

**2010-10-28-01 Board Cover Letter SSAC New and  
Departing Members Oct 2010**



12 October 2010

To: ICANN Board  
From: SSAC Chair  
Via: SSAC Liaison to the ICANN Board

The purpose of this letter is to bring you up-to-date on proposed changes to the Security and Stability Advisory Committee (SSAC) and to provide an explanation for the attached requests for Board actions. The changes we propose are incremental and positive.

As you know, SSAC has been in operation since spring 2002 and we periodically recruit new members to increase the expertise and breadth of the Committee. In addition, SSAC members may depart from time-to-time.

In selecting members, we strive first and foremost for technical competence, integrity and independence of thinking, and a willingness to devote the time needed for the Committee's work. We look for people from all segments of the technical community.

On 30 September, Dan Simon decided to step down as an SSAC member. The Board appointed Dan on 26 June 2009. We are grateful for Dan's service to the SSAC and wish him well in his professional endeavors. We request the Board to extend an expression of thanks to Dan on behalf of the SSAC.

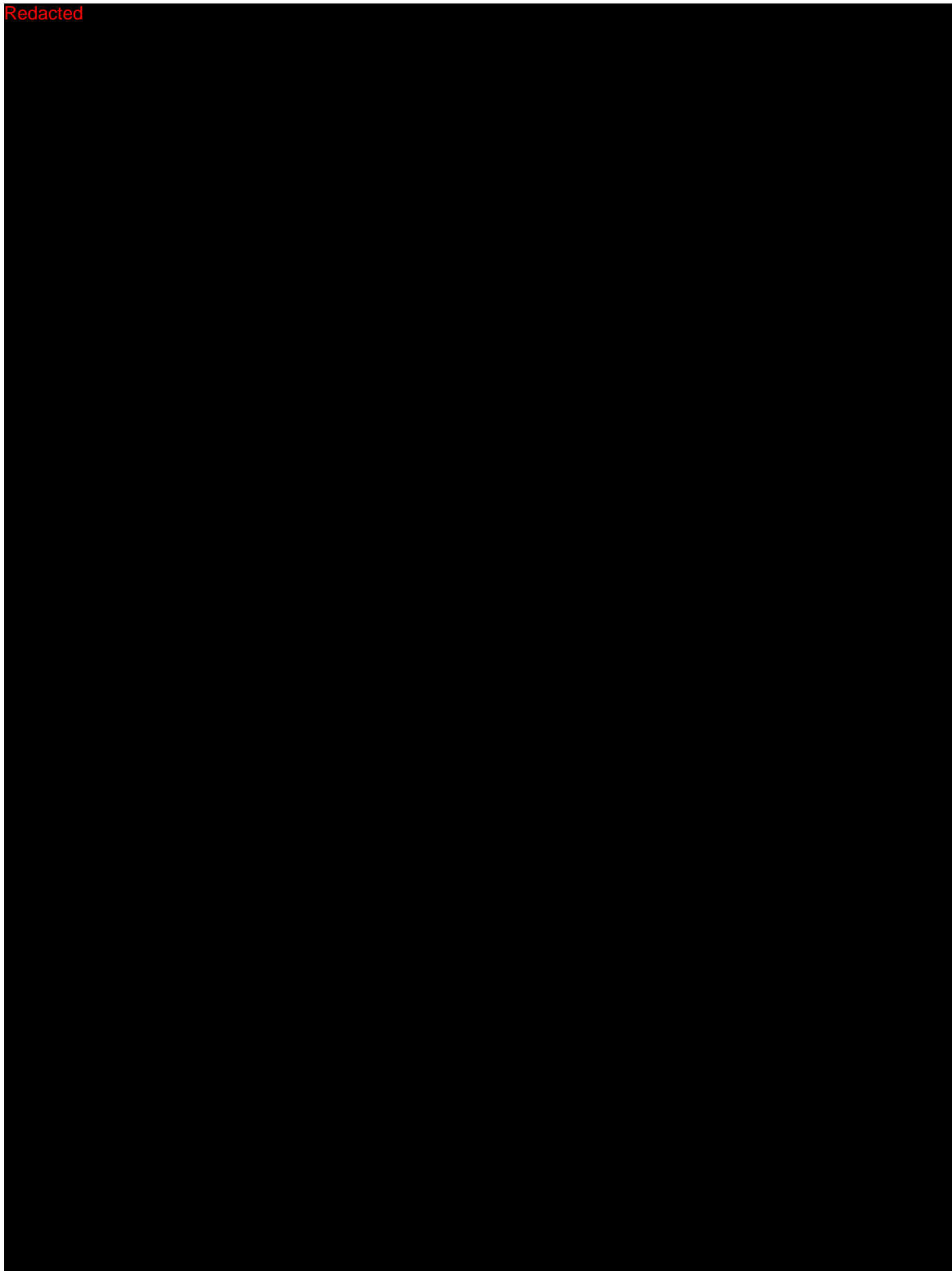
Also in September, the SSAC agreed to invite Merika Kaeo to the SSAC. Merika is the founder and Executive Strategy Advisor of Double Shot Security. She concentrates on leading the global strategic direction for corporate security initiatives. Merika will bring valuable experience and expertise to the SSAC. We request her appointment by the Board. We have attached her biographical information for your reference.

The SSAC welcomes comments from the Board concerning these requests.

Steve Crocker  
Chair, ICANN Security and Stability Advisory Committee

## **2010-10-28-01 Merike Kaeo Bio**

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# **2010-10-28-03 Attachment-A-Revised-Audit-Committee-Charter**

# Audit Committee Charter

## I. Purpose

The Audit Committee (“Committee”) of the Board of Directors (“Board”) of ICANN is responsible for:

- A. Recommending the selection of independent auditors to the Board;
- B. Receiving and reviewing status reports from independent auditors as required and recommended.
- C. Receiving, reviewing and forwarding to the Board the annual financial report of ICANN’s operations and financial position, the related footnotes, and the accompanying independent auditors’ report.
- D. Overseeing ICANN’s internal financial and accounting controls and procedures, which are designed to promote compliance with accounting standards, and applicable laws and regulations.

## II. Scope of Responsibilities

- A. Recommending the selection of independent auditors to the Board.
  - 1. The Committee will recommend to the Board of Directors the selection of ICANN’s independent auditors and the annual fees to be paid for services rendered by the independent auditors.
  - 2. The Committee will review the proposed audit plan(s) developed the independent auditors.
  - 3. The Committee will periodically review the performance, qualifications and independence of the independent auditors, and recommend to the Board any proposed retention or discharge of the independent auditors.
- B. Receiving and reviewing status reports from independent auditors as required and recommended.
- C. Receiving, reviewing and forwarding to the Board the annual financial report of the independent auditors.
  - 1. The Committee will review ICANN’s annual financial statements and reports as required by law and ICANN’s Bylaws.



2. The Committee will review and discuss the required communication from the independent auditor in relationship to the reliance on internal controls and the comments on those internal controls, if any.
3. The Committee will forward to the Board and recommend acceptance of ICANN's audited annual financial statements and reports and the annual financial management letter of the independent auditors, including Committee comments, if any.

D. Overseeing ICANN's internal financial and accounting controls and procedures designed to promote compliance with accounting standards, and applicable laws and regulations.

1. The Committee will periodically review ICANN's system of internal financial and accounting controls, including its financial risk assessment and financial risk management policies, including any relevant insurance coverage, and make recommendations for changes, if any.
2. The Committee will monitor the performance of ICANN's accounting and financial reporting process, internal financial controls and financial audits.
3. The Committee will oversee ICANN's compliance with generally accepted accounting principles for nonprofit organizations, and with any legal or regulatory requirements related to: (i) ICANN's accounting and financial management systems; and (ii) ICANN's financial reports.
4. The Committee will oversee investigations resulting from reports of questionable accounting or financial matters or financially-related fraud concerns, including receiving management reports about calls made to the anonymous reporting hotline pursuant to the ICANN whistleblower policy, as those calls relate to the reporting of concerns as enumerated above.

In addition, the Committee may perform other duties or responsibilities, if any delegated to the Committee by the Board from time to time.

### **III. Composition**

The Committee shall be comprised of at least three but not more than four voting Board Directors and not more than one non-voting Liaison Director, as determined and appointed annually by the Board, each of whom shall comply with the Conflicts of Interest Policy (see <http://www.icann.org/en/committees/coi/coi-policy-30jul09-en.htm>.) The voting Directors shall be the voting members of the Committee. The members of the Committee shall serve at the discretion of the Board.

Committee members must, to the extent practicable, be independent Directors of ICANN, as determined by the policies and practices of the organization. The Committee shall have access to financial expertise, preferably through the inclusion on

the Committee of at least one voting Director with the requisite level of financial expertise as deemed acceptable by the Board.

Unless a Committee Chair is appointed by the full Board, the members of the Committee may designate its Chair from among the voting members of the Committee by majority vote of the full Committee membership.

The Committee may choose to organize itself into subcommittees to facilitate the accomplishment of its work. The Committee may seek approval and budget from the Board for the appointment of consultants and advisers to assist in its work as deemed necessary, and such appointees may attend the relevant parts of the Committee meetings.

#### **IV. Meetings**

The Committee shall meet at least four times per year, or more frequently as it deems necessary to carry out its responsibilities. The Committee's meetings may be held by telephone and/or other remote meeting technologies. Meetings may be called upon no less than forty-eight (48) hours notice by either (i) the Chair of the Committee or (ii) any two members of the Committee acting together, provided that regularly scheduled meetings generally shall be noticed at least one week in advance.

#### **V. Voting and Quorum**

A majority of the voting members of the Committee shall constitute a quorum. Voting on Committee matters shall be on a one vote per member basis. When a quorum is present, the vote of a majority of the voting Committee members present shall constitute the action or decision of the Committee.

#### **VI. Records of Proceedings**

A preliminary report with respect to actions taken at each meeting (telephonic or in-person) of the Committee, shall be recorded and distributed to committee members within two working days, and meeting minutes shall be posted promptly following approval by the Committee.

#### **VII. Review**

The performance of the Committee shall be reviewed annually and informally by the Board Governance Committee. The Board Governance Committee shall recommend to the full Board changes in membership, procedures, or responsibilities and authorities of the Committee if and when deemed appropriate. Performance of the Committee shall also be formally reviewed as part of the periodic independent review of the Board and its Committees.

The Committee shall also conduct a separate self-evaluation of its performance and produce a report to the Board Governance Committee regarding any suggestions for changes to this Charter as identified through the self-evaluation process.

# **2010-10-28-03 Attachment-B-Executive-Committee- Charter**

# Executive Committee Charter

## I. Purpose

The Executive Committee is responsible for:

Exercising all the powers of the Board in the oversight of the management of the business and affairs of the Corporation, including, without limitation, financial matters so that the Board retains the ability to act through the Executive Committee between formal Board meetings if deemed necessary.

## II. Scope of Responsibilities

A. To the extent permitted by law, the Committee shall exercise all the powers of the Board during the interval periods between regular Board meetings when the Board is unavailable or unable to meet.

B. The Committee shall not have the authority to adopt, amend or repeal any provision of the Bylaws or take any other action which has been reserved for action by the full Board pursuant to the Bylaws, a resolution of the Board or which the Committee is otherwise prohibited by law to take.

## III. Composition

The Executive Committee shall be comprised of at least the Board Chair, the Board Vice-Chair and the Chief Executive Officer, and may include one other voting Board Director, as determined and appointed annually by the Board, each of whom shall comply with the Conflicts of Interest Policy (see <http://www.icann.org/en/committees/coi/coi-policy-30jul09-en.htm>.) The members of the Committee shall serve at the discretion of the Board.

The Board Chair shall serve as Committee Chair.

The Committee may choose to organize itself into subcommittees to facilitate the accomplishment of its work. The Committee shall have the authority to appoint consultants and advisers to assist in its work as deemed necessary, and such appointees may attend the relevant parts of the Committee meetings.

## IV. Meetings

The Executive Committee will not have regularly scheduled meetings. The Executive Committee shall meet as it deems necessary to carry out its responsibilities. The Committee's meetings may be held by telephone and/or other remote meeting technologies. Meetings may be called upon no less than forty-eight (48) hours notice by either (i) the Chair of the Committee or (ii) any two members of the Committee acting

together, provided that regularly scheduled meetings generally shall be noticed at least one week in advance.

## **V. Voting and Quorum**

A majority of the voting members of the Committee shall constitute a quorum. Voting on Committee matters shall be on a one vote per member basis. When a quorum is present, the vote of a majority of the voting Committee members present shall constitute the action or decision of the Committee.

## **VI. Records of Proceedings**

A preliminary report with respect to actions taken at each meeting (telephonic or in-person) of the Committee shall be recorded and distributed to committee members within two working days, and meeting minutes shall be posted promptly following approval by the Committee.

After each Executive Committee meeting where action has been taken, the Executive Committee shall provide a report to the full Board of Directors with a report of actions taken, for Board receipt and acknowledgment at the next regularly-scheduled meeting of the full Board.

