing Documents	ICANN org to work with IRT on reviewing implementation issues with respect to Registry Requirement 10 and potentially updating URS documents. <i>Note that</i>	No significant resources needed; implementation can commence upon adoption of recommendation.

	Registries and Registrars.”				<i>some direct engagement with contracted parties to further investigate the implementation issues may be helpful. The IRT will likely include members from the contracted parties.</i>	
URS Final Recommendation #15	Amend Title of URS High Level Technical Requirements for Registries and Registrar Remove “Technical” in title of “URS High Level Technical Requirements for Registries and Registrars”.	Operational Fix	URS High Level Technical Requirements for Registries and Registrar	Modify Existing Documents	ICANN org to work with IRT and URS Providers to update URS documents.	No significant resources needed; implementation can commence upon adoption of recommendation.
Trademark Clearinghouse (TMCH)						

<p>TMCH Final Recommendation #1</p>	<p>Amend AGB, Module 5 TMCH</p> <p>Only “word marks” that meet one of the following requirements are eligible for the mandatory Sunrise and Trademark Claims RPMs:</p> <ul style="list-style-type: none"> a. Nationally or regionally registered word marks from all jurisdictions; b. Word marks validated by a court of law or other judicial proceeding; c. or Word marks that are protected by a statute or treaty that is in effect at the time the mark is submitted to the TMCH and that are listed with a national or regional trademark office <p>Geographical indications, protected designations of origin, and other signs protected by quality schemes for distinguishing or indicating the geographic source or quality of goods or services are not eligible for the mandatory Sunrise and Trademark Claims RPMs (unless they are also trademarks as defined in (a) or (b)) TMCH Validation Provider(s),</p>	<p>New Policies and Procedures</p>	<p>Applicant Guidebook (AGB)</p>	<p>Modify Existing Documents</p>	<p>ICANN org to work with SubPro IRT to update AGB. RPM/SubPro IRTs to coordinate their efforts to ensure consistency.</p>	<p>Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins.</p>
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	registry operators and other third parties may provide ancillary services to intellectual property rights-holders; these other forms of intellectual property must be held in a separate ancillary database.					
TMCH Final Recommendation #2	Maintain current “TM +50” and “exact match” rules. NOT to limit the Scope of Applicability of Sunrise & Claims RPMs for trademarks containing dictionary term(s).	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.
TMCH Final Recommendation #3	Validation Provider primarily responsible for educating users about its services; IRT to work with Validation Provider and consider enhancing existing educational materials.	Operational Fix	N/A	Develop Educational Materials	ICANN org to work with IRT and the TMCH Validation Provider (Deloitte) on enhancing existing educational materials.	Requires substantial time and resources to implement; subject to prioritization efforts.
TMCH Final Recommendation #4	Database Provider must maintain industry-standard levels of redundancy and uptime.	Operational Fix	TMCH Database Framework Agreement	Modify Existing Documents	ICANN org to work with the Database Provider (IBM) on updating the	No significant resources needed; implementation can commence upon adoption of recommendation.

					public version of the Agreement.	
Sunrise						
Sunrise Final Recommendation #1	<p>Amend Registry Agreement</p> <p>Registry Agreement for future new gTLDs to include a provision stating that a Registry Operator shall not operate its TLD in such a way as to have the effect of intentionally circumventing the mandatory RPMs or restricting brand owners' reasonable use of the Sunrise RPM.</p>	New Policies and Procedures	Registry Agreement	Modify Existing Documents	ICANN org to work with SubPro IRT and Contracted Parties on creating a new Base Registry Agreement or complete the Global Amendment of the current 2017 Base Registry Agreement in advance of the application submission window. RPM/SubPro IRTs to coordinate their efforts to ensure consistency.	Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins.
Sunrise Final Recommendation #2	Maintain current mandatory Sunrise Period for all new gTLD.	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.
Sunrise Final Recommendation #3	Maintain current requirement for the Sunrise Period, including 30-day minimum period for Start Date Sunrise and 60-day minimum period End Date Sunrise.	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.

Sunrise Final Recommendation #4	Maintain current availability of Sunrise registrations only for identical matches; matching process should not be expanded.	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.
Sunrise Final Recommendation #5	NOT to limit the scope of Sunrise Registrations to the categories of goods/services for which trademark was registered.	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.
Sunrise Final Recommendation #6	NOT to create a challenge mechanism relating to Premium/Reserved Names.	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.
Sunrise Final Recommendation #7	NO mandatory publication of the Reserved Names lists	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.
Sunrise Final Recommendation #8	Amend AGB, Module 5 TMCH SDRP not intended to allow challenges to Sunrise registrations on grounds of invalid Trademark Record; Registry Operator to immediately suspend domain name registration to allow registrant to file challenge under the TMCH's dispute resolution procedure.	Operational Fix	Applicant Guidebook (AGB)	Modify Existing Documents	ICANN org to work with SubPro IRT to update AGB. RPM/SubPro IRTs to coordinate their efforts to ensure consistency.	Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins.
Trademark Claims						

Trademark Claims Final Recommendation #1	Current mandatory Claims Period remain uniform for all gTLDs in subsequent rounds, with exception for those exempted pursuant to Spec 13 .Brand TLDs & Section 6 of Spec 9 RO Code of Conduct.	New Policies and Procedures	Registry Agreement	Modify Existing Documents	ICANN org to work with SubPro IRT and Contracted Parties on creating a new Base Registry Agreement or complete the Global Amendment of the current 2017 Base Registry Agreement in advance of the application submission window. RPM/SubPro IRTs to coordinate their efforts to ensure consistency.	Work required to implement this recommendation can be incorporated when implementation of the New gTLD SubPro PDP recommendations begins.
Trademark Claims Final Recommendation #2	Amend RPM Requirements Trademark Claims Notice to be delivered both in English and the language of the registration agreement.	New Policies and Procedures	RPM Requirements	Modify Existing Documents	ICANN org to work with IRT and TMCH Service Providers to update RPM documents.	No significant resources needed; implementation can commence upon adoption of recommendation.
Trademark Claims Final Recommendation #3	Maintain current requirement for a mandatory Claims Period when the TLD opens for general registration; if RO offers a Limited Registration Period, RO must maintain	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.