## **VII. Review**

The performance of the Committee shall be reviewed every three years and informally by the Board Governance Committee. The Board Governance Committee shall recommend to the full Board changes in membership, procedures, or responsibilities and authorities of the Committee if and when deemed appropriate. Performance of the Committee shall also be formally reviewed as part of the periodic independent review of the Board and its Committees

# **2010-10-28-05 Attachment-re-Board-Terms-Proposed- Bylaws**

## Proposed Bylaws Amendments to Modify Board Terms

### Section 8. TERMS OF DIRECTORS

1. Subject to the provisions of the [Transition Article of these Bylaws](#), the regular term of office of Director Seats 1 through 15 shall begin as follows:

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a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;

b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;

c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;

d. The terms of Seats 9 and 12 shall [continue until the conclusion of ICANN's Mid-year Meeting after ICANN's annual meeting in 2011. The next terms of Seats 9 and 12 shall begin at the conclusion of the Mid-year Meeting occurring after the 2011 ICANN annual meeting and each ICANN annual meeting every third year after 2011;](#)

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e. The terms of Seats 10 and 13 shall [continue until the conclusion of ICANN's Mid-year Meeting after the 2012 ICANN annual meeting. The next terms of Seats 10 and 13 shall begin at the conclusion of the Mid-year Meeting occurring after the 2012 ICANN annual meeting and each ICANN annual meeting every third year after 2012;](#) and

f. The terms of Seats 11, 14 and 15 shall begin [at the conclusion of ICANN's Mid-Year Meeting after the 2010 ICANN annual meeting, and each ICANN annual meeting every third year after 2010. \(Note: In the period prior to the beginning of the term of Seat 15, Seat 15 shall remain vacant. Through a process coordinated by the At Large Advisory Council, the At-Large Community shall, make the selection of a Director to fill the vacant Seat 15 and shall give the ICANN Secretary written notice of its Selection. The vacant Seat 15 may only be filled at the conclusion of the ICANN annual meeting in 2010, with a term to conclude upon the commencement of the first regular term specified for Seat 15 in accordance with this Section of the Bylaws. Until the conclusion of the ICANN annual meeting in 2010, there will be a non-voting Liaison appointed by the At Large Advisory Committee who shall participate as specified at Sections 9\(3\) and 9\(5\) of this Article.\)](#)

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g. [For the purposes of this Section, the term "Mid-year Meeting" refers to the first ICANN International Public Meeting occurring no sooner than six and no later than eight months after the conclusion of ICANN's annual general meeting. In](#)

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the event that a Mid-year Meeting is scheduled and subsequently cancelled within six months prior to the date of its commencement, the term of any seat scheduled to begin at the conclusion of the Mid-year Meeting shall begin on the date the Mid-year Meeting was previously scheduled to conclude. In the event that no International Public Meeting is scheduled during the time defined for the Mid-year Meeting, the term of any seat set to begin at the conclusion of the Mid-year Meeting shall instead begin on the day six months after the conclusion of ICANN's annual meeting.

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.

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3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

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4. At least two months before the date specified for the commencement of the term as specified in paragraphs 1.d-g above, any Supporting Organization or the At-Large community entitled to select a Director for a Seat with a term beginning that year, shall give the Secretary of ICANN written notice of its selection.

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5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. Any prior service in Seats 9, 10, 11, 12, 13 and 14 as such terms were defined in the Bylaws as of [insert date before amendment effective], so long as such service was not to fill a vacancy, shall be included in the calculation of consecutive terms under this paragraph.

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# **2010-10-28-06 Annex - At-Large-Board-Directors**

**ANNEX TO ICANN BOARD SUBMISSION NO. 2010-10-28-06**

**TITLE:** **Approval of Bylaws Necessary to Seat Director  
from At-Large Community**

**ATTACHMENTS**

A redline of the proposed Bylaws edits is attached as **Attachment A**.

A copy of Staff's Summary and Analysis of Public Comment on the proposed Bylaws amendment is attached as **Attachment B**.

Submitted by:	Samantha Eisner
Position:	Senior Counsel
Date Noted:	15 October 2010
Email and Phone Number	Samantha.eisner@icann.org; +1.310.578.8631

# **2010-10-28-06 Attachment-A-to-Annex-re-At-Large- Bylaws**

## ARTICLE VI: BOARD OF DIRECTORS

### Section 1. COMPOSITION OF THE BOARD

The ICANN Board of Directors (“Board”) shall consist of sixteen voting members (“Directors”). In addition, five non-voting liaisons (“Liaisons”) shall be designated for the purposes set forth in [Section 9 of this Article](#). Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN Board.

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### Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

1. The Directors shall consist of:

a. Eight voting members selected by the Nominating Committee established by [Article VII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.

b. Two voting members selected by the Address Supporting Organization according to the provisions of [Article VIII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.

c. Two voting members selected by the Country-Code Names Supporting Organization according to the provisions of [Article IX of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.

d. Two voting members selected by the Generic Names Supporting Organization according to the provisions of [Article X of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.

[e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.](#)

e. The President ex officio, who shall be a voting member.

2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At no time when it makes its selection shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) from countries in any one Geographic Region (as defined in [Section 5 of this Article](#)) to exceed five; and

the Nominating Committee shall ensure when it makes its selections that the Board includes at least one Director who is from a country in each ICANN Geographic Region (“Diversity Calculation”).

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship (“Domicile”), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub- section 2 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one “Domicile,” which shall be determined by where the candidate has a permanent residence and place of habitation.

3. In carrying out their responsibilities to fill Seats 9 through 15, the Supporting Organizations [and the At-Large Community](#), shall seek to ensure that the ICANN Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At any given time, no two Directors selected by a Supporting Organization shall be citizens from the same country or of countries located in the same Geographic Region.

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For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship (“Domicile”), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Supporting Organization [or the At-Large Community](#) to use for selection purposes. For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one “Domicile,” which shall be determined by where the candidate has a permanent residence and place of habitation.

4. The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors, not including the President.

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#### Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term “official” means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental

or public policies.

2. No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board. If such a person accepts a nomination to be considered for selection by the Supporting Organization Council [or the At-Large Community](#) to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization Council [or the committee designated by the At-Large Community](#) relating to the selection of Directors by the Council [or Community](#), until the Council [or committee\(s\) designated by the At-Large Community](#) has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. [In the event that a person serving in any capacity on the At-Large Advisory Committee accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.](#)

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by [Article VII, Section 8](#).

### Section 5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the selection of Directors by the Nominating Committee, [each Supporting Organization and the At-Large Community](#) shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

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### Section 8. TERMS OF DIRECTORS

1. [The regular term of office of Director Seats 1 through 15](#), shall begin as follows:

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- a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
- b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
- c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;
- d. The regular terms of Seats 9 and 12 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2002 and each ICANN annual meeting every third year after 2002;
- e. The regular terms of Seats 10 and 13 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003; and
- f. The regular terms of Seats 11 and 14 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004.

g. The first regular term of Seat 15 shall begin on the day six months after the conclusion of ICANN's annual meeting in 2010 and each ICANN annual meeting every third year after 2010. (Note: In the period prior to the beginning of the term of Seat 15, Seat 15 shall remain vacant. Through a process coordinated by the At Large Advisory Committee, the At-Large Community shall make the selection of a Director to fill the vacant Seat 15 and shall give the ICANN Secretary written notice of its selection. The vacant Seat 15 may only be filled at the conclusion of the ICANN annual meeting in 2010, with a term to conclude upon the commencement of the first regular term specified for Seat 15 in accordance with this Section of the Bylaws, and shall give the ICANN Secretary written notice of its Selection. Until the conclusion of the ICANN annual meeting in 2010, there will be a non-voting Liaison appointed by the At Large Advisory Committee who shall participate as specified at Sections 9(3) and 9(5) of this Article.)

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.

3. At least one month before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

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4. No later than five months after the conclusion of each annual meeting, any Supporting Organization [or the At-Large Community](#) entitled to select a Director for a Seat with a term beginning on the day six months after the conclusion of the annual meeting shall give the Secretary of ICANN written notice of its selection.

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term.

6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

## Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

a. One appointed by the [Governmental Advisory Committee](#);

b. One appointed by the Root Server System Advisory Committee established by [Article XI of these Bylaws](#);

c. One appointed by the Security and Stability Advisory Committee established by [Article XI of these Bylaws](#);

d. One appointed by the Technical Liaison Group established by [Article XI-A of these Bylaws](#);

e. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the [Transition Article of these Bylaws](#), the non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN written notice of its appointment.

3. Non-voting liaisons shall serve as volunteers, without compensation other than the reimbursement of certain expenses.

4. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.

5. The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them

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pursuant to this Section for the purpose of consulting with their respective committee or organization.

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### Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

1. Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.

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## ARTICLE XI: ADVISORY COMMITTEES

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### Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

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#### 4. At-Large Advisory Committee

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e. The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to [Section 5 of Article VI](#)) to the Nominating Committee.

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#### i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.

2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in [Section 5 of Article VI](#)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.

4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.

5. Once the criteria and standards have been established as provided in this Clause i, the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.

6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS applications shall be subject to review by the RALOs and by the ICANN Board.

7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.

8. On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

j. The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

1. [Making a selection by the At-Large Community to fill Seat 15 on the Board. Notification of the At-Large Community's selection shall be given by the ALAC Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8\(4\) and 12\(1\).](#)

2. Keeping the community of individual Internet users informed about the significant news from ICANN;

3. Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;

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- | 4. Promoting outreach activities in the community of individual Internet users;
- | 5. Developing and maintaining on-going information and education programs, regarding ICANN and its work;
- | 6. Establishing an outreach strategy about ICANN issues in each RALO's Region;
- | 7. Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;
- | 8. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and
- | 9. Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.  
.....

# **2010-10-28-06 Attachment-B-to-Annex-re-At-Large- Bylaws**

## **Summary and Analysis of Comments on Proposed Bylaws Amendments to Allow Seating of a Voting Board Director Selected by the At-Large Community**

**Comment Period: 1 July 2010 – 15 August 2010**

### **EXPLANATION/BACKGROUND**

On [27 August 2009](#), the Board approved in principle the recommendation of the Board review Working Group (BRWG) to add one voting director from the At-Large Community to the ICANN Board of Directors and removing the present At-Large Advisory Committee (ALAC) Liaison to the ICANN Board. The BRWG issued its [final report](#) in February 2010, and noted the expectation that "the selection process will be designed, approved and implemented in time for the new Director to be seated at the 2010 Annual General Meeting."

With direction from the Board's Structural Improvements Committee and Board Governance Committee regarding the design of the new Seat 15 on the Board, including the coordination of the term with the terms of directors selected by the ICANN's Supporting Organizations, staff produced proposed Bylaws amendments to recognize a Seat 15 and effectuate the Committee directives.

At its meeting on 25 June 2010, the Board [directed staff to post these recommended Bylaws amendments](#) for public comment, so that the Board can take action on these proposed amendments no later than at its 28 October 2010 meeting.

### **SUMMARY OF COMMENTS RECEIVED**

Six comments were received during the comment period. On 10 September 2010, after the conclusion of the Public Comment period, staff received a compilation of emails submitted on mailing lists within the ALAC supporting comments made within the public comment process. That compilation is attached here, and the comments within are addressed as appropriate in this Summary and Analysis.

The comments are as follows:

Jean-Michel Becar noted his support for the idea of a voting director from the At Large, and commented that "street users" – users less advanced than those in the ALAC should be represented by a director. Mr. Becar did not comment on the content of the proposed Bylaws. <http://forum.icann.org/lists/bylaws-amend-al-director/msg00000.html>.

Tijani Ben Jemaa submitted a comment on behalf of the African Regional At Large Organization (AFRALO), noting that the transitional six month term provided for in the proposed bylaws "couldn't be sufficient for a director to enter into the process and become familiar with the work of the board." The AFRALO commented that the first transitional period of 42 months, to allow for synchronization of terms of

directors selected by ICANN's Supporting Organizations, and allow the new director to perform his or her role. AFRALO provided proposed language to modify the length of the transitional term. <http://forum.icann.org/lists/bylaws-amend-al-director/msg00001.html>. Mr. Ben Jemaa later contributed, in his personal stead, to an email discussion within the ALAC, attached to this summary, where he noted that having a 42-month total term does not necessarily require action by the ICANN Board. The At Large Community could decide that the person selected for the six-month transitional term would continue on for the first regular term. However, there is concern among the At-Large Community that such a direction be explicit, and not appear as an internal arrangement made within the ALAC.

George Kirikos of Leap of Faith Financial System submitted a comment noting that his organization is not participating in the public comment process. <http://forum.icann.org/lists/bylaws-amend-al-director/msg00002.html>

Baudouin Schombe submitted a comment supporting the revision to the transitional term language identical to that proposed within the AFRALO comment. <http://forum.icann.org/lists/bylaws-amend-al-director/msg00003.html>.

Karl Auerbach submitted a comment noting that he finds the proposed amendment "troublesome." Mr. Auerbach, a member of the ALAC review Working Group, noted that the board seat should be "filled by a process that included people from the broadest range of the community of internet users" and the ALAC is just an element of that community. Mr. Auerbach states that the amendments "disregard" the finding of the working group. He then provides discussion on opinions of the ALAC and that the ALAC will become "self-protective" of its role in making the selection. Mr. Auerbach calls for the Board resolution to be amended to allow the ALAC to be "but one source" of candidates, and that the earlier practice of public board seats be resumed. <http://forum.icann.org/lists/bylaws-amend-al-director/msg00004.html>.

Alan Greenberg submitted a comment addressing possible problems with the amendments. First, Mr. Greenberg notes that the prohibition that members of Sponsoring Organization councils cannot simultaneously serve on the Board of Directors is not extended to members of the ALAC or At-Large, or the chairs of the RALOs. Second, Mr. Greenberg notes the difference between the use of the word "nominated" in the proposed bylaws to the selection process underway within the At-Large Community. Third, Mr. Greenberg identifies references to the "the committee designated by the At-Large Community related to the selection" and requests clarification of what "committee" is being referred to. Finally, Mr. Greenberg commented that an existing provision in the Bylaws relating to replacements of Sponsoring Organization members for voting purposes if the member was a candidate for director, as well as the revisions relating to replacements of ALAC members for the same purpose, were meaningless in regards to Nominating Committee appointed members. Mr. Greenberg provided proposed revised language to address each of these four concerns.

Mr. Greenberg also raised concern with the proposed wording of Section 8.1.g, regarding the definition of the transitional term and full term of the Director, and proposed language to address his concerns. Regarding the issue of the six month transitional term to allow for seating of a Director, he noted that – as with the prior practice of the ccNSO in filling the first seat on the Board of Directors – the selection could be made for the six month transitional term as well as the subsequent regular term. Finally, Mr. Greenberg suggested proposed language regarding the use of the term “At-Large Community” in Article XI, Section 2.4.j.1 of the proposed Bylaws. See <http://forum.icann.org/lists/bylaws-amend-al-director/msg00005.html>.

## **ANALYSIS AND RECOMMENDATIONS**

### **Length of Term**

There has been substantial comment in support of the AFRALO proposal that the first voting director selected by the At-Large Community should have a 42-month transitional term. However, there are many practical problems raised by this proposal. First, the terms of all other Board members are limited to three years, and the argument that a director selected by the At-Large Community would require more than three years to become acclimated to his or her position is counter to the expectation placed on all other members of the Board. Second, the longer a transitional term is, the more consideration is required to determine if such a “transitional” term should count for purposes of term limits. The transition here is *not* a transition to acclimation to the Board, but a time for transitioning the seat into a regular term of the ICANN Board.

The basic concern raised by many of the commenters regarding the six-month transitional term is a practical concern – the selection process is detailed and time consuming, and it is impractical to require the At-Large Community to run through the entire process for only a six-month term and immediately re-initiate the process to identify a selection for the regular three-year term. In addition, no director serving for only six months can be expected to become familiar enough with the work of the Board to perform as a fully effective Board member. In addition, turnover of Board members creates additional strain on the Board in comprising its committees. These concerns are not trivial.

Mr. Greenberg noted that there is a practical solution to this issue that does not require the creation of a 42-month transitional term. In the 2002 re-structuring of the ICANN Bylaws, one of the seats selected by the ccNSO was – with the same language as proposed here – created with approximately a six-month transition clause. The ccNSO determined that the person selected for the short transitional term would then serve in the first regular term for the seat. Tijani Ben Jemaa, in comments provided by the ALAC Executive Committee after the close of the Public Comment period, also notes that the selection committee here could decide that the first selection process (currently proceeding) will identify a person to serve in the transitional as well as first regular term.



Under either the AFRALO proposal or the Greenberg/Ben Jemaa approach, the result is that the first Director selected by the At-Large Community will serve for 42 months total prior to a new selection process needing to be run. Because the result is the same, it is more appropriate to follow the Greenberg/Ben Jemaa approach, and not change the proposed Bylaws to accommodate the AFRALO proposal due to the other complexities that the adoption of the proposal could raise. To help effectuate this, at the time of adoption of the proposed Bylaws, the Board can specifically authorize and recommend to the At-Large Community that, based on the overwhelming sentiment raised in public comment and the Board's concerns of quick turnover of membership, that the At-Large Community's selection to fill the transitional term can appropriately continue to serve in the first regular term of Seat 15 without the re-initiation of a Board selection process. Such an explicit mention may also address concerns as raised by Mr. Ben Jemaa that such continuous service should not be seen as an "internal" arrangement by the ALAC.

### **Use of Transition Article**

One commenter suggested that the transition term should be placed within the Transition Article of the Bylaws. This approach is not recommended. The Transition Article is primarily to define the transition between the pre- and post-2002 ICANN Bylaws and Board system. While a minor use of the transition article was required in the GNSO Improvements process, transitory clauses have been inserted into other portions of the Bylaws without modification of the Transition Article, such as the recent SSAC amendments at Article XI, Section 2.2b.

In addition, the proposed Bylaws language defining the transitional and regular term of Seat 15 should not be altered, as the language proposed mirrors other language in the Bylaws for the creation of transition and regular terms for Board seats.

The comment received noting the unnecessary use of the word "first" in the phrase "first regular term" is well taken, and that word will be deleted from the version presented for Board approval. In addition, the comment that the current wording requires the At-Large Community to make a selection at the conclusion of the 2010 Annual General Meeting is well taken. The proposed Bylaws language will be clarified to allow for advance selection for the term commencing at the conclusion of the 2010 AGM.

### **ALAC Involvement in Selection Process**

No changes to the proposed Bylaws are required to respond to the comment regarding the need to return to the pre-2002 "public" board seats. The proposed Bylaws amendments specifically state that the At-Large Community shall select the Director for Seat 15. The ALAC is charged with coordinating with the Regional At Large Organizations (RALOs) for making a selection "by the At-Large Community."

In no way does this equate to the ALAC as the only source for candidates, or the only body with a voice in the selection. The Board Governance Committee, in coordination with the Structural Improvements Committee, reviewed the proposed process for selection of a voting member by the At-Large Community specifically for risks of capture, and concluded that any risks of capture were low. See <http://www.icann.org/en/minutes/minutes-bgc-20may10-en.htm>. Mr. Auerbach's comments also reflected on the work of the ALAC Review Working Group, however, the genesis of the current work to create a Seat 15 selected by the At-Large Community is the implementation of a recommendation arising out of the Board Review Working Group. See <http://www.icann.org/en/minutes/minutes-27aug09-en.htm>.

Because the ALAC's role is one of coordination, Mr. Greenberg's proposed language requiring the selection process to be defined in the ALAC's Rules of Procedure is not appropriate for adoption.

#### **Section 4.2 – Multiple Service and Recusal**

The omission of the ALAC from the prohibition of multiple service on the Board (Article XI, Section 4.2) was intentional. As directed by the Board's resolution, the seat on the Board of Directors is not a seat allocated to the ALAC, but a seat selected by the At-Large Community. Particularly because there is no direct mapping of a Director to an ICANN Advisory Committee, forbidding cross membership between the Board and the ALAC would likely raise the question of forbidding cross membership between the Board and any executive council of an ICANN Advisory Committee. Such a change has not been considered or recommended, and introducing such a change here would expand the proposed amendments beyond the minimum necessary to achieve the recommendation as approved by the Board. As a result, staff does not recommend any change to the Bylaws based upon this comment.

Section 4.2 also addresses candidate participation in the selection process, and requires recusal of persons "nominated to be considered for selection by [a] Supporting Organization Council or the At-Large Community to be a Director" from participation in the selection process. A comment was received recommending substantial modification to these recusal procedures tailored specifically to the form of the selection process recently approved by the At-Large Community. No changes are needed to the Bylaws as posted to address this comment.

The current reference to the "committee designated by the At-Large Community" provides flexibility to the At-Large Community to change the design of their selection process without the requirement of seeking a change to the Bylaws regarding the recusal provision. For example, if the ALAC was not part of the final vote in a future iteration of the Seat 15 selection process, and a separate committee was comprised for that purpose, the modification proposed by the commenter would *not* exclude a member of that selection committee from being a candidate for

selection. In addition, the inclusion of such ALAC-specific language could be perceived as counter to the Board’s direction that this be a seat selected by the At-Large Community and raise the prominence of concerns such as Mr. Auerbach’s.

To the extent the commenter noted the ineffectiveness of the provision within Section 4.2 that the Nominating Committee could replace an appointee if he or she were excluded from the selection process, while the practicality of replacement is a noted concern, this Bylaws amendment process is not the proper place to raise suggestions regarding Nominating Committee processes.

Regarding the comment regarding the inapplicability of the use of the term “nominated to be considered for selection” to the process designed by the At-Large Community should not serve as a grounds for creating separate language applicable to the Sponsoring Organization selections and the At-Large Community selections for Board seats. The uniformity of the language in the Bylaws should be maintained, and the At-Large Community can clarify within their selection processes that any method by which a person becomes a candidate for selection is considered a “nomination” for the purpose of this Bylaws section.

Finally, the commenter noted that the reference to “the committee designated by the At-Large Community relating to the selection” is unclear, as it could refer to the team *designing* the selection process, the committee identifying the slate of candidates, or the group identified to *vote* on which of the persons on the slate will be selected as the Director. However, the remainder of the section, stating, “until the . . . committee designated by the At-Large Community has selected the full complement of Directors it is responsible for the selecting” provides direction that recusal is only required by those serving on a committee responsible for selection/voting on directors. Within the At-Large Community selection process currently designed, there are *two* such committees – the slating committee and the group taking the final vote. Therefore, the term “committee designated . . .” should be changed to “committee(s) designated” to account for where there may be more than one committee responsible for slating and/or voting.

### **NEXT STEPS**

This summary and analysis will be presented to the Board for consideration at its meeting on 28 October 2010, along with the proposed Bylaws amendments incorporating modifications based upon comments received. Because of the minor changes to the proposed text, Staff will recommend that the Board approve the proposed Bylaws without the initiation of a further public comment period.

# **2010-10-28-07 Annex SSAC Charter Bylaws Changes**

ATTACHMENT TO BOARD SUBMISSION NO. 2010-10-28-07

**TITLE:** **Proposed Amendment to Article XI of the ICANN Bylaws to Implement Improvements Relating to Membership in the Security and Stability Advisory Committee (SSAC)**

**REDLINED LANGUAGE:**

Article XI: Advisory Committees

Section 2. Security and Stability Advisory Committee

a. The role of the Security and Stability Advisory Committee (“SSAC”) is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.

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**Deleted:** 1 To develop a security framework for Internet naming and address allocation services that defines the key focus areas, and identifies where the responsibilities for each area lie. The committee shall focus on the operational considerations of critical naming infrastructure.

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2. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

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3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC, RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

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4. To report periodically to the Board on its activities.

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5. To make policy recommendations to the ICANN community and Board.

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b. The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointment or re-appointment each year. [The Board shall also have the power to remove SSAC appointees as recommended by or in consultation with the SSAC.](#) (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC chair shall recommend the re-appointment of all current SSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)

# **2010-10-28-08 Annex ARTICLE VII - NomCom Bylaws Revisions**

## ARTICLE VII: NOMINATING COMMITTEE

### Section 1. DESCRIPTION

There shall be a Nominating Committee of ICANN, responsible for the selection of all ICANN Directors except the President and those Directors selected by ICANN's Supporting Organizations, and for such other selections as are set forth in these Bylaws.

### Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN Board;
2. [A non-voting Chair-Elect, appointed by the ICANN Board](#), as a non-voting advisor;

\*\*\*

### Section 3. TERMS

Subject to the provisions of the [Transition Article of these Bylaws](#):

1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.

2. The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.

3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, [the Chair-Elect](#), and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.

[4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.](#)

[5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article, or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed](#)

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**Deleted:** The immediately previous Nominating Committee Chair,

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by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.

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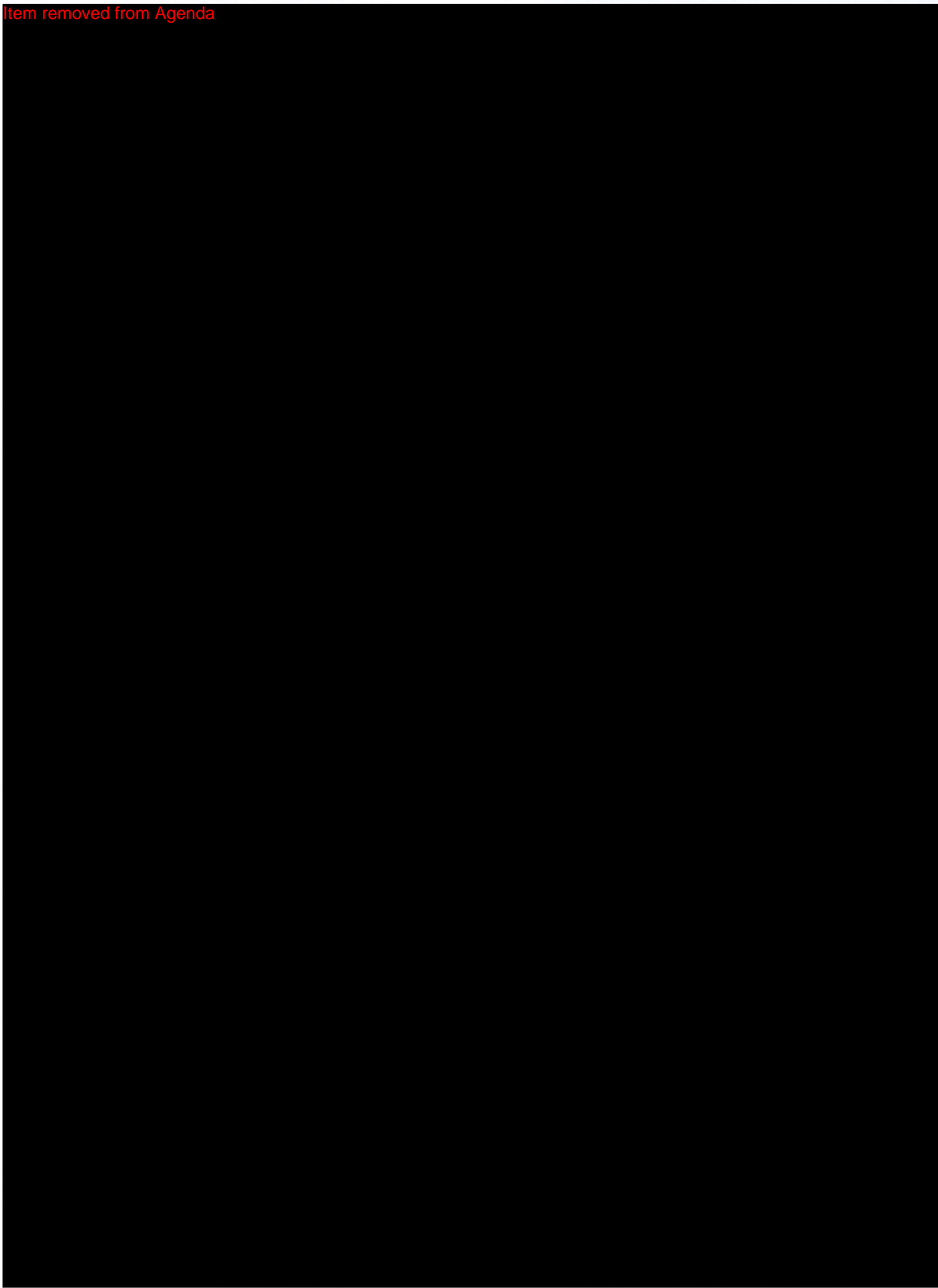
6. The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