	current requirement to provide the Claims Services.					
Trademark Claims Final Recommendation #4	Maintain current exact matching criteria for the Claims Notice.	Status Quo	N/A	Maintain Status Quo	N/A	No implementation work required.
Trademark Claims Final Recommendation #5	Maintain current requirement to send the Claims Notice before a registration is completed; ICANN org can work with Registrars to address all relevant implementation issues.	Operational Fix	N/A	Modify Existing Operational Practice	ICANN org to work IRT and registrars to consider ways in which to address operational issues related to the current 48-hour expiration period of the Claims Notice.	No significant resources needed; implementation can commence upon adoption of recommendation.
Trademark Claims Final Recommendation #6	Amend RPM Requirements Revise language of Trademark Claims Notice to improve the understanding of recipients; reflect more specific information about the trademark(s) for which it is being issued, and communicate its meaning and implications.	Operational Fix	RPM Requirements	Modify Existing Documents	ICANN org to work with IRT and TMCH Service Providers to update RPM documents; determine whether it would be helpful to solicit input from resources internal and/or external to the ICANN community.	No significant resources needed; implementation can commence upon adoption of recommendation.
Trademark Post Delegation Dispute Resolution Procedure (TM-						

PDDRP)						
TM-PDDRP Final Recommendation	Amend TM-PDDRP Rule 3(g) Multiple disputes filed by unrelated entities against the same Registry Operator may be initially submitted as a joint Complaint, or may, at the discretion of the Panel, be consolidated upon request.	New Policies and Procedures	TM-PDDRP Rules	Modify Existing Documents	ICANN org to work with IRT and TM-PDDRP Providers to update TM-PDDRP documents.	No significant resources needed; implementation can commence upon adoption of recommendation.
Overarching Data Collection						
Overarching Data Collection Final Recommendation	For future new gTLD rounds, ICANN org to collect data concerning the TMCH on at least an annual basis and make the data available to future RPM review teams; ICANN org to also collect data concerning trademark owners' and registrants' experience with RPMs; ICANN-accredited registrars must provide ICANN org with periodic reports of the number of Claims Notices that were sent out to prospective registrants; ICANN org to explore developing a mechanism, in consultation with the	New Policies and Procedures	N/A <i>Note that agreements/c ontracts between ICANN, TMCH Validation Provider, URS Providers, and Registrars may be impacted by this data collection requirement.</i>	Collect Data	ICANN org to work with IRT, TMCH Providers and registrars to collect TMCH related data; ICANN org and URS providers to explore developing a mechanism to enable publication of URS data in a uniform format; ICANN org to collect data concerning trademark owners' and registrants' experience with the	Requires substantial time and resources to implement; recommendation is subject to prioritization efforts.

	URS Providers, to enable publication and search of all URS Determinations in a uniform format.				RPMs.	
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ICANN BOARD SUBMISSION NO. 2022.01.16.2b

TITLE: **Consideration of the Afilias Domains No. 3 Ltd. v. ICANN
(.WEB) Independent Review Process Final Declaration**

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

EXECUTIVE SUMMARY:

Afilias Domains No. 3 Ltd. (Afilias),¹ one of the applicants for .WEB, initiated an Independent Review Process (IRP), challenging the validity of another applicant's .WEB application and the auction of last resort that resolved the .WEB contention set (.WEB IRP). The Final Declaration issued by the IRP Panel just became "final" on 21 December 2021, once the Panel denied Afilias' recent challenge to the Declaration (explained below). The Board is being asked to consider the Final Declaration from the .WEB IRP now because the Bylaws require the Board to "consider its response to IRP Panel decisions at the Board's next meeting," to the extent feasible.

Overview of the .WEB Auction:

Seven applicants submitted applications for the right to operate .WEB, including Afilias, Nu Dotco LLC (NDC), and Ruby Glen LLC, a Donuts subsidiary (Ruby Glen), creating a .WEB contention set with all applicants. As the contention was not privately resolved, the applicants went to an ICANN auction of last resort held on 27-28 July 2016, which concluded with NDC prevailing with a bid of US\$135 million. Shortly thereafter, Verisign Inc. (Verisign) publicly disclosed that, pursuant to an agreement it had entered with NDC (the Domain Acquisition Agreement or "DAA"), Verisign provided the funds for NDC's bid in exchange for, among other things, NDC's future assignment of the .WEB registry agreement to Verisign, subject to ICANN's consent.

Prior to and since the auction, Ruby Glen and Afilias made numerous allegations regarding NDC and Verisign (including alleging an undisclosed change of ownership or control of NDC and alleging a violation of the Guidebook's prohibition of assignment of an application to a third

¹ Afilias Domains No. 3 Ltd. is now known as Altanovo Domains Limited. For consistency and ease of reference, we will continue to use "Afilias" to refer to the Claimant in this IRP.

party), and requested that ICANN disqualify NDC’s application, reject its winning bid, and then recognize Afilias as the winning bidder (which had the second highest bid in the auction).²

Overview of the .WEB IRP Final Declaration:

In the .WEB IRP, Afilias alleged that NDC violated the Guidebook as a result of its arrangement with Verisign and that ICANN violated the Bylaws by failing to disqualify NDC. After a seven-day hearing in August 2020 and subsequent closing argument briefs, the Panel issued its Final Declaration in May 2021.