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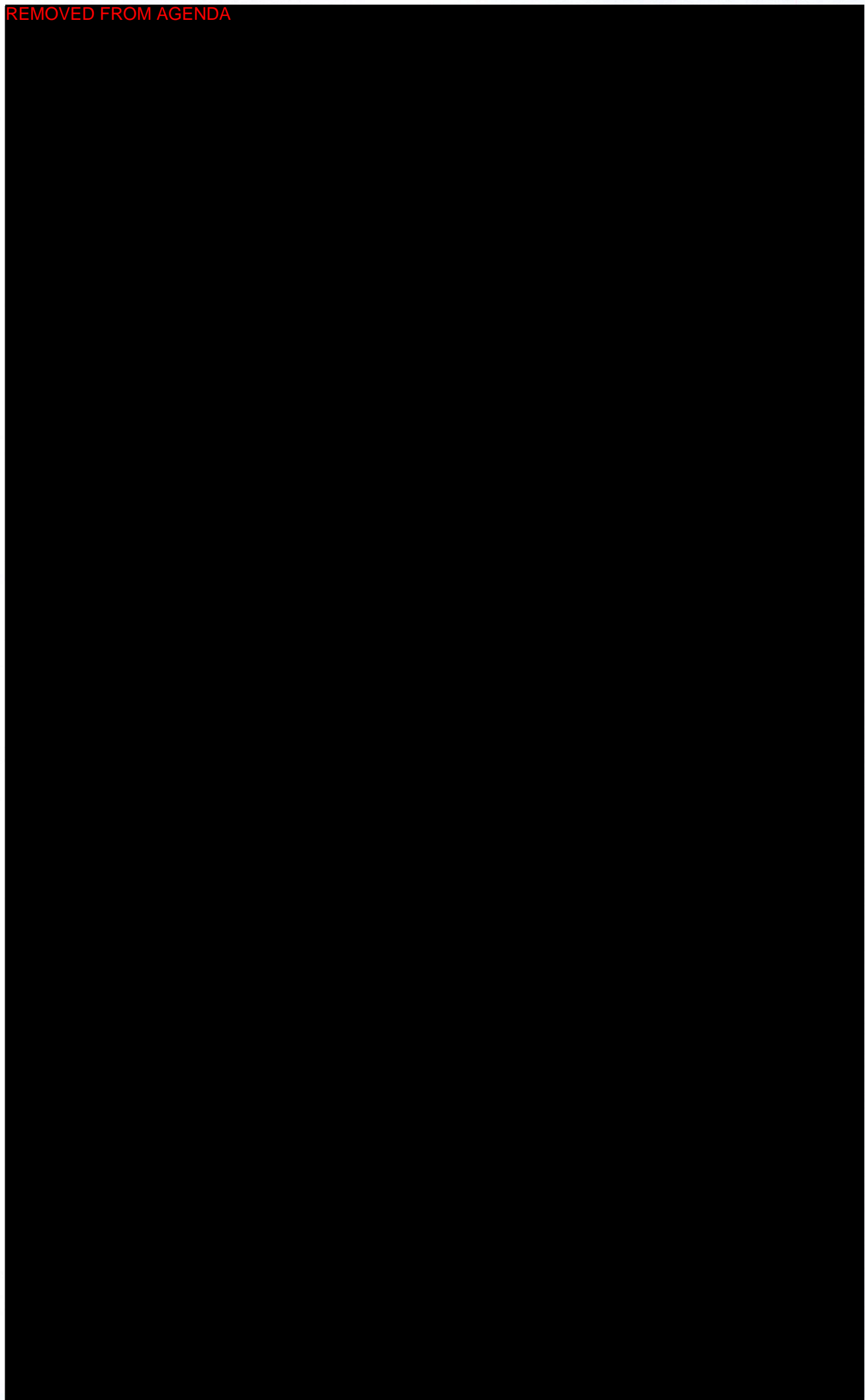
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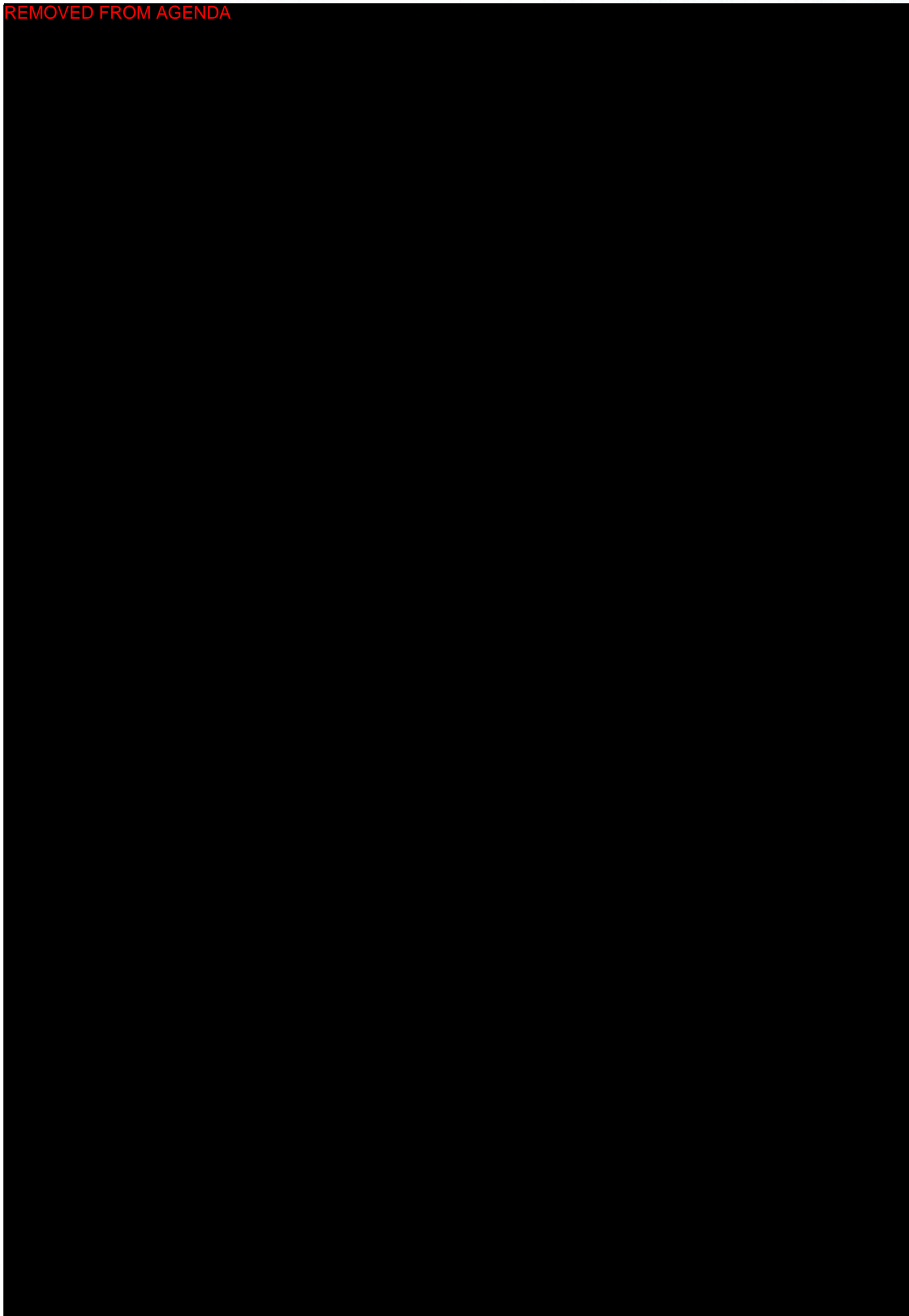
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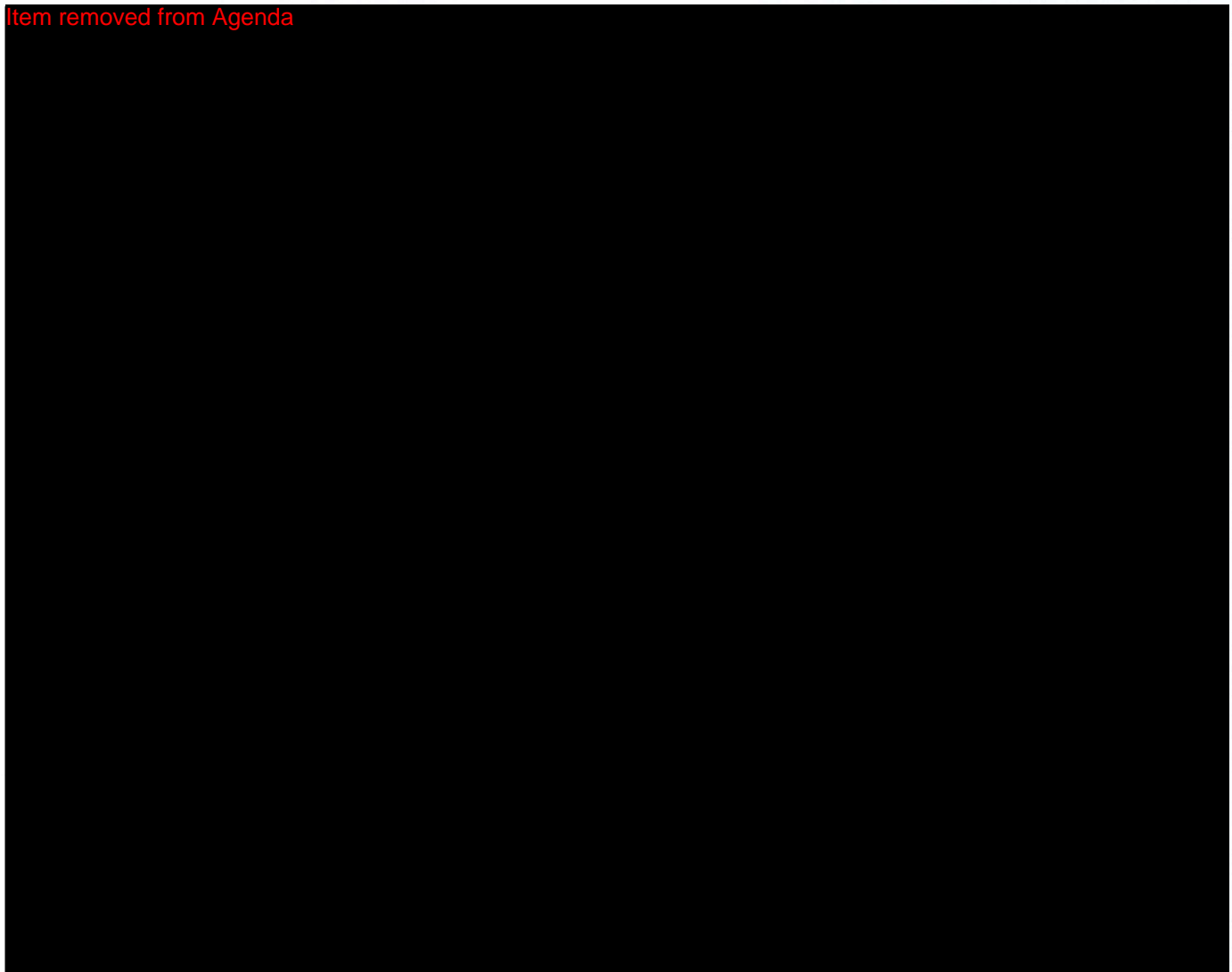


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# 2010-10-28-13 Annex - 375964-qatar

**ANNEX TO ICANN BOARD SUBMISSION NO. 2010-10-28-13**

**TITLE:** Delegation of the قطر. (“Qatar”) domain representing Qatar in Arabic

**IANA REFERENCE:** 375964

In accordance with ICANN’s obligations for managing the DNS root zone, IANA<sup>1</sup> receives requests to delegate, redelegate and revoke top-level domains. This application has been compiled by IANA for presentation to the ICANN Board of Directors for review and appropriate action.

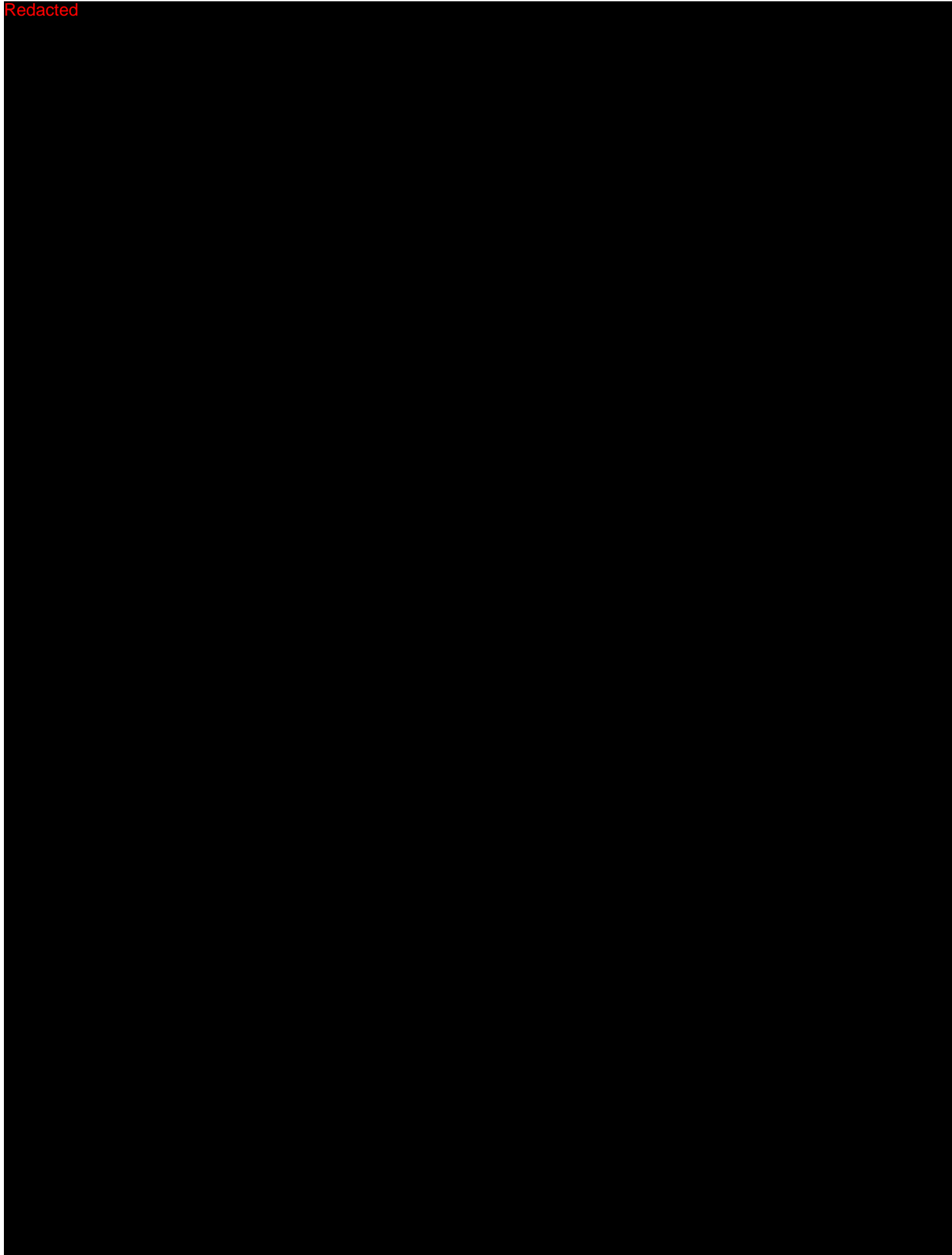
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<sup>1</sup> The term IANA is used throughout this document to refer to the department within ICANN that performs the IANA functions.