The IRP Panel designated Afilias “as the prevailing party” but specifically denied Afilias’ requests for: (a) a binding declaration that ICANN must disqualify NDC’s bid for .WEB for violating the Guidebook and Auction Rules; and (b) an order directing ICANN to proceed with contracting for .WEB with Afilias. The Panel noted that: “it is for [ICANN], that has the requisite knowledge, expertise, and experience, to pronounce in the first instance on the propriety of the [Domain Acquisition Agreement] under the New gTLD Program Rules, and on the question of whether NDC’s application should be rejected and its bids at the auction disqualified by reason of its alleged violations of the Guidebook and Auction Rules.”³

The Panel declared that ICANN had violated its Articles of Incorporation (Articles) and Bylaws by not applying documented policies objectively and fairly in that: (a) ICANN staff failed to decide whether the DAA between NDC and Verisign relating to .WEB violated the Guidebook and Auction Rules, and moved forward toward contracting with NDC in June 2018 without first having made that decision; and (b) the ICANN Board did not prevent staff from moving toward contracting in June 2018 or decide whether the DAA violated the Guidebook and Auction Rules once accountability mechanisms had been resolved.

² In addition, NDC later claimed that Afilias should have been disqualified from the .WEB auction for violating the auction blackout period, which prohibits certain communications just before an ICANN auction.

³ In addition, the Panel accepted “that ICANN does not have the power, authority, or expertise to act as a competition regulator by challenging or policing anticompetitive transactions or conduct.”

The Panel also declared that ICANN violated its Articles and Bylaws by not operating in an open and transparent manner when it failed to tell Afiliias in November 2016 that the Board would not be evaluating Afiliias' complaints while accountability mechanisms were pending.

The Panel denied the majority of Afiliias' request for cost shifting of legal fees but did grant legal fees in connection with the Request for Emergency Interim Relief during the IRP in a reduced amount of US\$450,000. The Panel further indicated that ICANN "shall reimburse [Afiliias] the full amount of its share of [the IRP costs] that Afiliias has advanced, in the amount of USD 479,458.27," the vast majority of which ICANN had already agreed to pay.⁴

In the Final Declaration, the Panel *recommended* that ICANN "stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the [ICANN] Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the DAA complied with the New gTLD Program Rules following [Afiliias'] complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified."

Subsequently, Afiliias asked the Panel for "interpretation and correction" of the Final Declaration (Request). The Panel unanimously denied Afiliias' Request in its entirety on 21 December 2021, finding the Request to be "frivolous" and awarding ICANN the legal fees it incurred in responding to the Request (in the amount of US\$236,884.39). Once the Panel denied Afiliias' Request, the Final Declaration was deemed to again be final effective 21 December 2021.

Consideration of the .WEB Final Declaration:

In accordance with [Article 4](#), Section 4.3(x) of the operative Bylaws,⁵ the Board is being asked to consider the Panel's Final Declaration in the .WEB IRP. Per the resolution below, the Board

⁴ ICANN had already agreed, pursuant to the Bylaws, that it would pay for the administrative costs of maintaining an IRP, including panelist fees. To the extent that this IRP Panel has directed reimbursement for additional fees related to the IRP, such as the initial filing fee, ICANN will abide by the Panel's declaration and reimburse those amounts as well.

⁵ The operative Bylaws are the [ICANN Bylaws](#) as amended 18 June 2018.

would be acknowledging the Panel’s binding declarations that Afilias is the prevailing party and that ICANN violated its Articles and/or Bylaws in the manner set forth in the Final Declaration, and directing that ICANN organization reimburse Afilias for certain costs in accordance with the Final Declaration. The Board is also conveying to the community that further consideration is needed regarding the IRP Panel’s non-binding recommendation, which is why, per the resolution, the Board would ask the Board Accountability Mechanisms Committee (BAMC) to review, consider, and evaluate the Final Declaration and recommendation, and provide the Board with its findings to consider and act upon before the organization takes any further action toward processing the .WEB application(s).

PROPOSED RESOLUTION:

Whereas, the Final Declaration in the Afilias Domains No. 3 Ltd. (Afilias)⁶ v. ICANN Independent Review Process regarding .WEB (.WEB IRP) was issued on 20 May 2021, a corrected version was issued on 15 July 2021, and that version was deemed “final” as of 21 December 2021 when the Panel denied Afilias’ subsequent challenge.

Whereas, among other things, the IRP Panel designated Afilias as the prevailing party, declared that ICANN violated its Articles of Incorporation and Bylaws in the manner set forth in the Final Declaration, and declared that ICANN shall reimburse Afilias the sum of US\$450,000 for its legal costs relating to the Emergency Interim Relief proceedings and the sum of US\$479,458.27 for its share of the IRP costs. (Final Declaration at ¶¶ 410(6), (10), (12).)

Whereas, the IRP Panel recommended that ICANN “stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the [ICANN] Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the [Domain Acquisition Agreement] complied with the New gTLD Program Rules following [Afilias’] complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC’s application for .WEB should be rejected and its bids at the auction disqualified.” (Final Declaration at ¶ 410(5).)

⁶ Afilias Domains No. 3 Ltd. is now known as Altanovo Domains Limited. For consistency and ease of reference, we will continue to use “Afilias” to refer to the Claimant in this IRP.

Whereas, in accordance with Article 4, Section 4.3(x) of the applicable version of the Bylaws, the Board has considered the Final Declaration.

Resolved (2022.01.16.xx), the Board acknowledges that the Panel declared the following: (i) Afilias is the prevailing party in the Afilias Domains No. 3 Ltd. v. ICANN Independent Review Process; (ii) ICANN violated its Articles of Incorporation and Bylaws in the manner set forth in the Final Declaration; and (iii) ICANN shall reimburse Afilias the sum of US\$450,000 for its legal costs relating to the Emergency Interim Relief proceedings; and (iv) ICANN shall reimburse Afilias the sum of US\$479,458.27 for its share of the IRP costs.⁷

Resolved (2022.01.16.xx), the Board directs the President and CEO, or his designee(s), to take all steps necessary to reimburse Afilias in the amount of US\$450,000 in legal fees and US\$479,458.27 for its share of the IRP costs in furtherance of the Panel's Final Declaration.