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Submitted by: Kim Davies  
Position: Manager, Root Zone Services  
Date Noted: 10 October 2010  
Email and Phone Number kim.davies@icann.org; +1 310 430 0455

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# 2010-10-28-13 375964-qatar-enclosures

**Draft Public Report —**

**Delegation of قطر ("Qatar") representing Qatar in Arabic to the Supreme Council of Information and Communication Technology**

ICANN has received a request to delegate قطر. as a country-code top-level domain representing Qatar. ICANN Staff have assessed the request, and provide this report for the ICANN Board of Directors to consider.

**FACTUAL INFORMATION**

**Country**

The "QA" ISO 3166-1 code, from which this application's eligibility derives, is designated for use to represent Qatar.

**String**

The domain under consideration for delegation at the DNS root level is “قطر”. This is represented in ASCII-compatible encoding according to the IDNA specification as “xn--wgb16a”. The individual Unicode code points that comprise this string are U+0642 U+0637 U+0631.

In Arabic language, the string has a meaning equivalent to “Qatar” in English. Its pronunciation in English is transliterated as “Qatar”. The string is expressed using the Arabic script.

**Chronology of events**

The proposed sponsoring organisation, the Supreme Council of Information and Communication Technology, was created by governmental decree in 2004 to “regulate the two sectors of Communication and Information Technology, and the creation of an advanced Information Community by preparing a suitable environment of infrastructure and a community capable of using communication and information technologies.”

The Electronic Commerce and Transactions Law No 16 of 2010 was decreed on 19 August 2010, and gives explicit responsibility for Qatar's Country Code Top-Level Domains to the proposed sponsoring organisation, reading “the Supreme Council alone is responsible for the management of top-level domains for the State of Qatar on the Internet, and has the authority to delegate this responsibility.”

In November 2009, an application was made to the "IDN Fast Track" process to have the string “قطر” recognised as representing Qatar. The request was supported by Government of Qatar, with additional community support provided. At the same time, the applicant states they commenced informal consultations in the community regarding the domain.

On 1 March 2010, review by the IDN Fast Track DNS Stability Panel found that "the applied-for strings associated with the applications from [Qatar] (a) present none of the threats to the stability or security of the DNS ... and (b) present an acceptable low risk of user confusion". The request for the string to represent Qatar was subsequently approved.

On 20 July 2010, the Supreme Council of Information and Communication Technology presented an application to ICANN for delegation of “تونس” as a top-level domain.

### **Proposed Sponsoring Organisation and Contacts**

The proposed sponsoring organisation is the Supreme Council of Information and Communication Technology.

The proposed administrative contact is Saleh Al-Kuwari, Technical Affairs Manager of the Supreme Council of Information and Communication Technology. The administrative contact is understood to be based in Qatar.

The proposed technical contact is Mohamed El Bashir, Section Manager, Numbering and Internet Domain of the Supreme Council of Information and Communication Technology.

## **EVALUATION OF THE REQUEST**

### **String Eligibility**

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

### **Public Interest**

Support for the application to delegate the domain to the Supreme Council of Information and Communication Technology from Dr Hessa Sultan Al-Haber, the Secretary General of the Supreme Council of Information and Communication Technology.

Letters of support for the application have been received on behalf of the Qatar Science and Technology Park, Qatar University, and the Doha Center for Media Freedom.

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

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

### **Based in country**

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

### **Stability**

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

The application is not known to be contested.

### **Competency**

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

## **EVALUATION PROCEDURE**

The Internet Corporation for Assigned Names and Numbers (ICANN) is tasked with managing the Domain Name System root zone as part of a set of functions governed by a contract with the U.S. Government. This includes managing the delegations of top-level domains.

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

Through an ICANN department known as the Internet Assigned Numbers Authority (IANA), requests are received for delegating new country-code top-level domains, and re-delegating or revoking existing country-code top-level domains. An investigation is performed on the circumstances pertinent to those requests, and, when appropriate, the requests are implemented. Decisions on whether to implement requests are made by the



ICANN Board of Directors, taking into account ICANN's core mission of ensuring the stable and secure operation of the Internet's unique identifier systems.

### **Purpose of evaluations**

The evaluation of eligibility for country-code top-level domains, and of evaluating responsible trustees charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet's unique identifier systems. The evolution of the principles has been documented in "Domain Name System Structure and Delegation" (RFC 1591), "Internet Domain Name System Structure and Delegation" (ICP-1), and other informational memoranda.

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

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

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

### **Method of evaluation**

To assess these criteria, information is requested from the applicant regarding the proposed sponsoring organisation and method of operation. In summary, a request template is sought specifying the exact details of the delegation being sought in the root zone. In addition, various documentation is sought describing: the views of the local internet community on the application; the competencies and skills of the trustee to operate the domain; the legal authenticity, status and character of the proposed trustee;

and the nature of government support for the proposal. The view of any current trustee is obtained, and in the event of a redelegation, the transfer plan from the previous sponsoring organisation to the new sponsoring organisation is also assessed with a view to ensuring ongoing stable operation of the domain.

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

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

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed sponsoring organisation and its suitability to operate the top-level domain being requested. This assessment is submitted to ICANN's Board of Directors for its determination on whether to proceed with the request.

## **2010-10-28-14 Annex - 372893-qa**

**ANNEX TO ICANN BOARD SUBMISSION NO. 2010-10-28-14**

**TITLE:** Redelegation of the .QA domain representing Qatar

**IANA REFERENCE:** 372893

In accordance with ICANN's obligations for managing the DNS root zone, IANA<sup>1</sup> receives requests to delegate, redelegate and revoke top-level domains. This application has been compiled by IANA for presentation to the ICANN Board of Directors for review and appropriate action.

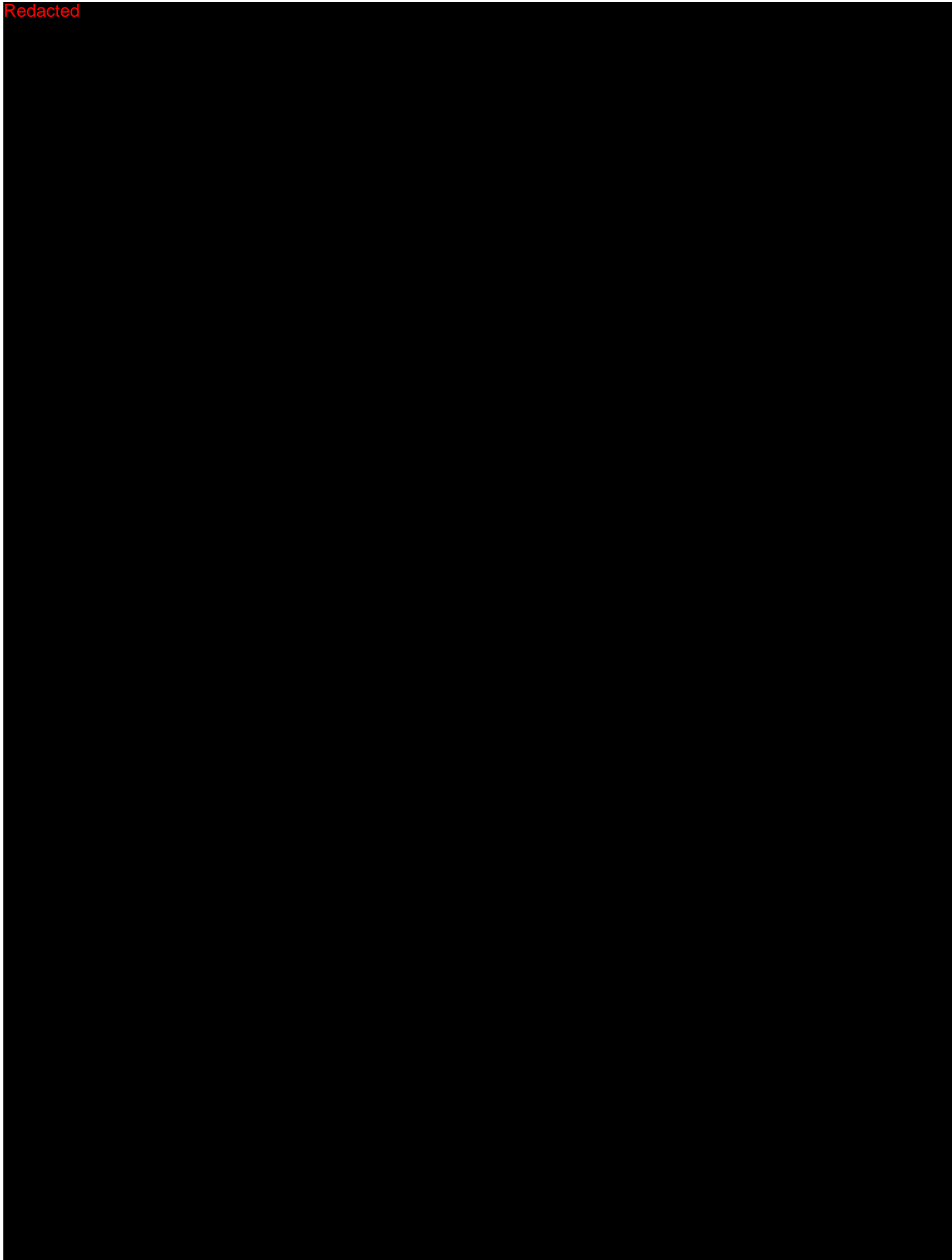
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<sup>1</sup> The term IANA is used throughout this document to refer to the department within ICANN that performed the IANA functions.

Redacted



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Submitted by: Kim Davies  
Position: Manager, Root Zone Services  
Date Noted: 12 October 2010  
Email and Phone Number kim.davies@icann.org; +1 310 430 0455

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## **2010-10-28-14 372893-qa-enclosures**

**Draft Public Report —  
Redelegation of the .QA domain representing Qatar to the  
Supreme Council of Information and Communication  
Technology**

ICANN has received a request to redelegate the .QA domain, a country-code top-level domain representing Qatar, to the Supreme Council of Information and Communication Technology. ICANN Staff have assessed the request, and provide this report for the ICANN Board of Directors to consider.

**FACTUAL INFORMATION**

**Country**

The "QA" ISO 3166-1 code is designated for use to represent Qatar.

**Chronology of events**

The .QA top-level domain was initially delegated in 2006 to Qatar Telecom (“Q-Tel”), which remains its operator today.

The proposed sponsoring organisation, the Supreme Council of Information and Communication Technology, was created by governmental decree in 2004 to “regulate the two sectors of Communication and Information Technology, and the creation of an advanced Information Community by preparing a suitable environment of infrastructure and a community capable of using communication and information technologies.”

The Electronic Commerce and Transactions Law No 16 of 2010 was decreed on 19 August 2010, and gives explicit responsibility for Qatar's Country Code Top-Level Domains to the proposed sponsoring organisation, reading “the Supreme Council alone is responsible for the management of top-level domains for the State of Qatar on the Internet, and has the authority to delegate this responsibility.”

On 13 July 2010, the Supreme Council of Information and Communication Technology presented an application to ICANN for redelegation of the .QA top-level domain.

**Proposed Sponsoring Organisation and Contacts**

The proposed sponsoring organisation is the Supreme Council of Information and Communication Technology.



The proposed administrative contact is Saleh Al-Kuwari, Technical Affairs Manager of the Supreme Council of Information and Communication Technology. The administrative contact is understood to be based in Qatar.

The proposed technical contact is Mohamed El Bashir, Section Manager, Numbering and Internet Domain of the Supreme Council of Information and Communication Technology.

## **EVALUATION OF THE REQUEST**

### **String Eligibility**

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

### **Public Interest**

Support for the application to delegate the domain to the Supreme Council of Information and Communication Technology from Dr Hessa Sultan Al-Haber, the Secretary General of the Supreme Council of Information and Communication Technology.

Letters of support for the application have been received on behalf of the Qatar Science and Technology Park, Qatar University, and the Doha Center for Media Freedom.

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

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

### **Based in country**

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

### **Stability**

The request is deemed uncontested, with the current sponsoring organisation Qatar Telecom consenting to the transfer. An appropriate transfer plan has been tendered with support from the involved parties.

### **Competency**

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

## **EVALUATION PROCEDURE**

The Internet Corporation for Assigned Names and Numbers (ICANN) is tasked with managing the Domain Name System root zone as part of a set of functions governed by a contract with the U.S. Government. This includes managing the delegations of top-level domains.

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

Through an ICANN department known as the Internet Assigned Numbers Authority (IANA), requests are received for delegating new country-code top-level domains, and re delegating or revoking existing country-code top-level domains. An investigation is performed on the circumstances pertinent to those requests, and, when appropriate, the requests are implemented. Decisions on whether to implement requests are made by the ICANN Board of Directors, taking into account ICANN’s core mission of ensuring the stable and secure operation of the Internet’s unique identifier systems.

### **Purpose of evaluations**

The evaluation of eligibility for country-code top-level domains, and of evaluating responsible trustees charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet’s unique identifier systems. The evolution of the principles has been documented in “Domain Name System Structure and Delegation” (RFC 1591), “Internet Domain Name System Structure and Delegation” (ICP-1), and other informational memoranda.

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

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

- The domain should be operated within the country, including having its sponsoring organisation and administrative contact based in the country.
- The domain should be operated in a way that is fair and equitable to all groups in the local Internet community.

- Significantly interested parties in the domain should agree that the prospective trustee is the appropriate party to be responsible for the domain, with the desires of the national government taken very seriously.
- The domain must be operated competently, both technically and operationally. Management of the domain should adhere to relevant technical standards and community best practices.
- Risks to the stability of the Internet addressing system must be adequately considered and addressed, particularly with regard to how existing identifiers will continue to function.

### **Method of evaluation**

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

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

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

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed sponsoring organisation and its suitability to operate the top-level domain being requested. This assessment is submitted to ICANN's Board of Directors for its determination on whether to proceed with the request.

# 2010-10-28-16 Annex Vertical Integration Exhibits A-E

**ANNEX TO BOARD SUBMISSION NO. 2010-10-28-16**

**SUBMISSION TITLE:        Vertical Integration**

Note: for complete details of each proposed vertical integration model, please refer to the GNSO VI Working Group’s “Initial Report on Vertical Integration Between Registrars and Registries” <<http://gns0.icann.org/issues/vertical-integration/revised-vi-initial-report-18aug10-en.pdf>>

**TABLE OF CONTENTS**

- **Annex Exhibit A: Compliance Implications of the Proposed Vertical Integration/Separation Models**
- **Annex Exhibit B: Stakeholders’ Positions on Vertical Integration**
- **Annex Exhibit C: Organizational Conflict of Interest Provisions from 1999-2001 Registry Agreements**
- **REDACTED**
- **Annex Exhibit E: (Draft) Evaluation of Vertical Integration Options Proposed in the Initial Report on Vertical Integration Between Registrars and Registries**
- **Annex Exhibit F: Vertical Integration – Chart of GAC Advice\* and Staff Recommendations**

## Vertical Integration – Annex Exhibit A

### Compliance Implications of the Proposed Vertical Integration/Separation Models

(Note: this is a preliminary staff overview of potential compliance implications of the various categories of approaches to vertical integration. The brief descriptions of the models are necessarily simplified for this overview -- for complete details on the particular models please refer to the Initial Report on Vertical Integration Between Registrars and Registries <<http://gnso.icann.org/issues/vertical-integration/revised-vi-initial-report-18aug10-en.pdf>>.)

V.I. Model	Potential Compliance Implications / Costs
1. <b>Strict Separation</b> (AGBv4) – no cross-ownership permitted (with possible exception for dot-brand)	Ascertaining whether an entity owns or controls another across diverse jurisdictions could require significant investigative and legal research. Publicly traded companies might not know the identity of all of the owners of small blocks (under 5%) of their shares.

<p><b>2. Limited cross-investment</b> (JN2 or RACK+) – cross-investment over 15% prohibited (with possible exceptions for community, orphaned or single-user TLDs)</p>	<p>Ascertaining whether an entity owns or controls another across diverse jurisdictions could require significant investigative and legal research, and the costs could be tremendous where the restrictions apply to tens of thousands of non-contracted parties (i.e., resellers and back-end service providers). Similarly, testing whether an integrated registry is registering names in violation of the proscription might require highly technical audits and would require additional, specialized compliance staff. Assessing compliance with separation rules could require considerable staff time and travel expenses. Determining whether the "users" of a single-registrant TLD meet the entity-employee-agent test would be nearly impossible without relying on the integrated registry to corroborate its own compliance.</p>
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<p><b>3. Limited integration</b> (CAM3 or SW) – cross-operation permitted subject to review by competition authorities</p>	<p>There would be some additional costs associated application/evaluation process with this model (e.g., assembling a competition experts panel analogous to the technical experts panel used in the RSEP process). Also, depending on the details of the model that it ultimately selected there could be significant startup costs incurred in setting up an audit program, screening potential auditors, establishing a framework for post-delegation dispute resolution, etc.</p>
<p><b>4. Free trade</b> – no restrictions on registry ownership of registrars or vice-versa</p>	<p>With no restriction on vertical integration, there would be no compliance enforcement costs associated with vertical integration. Any threats to competition would be addressed by private and public enforcement of existing competition laws applicable to all businesses.</p>



## Vertical Integration – Annex Exhibit B

### Stakeholders' Positions on Vertical Integration

(Note: this is a staff summary of a series of meetings and position statements that were captured for the Initial Report on Vertical Integration Between Registrars and Registries <<http://gnso.icann.org/issues/vertical-integration/revise-vi-initial-report-18aug10-en.pdf>>. The stakeholder positions are necessarily simplified for presentation in this brief summary.)

Stakeholder	Position on Vertical Integration	Supports V.I. for:
Registry Stakeholder Group	Registry Affiliates may be ICANN-accredited registrars, provided that such Affiliates may not distribute domain names in the TLD except in limited circumstances, such as certain "single registrant" or community TLDs (with no more than 50,000 names). Supports maintaining requirement to use only ICANN accredited registrars. Supports maintaining non-discriminatory access requirements for ICANN accredited registrars.	SRSUs and community TLDS

Registrar Stakeholder Group	ICANN should permit the integration of registry operators and registrars for New TLDs without sales restrictions. Domain names should be registered only through ICANN accredited registrars. ICANN should maintain the current requirements that: (a) there be structural separation between the RR/RV functions and (b) Registry operators not discriminate amongst registrars. ICANN should not prohibit: (1) affiliates of registrars to apply to be a New TLD registry operator; and (2) affiliates of ICANN-accredited registrars to provide any types of services to registry operators; and (3) registrars from selling registrations for TLDs of an affiliated registry operator.	All gTLDs
Intellectual Property Constituency	Supports the strict separation approach approved by the ICANN Board with exceptions (.brand).	.brand and SRSU

<p>Business Constituency</p>	<p>Removing the existing vertical separation safeguards between RR/RYs may increase the likelihood of the exercise of dominance within the marketplace. The BC opposes any change to the status quo for all TLDs intended for sale to third parties. The BC believes that uniquely for domain names intended for internal use (such as .brand), the principle of registry-registrar vertical separation should be waived.</p>	<p>.brand and SRSU</p>
<p>Internet Service Provider Constituency</p>	<p>Supports full structural separation of RR/RYs, with further discussion over the possibility of exceptions such as SRSUs and Community TLDs. Prior to accepting exceptions, ICANN needs to define strong safeguards that will guarantee a competitive, secure and stable internet. Supports increased Compliance to enforce VI/CO rules. Concerned that developing rules for SRSUs and enhanced compliance may cause undue delays in the first round.</p>	<p>SRSU and Community TLDs</p>

<p>Non-Commercial Stakeholder Group</p>	<p>Supports a cautious "one step at a time" approach. ICANN should not link the addition of new TLDs – which by itself involves enormous policy changes – to a major change in ICANN’s approach to market structure and competition policy in the industry.</p>	<p>SRSU TLDs</p>
<p>Governmental Advisory Committee</p>	<p>Governments generally support restrictions on vertical integration and cross-ownership. If market power is not an issue, the ability of registrars with valuable technical, commercial and relevant local expertise and experience to enter the domain names market could likely lead to benefits in terms of enhancing competition and promoting innovation. ICANN should adopt a solution that fosters competition and innovation in the DNS market by allowing exemptions, subject to some form of regulatory probity that ensures a level playing field, for certain registrars as potentially valuable newcomers to the registry market. ICANN may find it useful to consider the experience of competition regulators around the world in addressing this issue.</p>	<p>gTLDs without market power, and community gTLDs</p>

At-Large Advisory Committee	The ALAC/At Large Community is split on whether to support separation or integration. If ICANN is to require separation, an exception process should be adopted. Compliance will be a critical part of gTLD deployment. It is essential that the rules surrounding the new gTLDs be sufficiently clear and reasonably enforceable; and that ICANN put in place mechanisms to ensure reasonable compliance.	Cultural and IDN gTLDs, and SRSUs
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## Vertical Integration – Annex Exhibit C

### Organizational Conflict of Interest Provisions from 1999-2001 Registry Agreements

Background: ICANN's 1999-2001 agreements were negotiated at the beginning of the introduction of competition at the registrar and registry levels for gTLDs. Those agreements included provisions designed to ensure a level playing field for competition at the registrar level. In 1999 NSI had a 100% market share at the registry and registrar levels, and in 2001 NSI/VeriSign still had a 100% share of the gTLD registry market as well as a more than 50% share of the registrar market.

In 1999-2001 the registry agreements were therefore designed to protect newly introduced registrars (that were not affiliated with the registry operator) from being disadvantaged by the registry operator giving preferential treatment to its registrar affiliates/subsidiaries.

All seven of the new gTLDs introduced by ICANN in 2000 have featured some degree of registry-registrar cross-operation or cross-ownership:

- .AERO is operated by Afilias, which was established as a wholly-owned by a consortium of ICANN-accredited registrars; dot-aero names were (and are) distributed by registrars that own shares in the registry.
- .BIZ was delegated to NeuLevel, which was a joint-venture of NeuStar and MelbourneIT – an ICANN-accredited registrar; dot-biz names were distributed by a registrar owning a significant interest in the registry.
- .COOP is operated by Midcounties Co-operative Domains Ltd – an ICANN-accredited registrar; .COOP names are distributed by a registrar that operates the registry.
- .INFO was delegated to Afilias, which was established as a wholly-owned by a consortium of ICANN-accredited registrars; also at launch it was operated by a subsidiary of Tucows – an ICANN-accredited registrar.
- .MUSEUM is operated by CORE – an ICANN-accredited registrar.

- .NAME was delegated to GNR – a subsidiary of Nameplanet, which was an ICANN-accredited registrar; also for a time GNR operated Personal Names Limited, a wholly-owned subsidiary that was an ICANN-accredited registrar focused solely on selling dot-name registrations.
- .PRO was applied-for by RegistryPro, LTD, which was a joint venture involving Register.com and Virtual Internet – both ICANN-accredited registrars; dot-pro is currently operated by Registry Services Corporation, which is owned by Hostway, which also owns Domain People and Hostway Services, Inc. – both ICANN-accredited registrars.

The provisions in registry agreements requiring formal organizational conflict of interest schemes and registry codes of conduct have been substantially streamlined or eliminated in all of the ICANN gTLD registry agreements entered since 2005, including all of the current gTLD agreements <<http://www.icann.org/en/registries/agreements.htm>>. The four drafts (posted over the past two years) of the proposed base agreement for new gTLDs have been consistent in more closely following the 2005-2010 streamlined agreement model instead of the 1999-2001 model.

There have not been widespread calls from the community for the re-institution of formal registry codes of conduct or organizational conflict of interest requirements. Such requirements could create significant compliance burdens both for ICANN and for smaller new gTLD registries (especially those serving developing countries and smaller communities) and it is not clear whether or how such requirements would be applied to "dot-brand" or "single-registrant/single-user" gTLDs.

The following are excerpts from (and links to) the 1999-2001 provisions:

ICANN-NSI Registry Agreement

(10 November 1999)

<http://www.icann.org/en/nsi/nsi-registry-agreement-04nov99.htm>

*21. Additional NSI Obligations.*

*(A) NSI shall provide all licensed Accredited Registrars (including NSI acting as registrar) with equivalent access to the Shared Registration System. NSI further agrees*

*that it will make a certification to ICANN every six months, using the objective criteria set forth in [Appendix F](#) that NSI is providing all licensed Accredited Registrars with equivalent access to its registry services.*

*(B) NSI will ensure, in a form and through ways described in [Appendix F](#) that the revenues and assets of the registry are not utilized to advantage NSI's registrar activities to the detriment of other registrars.*

#### *Appendix F*

##### *Equivalent Access Certification*

##### *Organizational Conflict of Interest Compliance Plan*

*<http://www.icann.org/en/nsi/nsi-registry-agreement-appf-04nov99.htm>*

#### Un-sponsored TLD Agreement (BIZ/INFO)

(11 May 2001)

<http://www.icann.org/en/tlds/agreements/un-sponsored/registry-agmt-11may01.htm>

#### *3.5. Fair Treatment of ICANN-Accredited Registrars.*

*3.5.1. Registry Operator shall provide all ICANN-Accredited Registrars that have Registry-Registrar Agreements in effect, and that are in compliance with the terms of such agreements, equivalent access to Registry Operator's Registry Services, including to its shared registration system.*

*3.5.2. Registry Operator shall certify to ICANN every six months, using the objective criteria set forth in Appendix H, that Registry Operator is providing all such ICANN-Accredited Registrars with equivalent access to its Registry Services, including to its shared registration system.*



*3.5.3. Registry Operator shall not act as a registrar with respect to the Registry TLD. This shall not preclude Registry Operator from registering names within the domain of the Registry TLD in compliance with Subsection 3.6. This also shall not preclude an affiliate of Registry Operator from acting as a registrar with respect to the Registry TLD, provided that Registry Operator complies with the provisions of Subsections 3.5.4 and 3.5.5.*

*3.5.4. Registry Operator shall comply with its Code of Conduct attached as Appendix I. Any changes to that Code of Conduct will require ICANN's written approval.*

*3.5.5. Registry Operator will ensure, in a form and through ways described in Appendix H, that the revenues and assets of Registry Operator are not utilized to advantage registrars that are affiliated with Registry Operator to the detriment of other ICANN-Accredited Registrars. The distribution of funds by Registry Operator to its debt or equity participants in accordance with their debt or equity participation shall not violate this Subsection 3.5.5.*

*3.5.6. With respect to its obligations under Subsections 3.5.1 through 3.5.5 and Appendices H and I, Registry Operator agrees to participate in and comply with the sanctions program described in Appendix Y, provided that all other registry operators having registry agreements with ICANN for the operation of unsponsored top-level domains (i.e. top-level domains, other than country-code and infrastructure domains, not having a sponsoring organization) are obligated to participate in and comply with a sanctions program with substantially the same provisions as Appendix Y. Registry Operator agrees that the sanctions program described in Appendix Y shall be a non-exclusive and additional option for ICANN to promote compliance with Subsections 3.5.1 through 3.5.5 and Appendices H and I, and that the availability of that option does not limit or affect in any way ICANN's ability to employ any other compliance measures or remedies available under this Agreement. In the event that the gTLD Constituency of the Domain Name Supporting Organization proposes a substitute Appendix Y at any time prior to 1 May 2002, and ICANN determines (following an appropriate process of public notice and comment) that substitution by that Appendix Y would serve the interests of the Internet community, the substitution shall be made.*