Resolved (2022.01.16.xx), further consideration is needed regarding the IRP Panel's non-binding recommendation that ICANN "stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the [ICANN] Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the DAA complied with the New gTLD Program Rules following [Afilias'] complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified."

Resolved (2022.01.16.xx), the Board asks the Board Accountability Mechanisms Committee (BAMC) to review, consider, and evaluate the IRP Panel's Final Declaration and recommendation, and to provide the Board with its findings to consider and act upon before the organization takes any further action toward the processing of the .WEB application(s).

PROPOSED RATIONALE:

⁷ ICANN already agreed, pursuant to the Bylaws, that it would pay for the administrative costs of maintaining an IRP, including panelist fees. To the extent that this IRP Panel has directed reimbursement for additional fees related to the IRP, such as the initial filing fee, ICANN will abide by the Panel's declaration and reimburse Afilias those amounts as well.

Seven applicants submitted applications for the right to operate .WEB, including Afilias Domains No. 3 Ltd. (Afilias),⁸ Nu Dotco LLC (NDC), and Ruby Glen LLC, a Donuts subsidiary (Ruby Glen), and, as they did not privately resolve contention, the applicants went to an ICANN auction of last resort. An auction was held on 27-28 July 2016, which concluded with NDC prevailing with a bid of US\$135 million. Shortly thereafter, Verisign Inc. (Verisign) publicly disclosed that, pursuant to an agreement it had entered with NDC, Verisign provided the funds for NDC's bid in exchange for, among other things, NDC's future assignment of the .WEB registry agreement to Verisign, subject to ICANN's consent.

Prior to and since the auction, Ruby Glen and Afilias made numerous allegations regarding NDC and Verisign (including alleging an undisclosed change of ownership or control of NDC and alleging a violation of the Guidebook's prohibition of assignment of an application to a third party), and requested that ICANN disqualify NDC's application, reject its winning bid, and then recognize Afilias as the winning bidder (which had the second highest bid in the auction).⁹ Further background information is available in the accompanying Reference Materials.

Afilias initiated an Independent Review Process regarding .WEB (.WEB IRP) in November 2018, alleging that NDC had violated the Guidebook as a result of its arrangement with Verisign and that ICANN had violated the Bylaws by failing to disqualify NDC. In particular, Afilias alleged that NDC violated the Guidebook by: (a) "omitting material information from and failing to correct material misleading information in its .WEB application"; (b) "assigning [NDC's] rights and obligations in its .WEB application to VeriSign"; and (c) "agreeing to submit bids on VeriSign's behalf at the .WEB Auction." With regard to ICANN, Afilias alleged that: (a) "ICANN's failure to disqualify [NDC] breaches ICANN's obligation to apply documented ICANN policies neutrally, objectively and fairly"; (b) "ICANN's decision to finalize a registry agreement while knowing of [NDC's] arrangement with VeriSign violates ICANN's mandate to promote competition"; and (c) "ICANN violated its Bylaws in Adopting

⁸ Afilias Domains No. 3 Ltd. is now known as Altanovo Domains Limited. For consistency and ease of reference, we will continue to use "Afilias" to refer to the Claimant in this IRP.

⁹ In addition, NDC later claimed that Afilias should have been disqualified from the .WEB auction for violating the auction blackout period, which prohibits certain communications just before an ICANN auction.

Rule 7 of the Interim [Supplementary] Procedures,” which allows participation in an IRP by a party with a material interest in the proceedings.

NDC and Verisign asked to participate as *amici curiae* in the IRP, which Afilias opposed. The Panel granted *amici* participation allowing them to attend hearings, submit written briefings on the dispute or on questions the Panel might ask, and have access to all materials related to the IRP except for commercially sensitive or privileged material. The merits hearing took place on 3-11 August 2020, and the IRP Panel issued its Final Declaration on 20 May 2021, which the Panel later corrected for certain typographical errors, effective 15 July 2021.

In the Final Declaration, the IRP Panel designated Afilias “as the prevailing party in relation to the above declarations, decisions, findings and recommendations [noted in the Final Declaration]” and dismissed Afilias’ “other requests for relief in connection with its core claims.” In particular, the Panel denied Afilias’ requests for: (a) a binding declaration that ICANN must disqualify NDC’s bid for .WEB for violating the Guidebook and Auction Rules; and (b) an order directing ICANN to proceed with contracting for .WEB with Afilias. The Panel noted that: “it is for [ICANN], that has the requisite knowledge, expertise, and experience, to pronounce in the first instance on the propriety of the [Domain Acquisition Agreement] under the New gTLD Program Rules, and on the question of whether NDC’s application should be rejected and its bids at the auction disqualified by reason of its alleged violations of the Guidebook and Auction Rules.”

The Panel declared that ICANN had violated its Articles of Incorporation (Articles) and Bylaws by not applying documented policies objectively and fairly in that: (a) ICANN staff failed to decide whether the Domain Acquisition Agreement (DAA) between NDC and Verisign (pursuant to which Verisign financially supported NDC’s bidding in the .WEB auction) violated the Guidebook and Auction Rules, and moved forward toward contracting with NDC in June 2018 without first having made that decision; and (b) the ICANN Board did not prevent staff from moving forward toward contracting in June 2018 or decide whether the DAA violated the Guidebook and Auction Rules, once pending accountability mechanisms had been resolved.