*Appendix H (.info)*

*<http://www.icann.org/en/tlds/agreements/info/registry-agmt-apph-11may01.htm>*

*Appendix I (.info)*

*<http://www.icann.org/en/tlds/agreements/info/registry-agmt-appi-27feb01.htm>*

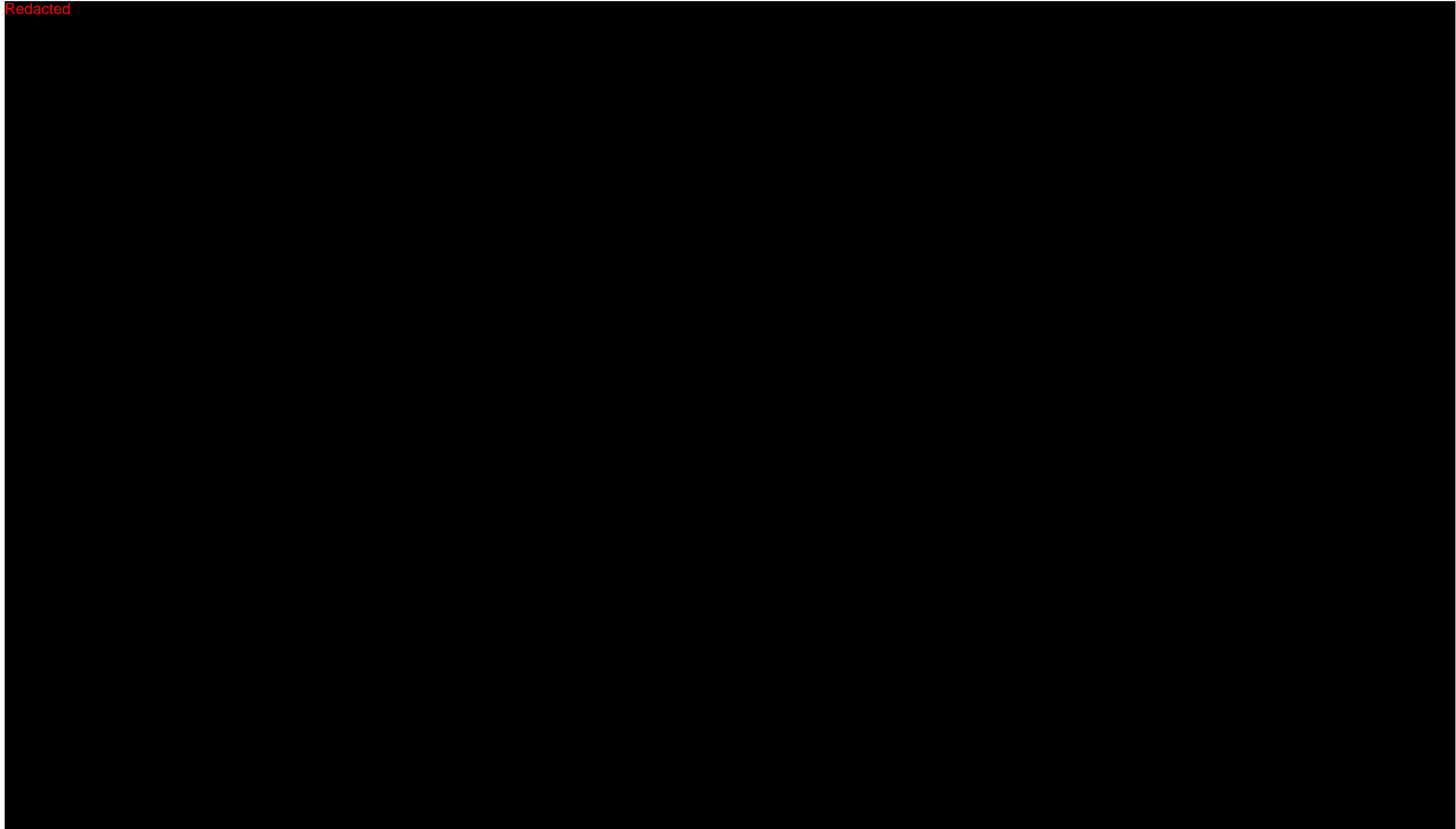
*Appendix H (.biz)*

*<http://www.icann.org/en/tlds/agreements/biz/registry-agmt-apph-11may01.htm>*

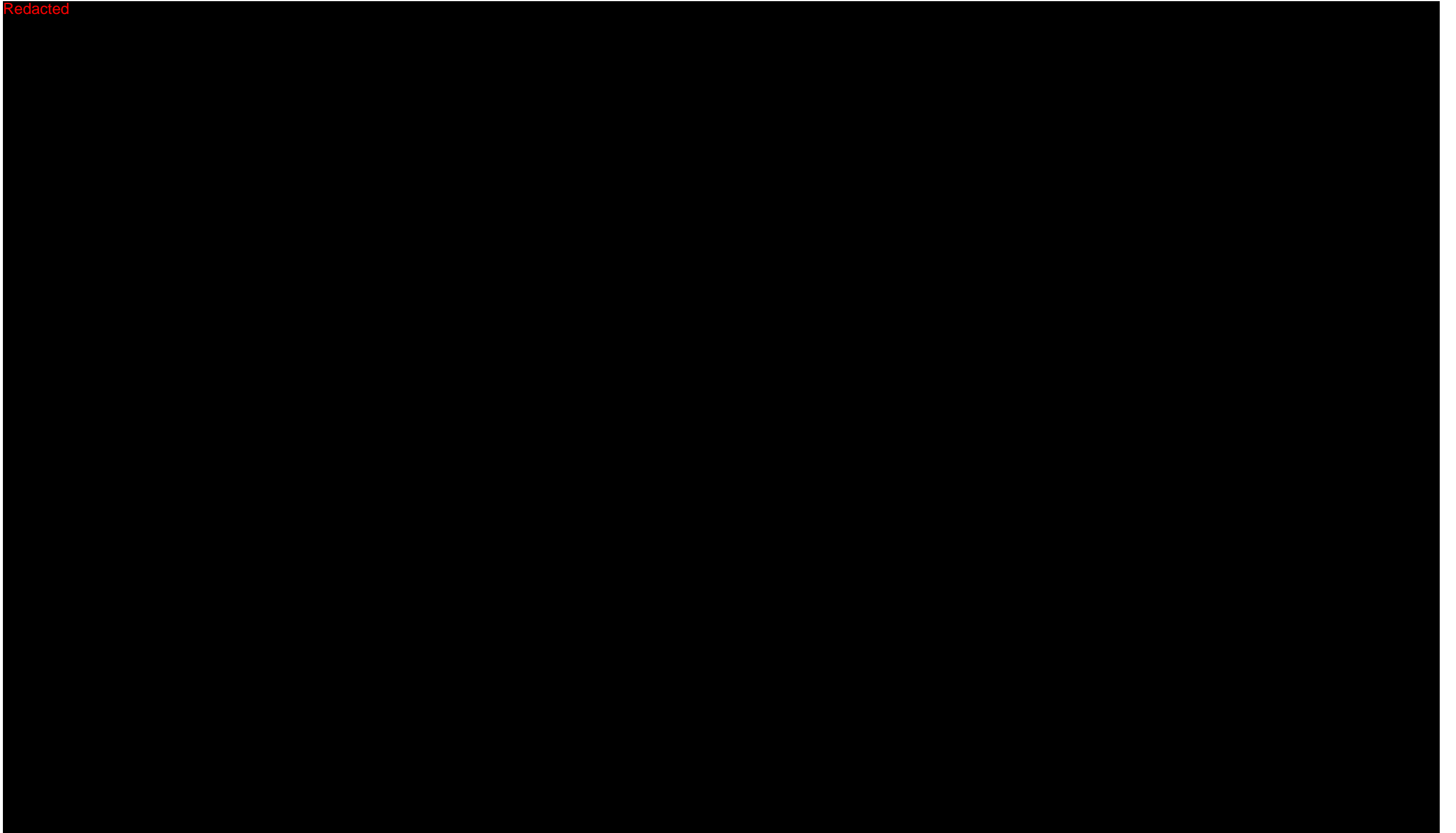
*Appendix I (.biz)*

*<http://www.icann.org/en/tlds/agreements/biz/registry-agmt-appi-27apr01.htm>*

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## Vertical Integration – Annex Exhibit E

CONFIDENTIAL

DRAFT: 09/12/2010

### Evaluation of Vertical Integration Options Proposed in the Initial Report on Vertical Integration Between Registrars and Registries

Steven C. Salop

Joshua D. Wright<sup>2</sup>

ICANN has requested that we review and analyze the six policy proposals discussed in the Initial Report prepared by the Vertical Integration PDP Working Report and ICANN Staff, which was delivered to the GNSO Council. ICANN also has requested that we review our own proposal (“SW”) and compare it to these alternatives.<sup>3</sup> As part of this comparison, we will explain why we prefer our original proposal, as well as why we would recommend certain changes to it based on what we have learned from the other proposals.

#### I. Basic Economic Framework

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<sup>2</sup> The authors are (respectively) Professor of Economics and Law, Georgetown University Law Center; Associate Professor, George Mason University School of Law and Department of Economics. Both authors are Senior Consultants, Charles River Associates.

<sup>3</sup> The Initial Report draft is dated July 23, 2010. The policy proposals discussed, according to the Initial Report, are those that “have garnered minimal levels of support and are actively under consideration.” While the SW proposal was not explicitly included, at least one of the proposals considered by the Working Group is somewhat based on it.

The U.S. Supreme Court has characterized antitrust as a “consumer welfare prescription.”<sup>4</sup> As economists steeped in antitrust analysis, we focus on the competitive effects the various proposals on registrants. This is an important issue because the various proposals differ with respect to their impact on the welfare of registrants, registries and registrars. In our view, ICANN policy towards the registries and registrars should be focused exclusively upon consumer welfare. The welfare of the registries and registrars matters to the extent that it is harmonized with the welfare of registrants.<sup>5</sup> The rules should protect competition, not competitors.

Economic analysis teaches that vertical integration and vertical contracts between registries and registrars can create both competitive benefits and competitive harms. Assessing the likely competitive effects of any particular contractual arrangement between a registry and registrar is a difficult and complex task. It is complicated by the fact that both the benefits and the harms sometimes may occur without cross-ownership. A registry or registrar can exercise its market power even when there is vertical separation.<sup>6</sup>

A vertically integrated registry owner (i.e., a registry that owns a registrar, or vice versa) may have the beneficial incentive to charge a lower registration fee. Vertical integration also might vitalize a struggling registry through the creation of a superior registry product. Vertical promotional agreements between registrars and registries are common today. They appear to be pro-competitive, and are capable of driving a significant increase in registrations. Where these efficiencies exist, they could cause harm to competing registries and registrars, but they would be beneficial for consumers.

However, vertical integration also can lead to the exercise and enhancement of market power. Under certain conditions, a dominant registrar with an ownership interest in a registry could refuse to promote competing registries and thereby allow its affiliated registry to gain market power or enhance the market power it has. Similarly, a dominant

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<sup>4</sup> Reiter v. Sonotone Corp., 442 U.S. 330, 343 (1979). In this matter, the registrants are the “consumers.”

<sup>5</sup> Our focus on consumer welfare analysis, for example, would count as a competitive benefit of vertical integration the potential for reduced costs and lower prices, despite the fact that lower prices offered by an integrated firm might result in competition that harms rival, unaffiliated registries.

<sup>6</sup> Vertical contracts can have effects like vertical integration. For example, a registrar with market power could charge registries a high price for access to its shelf space and an unintegrated registry with market power could charge registrars a high registration fee.

registry could withhold its domain (or other information) from competing registrars and thereby allow its affiliated registrar to gain or enhance its market power. Thus, a key factor in predicting whether vertical integration is capable of generating competitive harms is whether or not a registry or registrar has market power.<sup>7</sup>

Vertical integration also has the potential to facilitate the misuse of sensitive competitive information by vertically integrated registrar/registries. This could involve, for example, gaining information about rivals' plans to introduce innovative new services (or lower prices), which would permit a faster competitive response. The more rapid competitive response could benefit consumers if the innovations (or lower prices) are actually implemented; however, an unintegrated rival might anticipate that a competitor will be able to respond very quickly, thus reducing the profits from innovation and potentially dampening the incentive to innovate (or cut price).

Misuse of competitively-sensitive information also could cause other effects that have more mixed competitive effects. For example, if a vertically integrated registrar is able to gain better access to expired domain names than other registrars, it could "taste" the domains within their affiliated registrar, and thereby gain an advantage in the market. This advantage would come at the expense of other, unaffiliated registrars. If this advantage causes other registrars to exit from the market or reduces their incentive to invest, competition and registrants could be harmed; if the advantage is not that severe, it could lead to increased investment in registries because the integrated registry/registrar would earn higher profits.<sup>8</sup> However, such activities can occur with or without integration. Further, to the extent there is a concern that it is harder to detect this conduct for a vertically integrated firm, that concern might be addressed a number of ways, including internal firewalls.

## **II. Features of Vertical Integration Proposals Bearing on Economic Analysis**

Six "major proposals" debated within the VI Working Group are listed in the Report. In addition, we previously have made our own proposal. The proposals differ in a number of ways. These differences can be seen by envisioning them as branches of a decision-tree relating to specific dimensions of the decision.

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<sup>7</sup> Market power on the sell-side or the buy-side is a *necessary* but not *sufficient* condition for the possibility of such harms from vertical integration. *See generally* Michael H. Riordan & Steven C. Salop, Evaluating Vertical Mergers: A Post-Chicago Approach, 63 Antitrust Law Journal 513 (1995).

<sup>8</sup> This is somewhat analogous to the issue of whether to assign to the real estate developer or tenants the right to retain access to the best space. Here, the issue is whether the right to any value deriving from "good domains" should be assigned to the gTLD operator or the first buyer. The effect of the allocation of that property right on consumer welfare is not obvious. On the one hand, the inability to obtain this information can deter registrants from speculating in domains; on the other hand, a gTLD operator who can extract these profits would have the incentive to invest more in the domain, which could in turn create an incentive to create more and better domains. The net effect of the initial assignment of the right to this type of information on consumers is, as with the other potential effects of vertical integration, complex and properly addressed on a case-by-case basis by experts.