The Panel also declared that ICANN violated its Articles and Bylaws by not operating in an open and transparent manner and consistent with procedures to ensure fairness when it failed to

communicate to Afilias in November 2016 that the ICANN Board would not be evaluating Afilias' complaints while accountability mechanisms were pending.

In addition, while finding Afilias' claim that ICANN failed to enable and promote competition in the DNS was premature, the Panel stated that it "accepts the submission that ICANN does not have the power, authority, or expertise to act as a competition regulator by challenging or policing anticompetitive transactions or conduct."

The Panel further declared that Afilias' challenge to the validity of IRP Interim Supplementary Procedures Rule 7 about *amici* participation is moot since the Panel previously ruled that NDC and Verisign could participate, and "no useful purpose would be served by the Rule 7 Claim being addressed beyond the findings and observations contained in the Panel's Decision of Phase I."

The Panel denied the majority of Afilias' request for cost shifting of legal fees, but did grant legal fees in connection with the Request for Emergency Interim Relief (related to whether the contention set would remain on hold during the pendency of the IRP) in a reduced amount of US\$450,000. The Panel further indicated that ICANN "shall reimburse [Afilias] the full amount of its share of [the IRP costs] that Afilias has advanced, in the amount of USD 479,458.27," the vast majority of which ICANN had already agreed to pay.¹⁰

The Panel recommended that ICANN "stay any and all action or decision that would further the delegation of the .WEB gTLD until such time as the [ICANN] Board has considered the opinion of the Panel in this Final Decision, and, in particular (a) considered and pronounced upon the question of whether the DAA complied with the New gTLD Program Rules following [Afilias'] complaints that it violated the Guidebook and Auction Rules and, as the case may be, (b) determined whether by reason of any violation of the Guidebook and Auction Rules, NDC's application for .WEB should be rejected and its bids at the auction disqualified."

¹⁰ ICANN has already agreed to pay for the administrative costs of maintaining an IRP, including panelist fees. To the extent that this IRP Panel has directed reimbursement for additional fees related to the IRP, such as the initial filing fee, ICANN will abide by the Panel's declaration and reimburse Afilias those amounts as well

Subsequently, on 21 June 2021, Afilias submitted a request to the Panel for “interpretation and correction” of the Final Declaration under Article 33 of the ICDR Arbitration Rules (Request). On 21 December 2021, the Panel unanimously denied Afilias’ Request in its entirety, finding the Request to be “frivolous” and awarding ICANN the legal fees it incurred in responding to the Request (in the amount of US\$236,884.39). With the Panel’s denial of Afilias’ Request, the Final Declaration in the .WEB IRP remains intact and is deemed “final” as of 21 December 2021. In accordance with [Article 4](#), Section 4.3(x) of the operative Bylaws,¹¹ the Board is now considering the Panel’s Final Declaration in the .WEB IRP.

The Board appreciates that both the parties and the *amici* participated in good faith in the IRP, and acknowledges that a neutral third-party Panel designated Afilias as the prevailing party, declared that ICANN violated its Articles of Incorporation and Bylaws in the manner set forth in the Final Declaration, and declared that ICANN should reimburse Afilias for its legal costs relating to the Request for Emergency Interim Relief and for its share of the IRP costs as set forth in the Final Declaration. The Board is therefore adopting this resolution so as to not delay the reimbursement of Afilias for these costs, while the Board continues to consider the Panel’s recommendation and/or next steps relating to the .WEB application(s).

The Board recognizes the importance of this decision and wants to make clear that it takes the results of all ICANN accountability mechanisms very seriously, which is why the Panel’s recommendation is being referred to the Board Accountability Mechanisms Committee (BAMC) for thorough consideration and formulating a recommendation to the Board on next steps.

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. This accountability includes having a process in place by which a person or entity materially and adversely affected by a Board or organization action or inaction may challenge that action or inaction.

Taking this decision is expected to have a direct financial impact on ICANN in the amount the Panel declared ICANN should reimburse the prevailing party, which can be absorbed under the

¹¹ The operative Bylaws are the [ICANN Bylaws](#) as amended 18 June 2018.

current budget. Further review and analysis of the Panel's recommendation will not have any direct impact on the security, stability or resiliency of the domain name system.

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

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 7 January 2022
Email: amy.stathos@icann.org

REFERENCE MATERIALS – ICANN BOARD SUBMISSION NO. 2022.01.16.2b

TITLE: **Consideration of the Afilias Domains No. 3 Ltd. v. ICANN (.WEB) Independent Review Process Final Declaration**

Attachments:

The following attachments are relevant to the Board consideration of the IRP Panel’s Final Declaration in the Afilias Domains No. 3 Ltd. v. ICANN Independent Review Process regarding .WEB (.WEB IRP):

- Attachment A is the operative [Final Declaration](#) in the .WEB IRP – initially issued on 20 May 2021, corrected version issued by the IRP Panel on 15 July 2021, deemed “final” on 21 December 2021 when the Panel denied Afilias’ subsequent challenge.
- Attachment B is the [Panel’s ruling](#) on 21 December 2021 denying Afilias’ request for “interpretation and correction” of the Final Declaration.

Other Relevant Materials:

The documents, briefs, background facts, arguments, supporting declarations, and Panel rulings submitted during the course of the .WEB IRP are available at:

<https://www.icann.org/resources/pages/irp-afilias-v-icann-2018-11-30-en>.

Nu Dotco LCC (NDC) and Verisign, Inc.’s (Verisign) 23 July 2021 letter to the ICANN Board is available at: <https://www.icann.org/en/system/files/correspondence/marenberg-to-botterman-23jul21-en.pdf>.

Altanovo Domains Limited’s (formerly Afilias Domains No. 3 Ltd.) 3 November 2021 letter to the ICANN Board is available at: <https://www.icann.org/en/system/files/correspondence/ali-to-botterman-03nov21-en.pdf>.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 7 January 2022
Email: amy.stathos@icann.org

ICANN BOARD PAPER NO. 2022.01.16.2c

TITLE: GAC Advice: ICANN72 Virtual Annual General Meeting Communiqué (November 2021)

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered advice to the ICANN Board in its [ICANN72 Virtual Annual General Meeting Communiqué](#) issued 01 November 2021. The advice concerns the Board Scorecard on SSR2 Review Final Report. The GAC also provided a follow-up to previous advice regarding Domain Name Registration Directory Service and Data Protection and EPDP Phase 1 Policy Implementation.

The ICANN72 Virtual Annual General Meeting Communiqué was the subject of an exchange between the Board and the GAC on 21 December 2021. The purpose of the exchange was to ensure common understanding of the GAC advice provided in the communiqué.

The Board is being asked to approve the GAC-Board Scorecard to address the GAC's advice in the ICANN72 Virtual Annual General Meeting Communiqué. The draft Scorecard is attached to this briefing paper. The draft Scorecard includes: the text of the GAC advice; the Board's understanding of the GAC advice following the 21 December 2021 dialogue with the GAC; the GNSO Council's review of the advice in the ICANN72 Virtual Annual General Meeting Communiqué as presented in a 18 November 2021 [letter](#) to the Board (included for Board review only and will not be part of the final scorecard); and the Board's proposed response to the GAC advice.

ICANN ORG RECOMMENDATION:

The ICANN org recommends that the Board adopt the attached scorecard to address the GAC's advice in the November 2021 ICANN72 Virtual Annual General Meeting Communiqué.

PROPOSED RESOLUTION:

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN72 Virtual Annual General Meeting and issued advice to the ICANN Board in a [communiqué](#) on 01 November 2021 (“ICANN72 Virtual Annual General Meeting Communiqué”).

Whereas, the ICANN72 Virtual Annual General Meeting Communiqué was the subject of an exchange between the Board and the GAC on 21 December 2021.

Whereas, in a 18 November 2021 [letter](#), the GNSO Council provided its feedback to the Board concerning advice in the ICANN72 Virtual Annual General Meeting Communiqué relevant to the Board Scorecard on SSR2 Review Final Report, Domain Name Registration Directory Service and Data Protection, and EPDP Phase 1 Policy Implementation.

Whereas, the Board developed a scorecard to respond to the GAC’s advice in the ICANN72 Virtual Annual General Meeting Communiqué, taking into account the dialogue between the Board and the GAC and the information provided by the GNSO Council.

Resolved (2022.01.16..xx), the Board adopts the scorecard titled “GAC Advice – ICANN72 Virtual Annual General Meeting Communiqué: Actions and Updates (13 January 2022)” **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY BOARD]** in response to items of GAC advice in the ICANN72 Virtual Annual General Meeting Communiqué.

PROPOSED RATIONALE:

Article 12, Section 12.2(a)(ix) of the ICANN Bylaws permits the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” In its ICANN72 Virtual Annual General Meeting Communiqué (01 November 2021), the GAC issued advice to the Board on the Board Scorecard on SSR2 Review Final Report. The

GAC also provided a follow-up to previous advice regarding Domain Name Registration Directory Service and Data Protection and EPDP Phase 1 Policy Implementation. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. Any GAC advice approved by a full consensus of the GAC (as defined in the Bylaws) may only be rejected by a vote of no less than 60% of the Board, and the GAC and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The Board is taking action today on the GAC Consensus Advice to the ICANN Board in the ICANN72 Virtual Annual General Meeting Communiqué, including the item related to the Board Scorecard on SSR2 Review Final Report. This decision is in the public interest and within ICANN's mission, as it is fully consistent with ICANN's bylaws for considering and acting on advice issued by the GAC.

The Board's actions are described in the scorecard dated 13 January 2022 **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY THE BOARD]**.

In adopting its response to the GAC advice in the ICANN72 Virtual Annual General Meeting Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- ICANN72 Virtual Annual General Meeting Communiqué (01 November 2021): <https://www.icann.org/en/system/files/correspondence/gac-to-icann-01nov21-en.pdf>
- The GNSO Council's review of the advice in the ICANN72 Virtual Annual General Meeting Communiqué as presented in the 18 November 2021 letter to the Board: <https://www.icann.org/en/system/files/correspondence/fouquart-to-botterman-18nov21-en.pdf>

The adoption of the GAC advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC

concerning gTLDs and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. This is an Organizational Administrative function that does not require public comment.

Signature Block:

Submitted by: David Olive
Position: Senior Vice President, Policy Development Support
Date Noted:
Email: david.olive@icann.org

GAC Advice – ICANN72 Virtual Annual General Meeting Communiqué: Actions and Updates (01 November 2021)

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ICANN72 Virtual Annual General Meeting GAC Communiqué: Board Action (16 January 2022)

GAC Consensus Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>§1.a.1 - Board Scorecard on SSR2 Review Final Report</p>	<p>a. The GAC advises the Board to:</p> <p>i. Undertake as a matter of priority the follow-up actions needed to support the swift implementation of the Board’s scorecard on the Final SSR2 Review Team Report, and to inform the GAC accordingly, including about the corresponding timeline.</p> <p><u>RATIONALE:</u></p> <p>This advice aims to support the effective follow-up action on the Board’s tasks set in the Board Scorecard on the Final SSR2 Review Team Final Report. Noting the need expressed by the Board for further analysis and consultation, and given the importance of the SSR2 recommendations to address cybersecurity and DNS Abuse, the GAC encourages the Board to proceed with the necessary action plan in a timely manner. The Board Scorecard identifies which action the Board expects from which entity (ICANN org, SSR2 Review Team Implementation Shepherds, and others), which is a very useful starting tool. The Board is expected to prioritize the different actions in the scorecard and accompany the proposed follow-up action plan by a clear timeline. This would help ICANN’s constitutive bodies to actively deliver on the Board Scorecard, while allowing issues prioritization and appropriate mobilization of the ICANN community.</p>	<p>The Board understands that the GAC would like the Board to diligently undertake the follow-up actions needed, specifically in addressing the pending recommendations, to proceed with subsequent implementation activities of the recommendations that the Board will adopt.</p>	<p>The Board agrees that addressing the 34 pending recommendations, noted in the scorecard accompanying the Board resolution 2021.07.22.13, in a timely manner is important. As noted in the Board resolution 2021.07.22.13, the Board expects an update within six months of its action (by 22 January 2022) on the status of this effort. For these pending recommendations, ICANN Org is tasked to resolve the actions identified by the Board in the Scorecard and has initiated the process to document the questions that need addressing for the Board to be able to make a final decision. These questions will be provided to the SSR2 Implementation Shepherds in advance of scheduled meetings, held to facilitate the production of answers by the Shepherds. During the call between the Board and the SSR2 Implementation Shepherds on 29 September 2021 (see public record), this process was discussed and the pending recommendations will be organized in groups for convenience: pending/likely to be approved, pending/likely to be rejected and pending/ additional clarification and information is needed.</p> <p>The outcome of this engagement and of the responses provided by the Shepherds will be taken into account by ICANN org in its analysis to prepare the Board to take further action on the pending recommendations.</p> <p>In total the Board approved 13 Recommendations, subject to prioritization, risk assessment and mitigation, costing, and implementation considerations; Of these 13 recommendations 2 are considered fully implemented.</p> <p>For the fully implemented recommendations, ICANN org will prepare reports of how these recommendations were implemented, to be assessed by the next review team. The remaining approved recommendations are awaiting prioritization and implementation design. Updated information on the status of the SSR2 Approved recommendations is available on the SSR2 webpage.</p>
<p>§1.b.1 - Board Scorecard on SSR2 Review Final Report</p>	<p>The GAC advises the Board to:</p> <p>i. Provide further information on the diverging interpretation by the Board and SSR2 Review Team of the level of implementation of certain recommendations.</p> <p><u>RATIONALE:</u></p> <p>The GAC believes that additional information would be helpful for the GAC to gain a deeper understanding of the diverging interpretations. This advice would allow ICANN and the ICANN community to gain a shared understanding of the issues effectively requiring further action.</p>	<p>The Board understands the GAC is seeking further information on the two recommendations, 4.1 and 9.1, which the Board approved and noted their implementation has already been completed.</p>	<p>The Board approved Recommendations 4.1 and 9.1, which were considered already fully implemented based on the measures of success defined by the SSR2 Review Team in its Final Report, and including rationale for its decision as detailed in the Scorecard accompanying the Board action. With regard to Recommendation 4.1, the Board noted that ICANN org already has policies, plans and programs in place through which Recommendation 4.1 has already been implemented. The Board continues its oversight role over ICANN org’s risk management efforts and is supportive of ICANN org in continuing the risk management activities and strategy that it is already carrying out.</p> <p>For Recommendation 9.1, the Board noted that the Contractual Compliance operations that ICANN org has in place already meet the SSR2 Review Team’s defined measures of success for this recommendation as audits are in place, have been completed and been the subject of public reports.</p>

GAC Consensus Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
			<p>For these recommendations that are deemed to have already been implemented, as well as for all implemented recommendations, ICANN org will prepare and publish reports to detail out how the implementation was accomplished. The Board notes that as a formal matter the Bylaws (Section 4.6(b)(iii)) reserve to SSR3 (or other future SSRs) the role of final assessment of the completion of recommendations from prior SSR reviews.</p>

ICANN72 Virtual Annual General Meeting GAC Communiqué: Actions and Updates (16 January 2022)

GAC Follow Up on Previous Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
<p>1. Domain Name Registration Directory Service and Data Protection</p>	<p>In response to the GAC Montreal Communiqué, the Board accepted the GAC’s advice to:</p> <p><i>“Instruct the ICANN organization to ensure that the current system that requires ‘reasonable access’ to non-public domain name registration is operating effectively.</i></p> <p><i>This should include:</i></p> <ul style="list-style-type: none"> - <i>educating key stakeholder groups, including governments, that there is a process to request non-public data;</i> - <i>actively making available a standard request form that can be used by stakeholders to request access based upon the current consensus policy; and</i> - <i>actively making available links to registrar and registry information and points of contact on this topic.”</i> <p>The GAC would welcome the Board providing an update on these three efforts. In particular, the GAC observes that information on how to make a request for non-public data does not appear to be prominently located or easy to find on ICANN’s website. The GAC also recognizes that the contracted parties have developed guidance on the Minimum Required Information for Whois Data Requests and notes that relevant stakeholders would also benefit from the prominent display of this information in the relevant section of ICANN’s website</p>	<p>Pursuing a standardized form for requests is similar to a centralized intake system; the SSAD recommended by the GNSO includes such a system.</p> <p>The Board understands that the GAC is looking for information on the next steps that will happen after the ODA. The Board acknowledges that the GAC expressed interest in receiving a presentation on the SSAD, similar to the one which was provided to the GNSO Council</p>	<p>Following acceptance by the Board, ICANN org collaborated with the gTLD Registries Stakeholder Group (RySG) and the Registrars Stakeholder Group (RrSG) regarding a standard form as requested by the GAC. The contracted parties recommended against such a form, due to the variety of request intake mechanisms, e.g. emails, webforms. Instead the Registrars agreed to produce and publish a standard set of suggested information -- the Minimum Required Information for Whois Data Requests -- that third parties should provide to contracted parties when requesting non-public registration data. This set of guidelines is available on the RrSG webpage as well as on ICANN’s DNS abuse page - www.ICANN.org/dnsabuse.</p> <p>The pursuit of a standardized form for requests touches on the desire for a centralized intake system for requests. The SSAD recommended by the GNSO would include such a system.</p> <p>Since the publication and promotion of the document by the RrSG, the ICANN org team has shifted its resources to focusing on the Operational Design Assessment of the GNSO’s recommended SSAD.</p> <p>It should be noted, the data from both Contractual Compliance and Global Support do not indicate this lack of centralized intake system to be a significant issue for Internet users. In a survey of Contracted Parties’ for the SSAD ODP, a majority of respondents (101 Contracted Parties representing more than 160 million domains under management) reported receiving less than 10 requests for non-public registration data a month. In 2020, 11 reported receiving 10-50 requests per month, and 8 reported receiving 40-149 requests per month. For additional information regarding the SSAD ODP survey, please see our September 2021 presentation.</p> <p>It should be further noted that the standard request form or the SSAD will not circumvent the GDPR or any other applicable legal restriction on registration data access and disclosure.</p> <p>Also, legislative developments, such as the possible extension of the “know your business customer” obligation to registries and registrars through the EU Digital Services Act (currently under negotiation), could affect 3rd Party requests for access to nonpublic registration data (RDDS/Whois) pursuant to ICANN policy and contractual requirements. This is because similar information would be collected and access would be provided pursuant to this legislation.</p> <p>The SSAD ODP team recently briefed the GNSO council on the estimated costs and fees associated with an SSAD design. The briefing marks the end of the org’s design work and the beginning of a consultation process the GNSO Council requested with the Board on the costs and benefits of an SSAD. A December blog summarized the meeting.</p>

GAC Follow Up on Previous Advice Item	Advice Text	Board Understanding Following Board-GAC Call	Board Response
			<p>The SSAD ODP team provided a similar presentation during a 11 January GAC briefing.</p> <p>As noted in the December blog, the Board will discuss the next steps during the upcoming January Board workshop, and engage with the Council on the planned formal consultation following a community webinar on 18 January, that will expand upon the findings presented to the GNSO Council.</p> <p>The ODP is on track to be completed in February 2022 with the submission of ODA to the Board.</p>
<p>2. EPDP Phase 1 Policy Implementation</p>	<p>The GAC notes its previous advice within the ICANN66 Montréal Communiqué and the follow-up on previous advice in the ICANN70 and 71 Communiqués with regard to Phase 1 of the EPDP on gTLD Registration Data and the request for “<i>a detailed work plan identifying an updated realistic schedule to complete its work.</i>” The GAC highlights with “continued concern that the Phase 1 Implementation Review Team (IRT) lacks a current published implementation timeline.”</p>	<p>The Board understands that the GAC is requesting a detailed work plan identifying an updated realistic schedule to complete the work of the EPDP Phase 1 implementation, and that the GAC has expressed continued concern that the Phase 1 Implementation Review Team (IRT) lacks a current published implementation timeline.</p>	<p>The Board appreciates the interest of the GAC in this work, and has shared updates on multiple areas of the EPDP Phase 1 policy implementation, noted below.</p> <p>Outstanding work on implementation of the Phase 1 recommendations includes completing the draft of the gTLD Registration Data Policy and a proposed implementation timeline to be shared for public comment, including the anticipated implementation time for contracted parties.</p> <p>ICANN org and a CPH discussion group are also developing a draft Data Processing Specification, pursuant to EPDP Phase 1, Recommendation 19. EPDP Phase 1, Recommendation 19 recommended that ICANN and the contracted parties negotiate and enter into required data protection agreements, as appropriate. The current thinking is that this Specification will be published for public comment along with the Registration Data Policy. To be clear, these data processing specifications will not change the current paradigm where the Contracted Party must make the decision to disclose the data to a requestor, as this is a function of complying with GDPR (and other relevant data privacy regulations).</p> <p>In regard to the timeline, the org has continued to work with the community and Board on clarifying and documenting the implementation requirements for some key recommendations, including Recommendation 7 on transfer of data, and Recommendation 12 on the organization field. The progress on these recommendations will help clear the way for several other implementation tasks, and puts the team in a better position to develop and share a meaningful timeline.</p> <p>The progress of the org with the contracted parties on data protection agreements continues to be a priority item for both sides to drive to completion. Recently the representatives from the contracted parties and ICANN org met for several hours over the course of multiple days to further this work.</p> <p>Milestones remaining for implementation of the policy include:</p> <ul style="list-style-type: none"> ○ Completion of the draft data protection specification ○ Completion of the draft Registration Data Policy ○ Completion of draft updates to existing policies and procedures impacted by the Phase 1 recommendations. ○ Completion of a public comment period on the implementation plan consisting of the above elements.

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			<ul style="list-style-type: none"> ○ Updates as needed to incorporate input received in public comments. ○ Announcement of effective date. <p>The Board understands that the org is also in the process of developing additional status tracking resources to be available for this project.</p> <p>The Board also notes that the Interim Registration Data Policy is in place while the Phase 1 implementation is in progress, which means a number of substantially similar provisions are already in place, including in some cases, requirements that are greater than what will be required by Phase 1.</p> <p>More generally in regards to discussions across the community at ICANN72 and specifically with the GAC the Board notes concerns regarding timelines for implementation or completion of certain work items. The Board and Org share these concerns as the extended timelines require more resources from ICANN as well as the community volunteers. When reviewing some of the on-going projects, some key themes do emerge, including the challenges that arise with community recommendations that are ambiguous, or where the community is not aligned on the path of implementation. These scenarios add significant time and complexity to implementation work. The Board urges the GAC, as a participant in the processes that yield community recommendations, to work with the respective community groups to achieve clarity and alignment across the community of what recommendations will institute regarding requirements or obligations.</p>