The first set of branches involves the scope of vertical arrangements subject to the rule. This involves the degree of cross-ownership, as measured by the percentage of ownership, the degree of control or influence over competitive decisions, or both. For example, the SW proposal exempts from the rule acquisitions that result in cross-ownership of less than 20-25 percent of a vertically related entity. Alternative approaches could choose different criteria for defining sufficient cross-ownership, either the percentage of ownership or indicia of control.

There are other dimensions to defining the scope of any rule limiting vertical integration. For example, it must be determined whether registry infrastructure service providers ("RISPs") should be subject to the cross-ownership restrictions and whether to apply the restrictions solely to cross-ownership or also to vertical contracts.

Assuming that a vertical relationship between a registry and registrar is considered risky enough to warrant further analysis, the second set of branches involves the decision of whether to have a one-size-fits-all (essentially "per se") rule for all vertical contractual arrangements and structures or whether to evaluate proposals on a case-by-case basis. On the per se branch, there are two choices: (1) prohibiting all vertical integration (per se illegality), or (2) allowing all vertical integration (per se legality). On the case-by-case analysis branch, in which vertical integration will be permitted in some circumstances but not others, further decision criteria must be adopted, and a decision-maker must be identified.

For example, the SW proposal recommends the case-by-case branch and uses market share as an initial screen. If market share falls below a specified threshold, vertical integration is permitted. Alternative proposals could use different market share thresholds. It is difficult to accurately measure market power. Market definition and the evaluation of market power are contentious issues in most antitrust cases and often require complex economic and econometric analysis. However, market share is a common, albeit imperfect indicator of actual market power.<sup>9</sup>

Under the SW proposal, if the market share of the registry or registrar exceeds the specific threshold, vertical integration is not prohibited. Instead, it is delayed for a certain, specified period of time while it is subjected to further analysis. However, this is not the only approach that could be taken for this set of branches. An alternative approach could prohibit all vertical integration structures that exceed the threshold. Another alternative could subject any vertical arrangements falling below the threshold to further analysis.

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<sup>9</sup> Registrar market shares could be based either on the percentage of total gTLD registrations under management by the registrar, or it could be based on the percentage of newly created gTLD registrations by the registrar in the last year. For measuring registrar market power, we believe that the percentage of newly created gTLD registrations is a more appropriate measure, because this measure is a more accurate proxy for the potential buy-side market power issues that exist at the registrar level. With respect to registries, we believe that the percentage of total gTLD registrations is a more appropriate measure. These market share calculations should be based on the share of the entire company. We also believe that it is most appropriate to base the calculation of market shares on the total number of gTLD registrations.

The third set of branches of the tree involves the choice of entity to carry out any further analysis that is warranted. The SW proposal refers that analysis to national competition authorities; the application is delayed for a period while the analysis is carried out. An alternative could involve further evaluation that is carried out instead by the ICANN staff or an ICANN committee. This set of branches also can differ according to the default outcome if the competitive authority does not respond; either the application can be rejected or the application can be permitted.

### **III. Summary and Evaluation of Policy Proposals**

The Report refers to six "major proposals" debated within the VI Working Group: JN2, Free Trade, RACK+, CAMv3, DAGv4, and IPC. The Report observes that "no consensus has been reached on a proposed model on vertical integration and cross-ownership." We summarize the critical economic characteristics of each of the six major proposals, relative to the Salop-Wright proposal.

#### **A. DAGv4 Proposal**

The DAGv4 proposal ("DAGv4") represents a per se prohibition against vertical integration or cross-ownership between registries and registrars, with only limited exceptions. For example, a registrar or an affiliated entity is allowed up to a 2 percent ownership stake in a registry. A registrar or its affiliate may not hold a registry contract, nor may a registry entity control a registrar or its affiliates. Further, registries may not distribute names in any TLD.

#### **B. Free Trade Proposal**

The Free Trade proposal is at the other extreme -- per se legality. It would eliminate any and all restrictions on vertical integration and cross-ownership for all registries, registrars, and RISPS in the new TLDs. Under this proposal, an integrated registry-registrar would be able to distribute its own TLD. The Free Trade proposal observes that "setting random percent ownership limits does nothing to mitigate harms and abuse," and that "no harms have been showed to have occurred unmanageably to date, in any namespace, due to lack of vertical integration/ cross-ownership restrictions."<sup>10</sup>

#### **C. Intellectual Property Constituency (IPC) Proposal**

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<sup>10</sup> Initial Report, at 39.

The IPC proposal (“IPC”) expresses its support for the strict per se prohibition on vertical integration and cross-ownership endorsed by the ICANN Board in the DAGv4 proposal. IPC, however, carves out certain exceptions to this prohibition for branded TLDs. The exceptions proposed by IPC would, generally, allow for vertical integration only in instances where the TLD is owned and operated by a trademark holder who is also the registered name holder of all of the second-level domain names in the TLD, or whose trademark licensees are the registered name holders.

#### **D. JN2 Proposal**

The JN2 proposal (“JN2”) would permit cross-ownership between registries and registrars that meet both of the following two cross-ownership thresholds: (1) less than 15 percent equity stake, or (2) lack of “control,” where control is defined as “the possession, indirect or direct, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting or debt securities, by contract, or otherwise.”<sup>11</sup> All cross-ownership between Registry operators (and their affiliates) and registrars that serve as an ICANN-accredited registrar in that TLD that exceed either one of these thresholds would be prohibited, unless it satisfies one of the following three exceptions: (1) single-registrant TLDs, (2) community applicants (maintaining up to 30,000 registrations), and (3) an orphan registry operator (a registry operator who cannot attract distribution from existing registrars may register up to 30,000 domain names). Where cross-ownership is permitted, registry operators are prohibited from distributing names within their own TLD. Registrars would be permitted to be registry operators, but only within a TLD for which they are not an operator.

Under JN2, RISPs<sup>12</sup> will be bound by restrictions on vertical integration only if they “are Affiliates with [the] Registry Operator” or “otherwise control the pricing, policies or selection of registrars for that TLD.”<sup>13</sup>

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<sup>11</sup> Vertical Integration PDP Working Group Initial Report, at 35.

<sup>12</sup> JN2 refers to RISPs as “back-end service providers.” For the sake of continuity, we will use the term RISPs for our analysis.

<sup>13</sup> *Id.* at 37. The JN2 Proposal defines “control” as “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting or debt securities, by contract, or otherwise.” It goes on to explain, “as used in this definition, the term ‘control’ means the possession of beneficial ownership of more than fifteen percent (15%) of the interests entitled to vote for the election of, or serve as, the board of directors or similar managing authority of the entity.” *Id.* at 35.

JN2 contemplates limited exceptions for single-registrant TLDs, community TLDs, and orphan TLDs. In these cases JN2 also states that “ICANN may consult with the relevant competition authority at its discretion when reviewing any of these requests for approval” and, when it does so, “should use a ‘public interest’ standard.” “Public interest” is not defined in the JN2 proposal. Nor does it explain what criteria ICANN should evaluate.

### **E. RACK+ Proposal**

Like JN2, The RACK+ proposal (“RACK+”) would permit vertical integration and cross-ownership up to 15 percent. RACK+ also recommends ownership caps and limits on vertical integration that result in corporate control.<sup>14</sup> RACK+ is more restrictive than JN2 by eliminating exceptions for single-registrant, community, and orphan TLDs. RACK+ observes that the potential benefit of such a limit is that it “avoids creating ownership positions that provide incentives for registries and registrars alike to discriminate against unaffiliated competitors.”<sup>15</sup> RACK+ specifically notes that its proposal is “intended to minimize the possibility of abuse of registry data through structural separation.” RACK+ does not consider “less restrictive” alternatives such as internal firewalls for dealing with the potential for abuse of sensitive competitive information by vertically integrated registrar/registries.

### **F. CAMv3 Proposal**

The CAMv3 (“Competition Authority Model”) proposal is similar to SW. It establishes a multi-step process for approval of a registry (registrar) request to acquire any ownership interest in a registrar (registry). The multi-step process would apply to acquisitions of an ownership interest but not to vertical contracts. CAMv3 has three essential components. The first is the establishment of a “Competition/Consumer Evaluation Standing Panel” (“CESP”), which would include “economics, law, consumer protection and policy experts from each of the five ICANN geographical regions.”<sup>16</sup> CESP would be responsible for evaluating all applications by registries and registrars seeking to acquire an

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<sup>14</sup> RACK+ adopts the same the definition of “control” as the JN2 proposal. Control is inferred from either a 15 percent equity stake or a 15 percent share of voting interests. *Id.* at 47.

<sup>15</sup> *Id.* at 46.

<sup>16</sup> *Id.* at 50.

ownership interest in a "different type of Registration Authority."<sup>17</sup> CESP would conduct a “quick look” analysis to determine whether any competition or misuse of information issues are present. If the CESP determines that there are no such issues, the vertical integration would be permitted in the absence of other problems with the gTLD application.

If CESP determines there are competition or consumer protection issues, that determination triggers a referral process, whereby ICANN would "refer the matter to the appropriate national competition and/or consumer protection agencies" along with the CESP report describing the competitive concerns. ICANN would withhold approval of the application for 45 days to allow for competition agency review. If the competition agency indicates that the vertical integration might violate its competition or consumer protection laws, CAMv3 would require ICANN to place the application on hold for another 60 days after the deadline of any information requests the competition agencies have made upon the applicants.

#### **G. Summary of Vertical Integration PDP Working Report**

The following chart summarizes the key features of the various proposals according to our decision tree elements:

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<sup>17</sup> *Id.* at 49.

PROPOSAL	SCOPE OF THE RULE	PER SE OR CASE-BY-CASE	WHO CONDUCTS ANALYSIS	SUMMARY
DAGv4	Beneficial ownership > 2%	Per se prohibition of cross-ownership and integration	ICANN	Per se illegality
IPC	Beneficial ownership > 2% with limited exceptions for branded gTLDs	Per se prohibition of cross-ownership and integration; conditions for brand exceptions	ICANN	Per se illegality with limited safe harbor
RACK+	Cross-ownership for <15% and without control exempted; registries may not distribute names within own TLD	Per se prohibition above the relevant threshold	ICANN	Per se illegality with safe harbor
JN2	Cross-ownership for <15% and without control exempted; registries may not distribute names within own TLD; exceptions allowed	Per se prohibition above the relevant threshold ; exceptions evaluated on “public interest” standard	ICANN	Per se illegality with safe harbor
CAMv3	All vertical cross-ownership but not vertical contracts	Case by case; Referral to competition agency upon determination by expert panel	Competition authority; affirmative action required for approval	Permissible only if competition authority explicitly approves
SW	All vertical arrangements	Case by case; Referral to competition agency if market share above specified threshold (40-60%)	Competition authority; affirmative action required for rejection	Permissible unless competition authority explicitly disapproves

#### IV. Commentary: Why We Prefer the Salop-Wright Proposal

It is not a surprise that we prefer our own proposed rule. In this section, we explain why. We also discuss some potential alterations that might be considered in light of the concerns of the other rules.

While the Free Trade proposal avoids the over-inclusiveness problems of some of the other proposals, we believe that it does not adequately address the possibility of competitive harms. The fact that vertical integration and vertical contracts between registries and registrars can create both competitive harms and benefits suggests that per se rules will not be in registrants' interests.

The DAGv4 and IPC proposals involve per se illegality. As such, we believe that they are over-inclusive. While these bright-line rules are less costly to administer than fact-intensive standards, they inevitably will sacrifice consumer benefits. They will prohibit more pro-consumer vertical integration than is in the interest of registrants. In contrast, the SW and CAMv3 proposals are case-by-case rules that cover all vertical contracts, not just cross-ownership. As a result, they will lead to fewer mistakes. Case-by-case analysis is more difficult and takes more time, but we believe that this additional work is warranted in order to increase competition for the benefits of registrants. This approach may harm certain competitors, but in our view, the higher welfare of registrants should take priority.

In our view, JN2 and RACK+ also do not go far enough to protect the registrants' interests in the competitive benefits of vertical integration and cross-ownership between registries and registrars. None of these other proposals is conditioned on the presence of market power at the registry or registrar level. Because competitive harms can be generated by contract without integration, these proposals do little if anything to prevent the competitive harms with which they express concern.

JN2 severely restricts both the conditions and extent of integration along several dimensions, relative to SW. Most importantly, the JN2 restrictions would apply to all registries and registrars, regardless of market share. In this way, it cuts more broadly. In contrast, JN2 restrictions reach only cross-ownership, not also vertical contracts. JN2 also effectively delegates the responsibility for competition policy analysis and decisions to ICANN rather than to an expert antitrust agency.

RACK+ also is too restrictive towards the risk of misuse of competitive information. That problem perhaps could be remedied with firewalls, which could address the issue without restricting vertical integration and giving up its competitive benefits. To the extent that ICANN believes that misuse of information is a serious concern, the SW proposal could be modified to allow ICANN to require, as a condition of approval, that RISPs impose internal firewalls between data in a registry and its affiliated registrars.

The SW and CAMv3 proposals are most similar, but they differ in several important ways. First, the CAMv3 referral standard relies on subjective criteria that require the CESP to make determinations, whereas the SW referral standard depends only on market share. The CAMv3 proposal uses a subjective and ambiguous “public interest” standard, which increases the likelihood that more applications that do not pose any competitive threat to registrants and are likely to generate benefits will be referred and ultimately

rejected. In contrast, economic theory and empirical evidence suggests that that market power is the best single indicator of whether vertical integration is capable of generating competitive harms. SW is consistent with the economics of vertical integration, and therefore, would permit vertical integration and cross-ownership for registries and registrars that are unlikely to have market power and impose restrictions or conditions on vertical integration between registries and registrars when market power is present. Our market share screen, similar to that employed in both U.S. and European antitrust law, would avoid much of the over-inclusiveness of the alternative proposals by providing a safe harbor for acquisitions below the relevant threshold.<sup>18</sup>

Second, the default presumption of CAMv3 is that vertical integration is *not* allowed unless and until the competition agency approves the proposed integration, whereas SW applies the opposite default presumption, which we believe is the more appropriate default in order to protect registrants' interests in vigorous competition.<sup>19</sup> Third, CAMv3 also is unclear as to precisely what steps would suffice to deviate from the default rejection if a competition agency does not respond. This suggests that many applications likely would be rejected through operation of the default despite the fact that they may not trigger competition concerns. All in all, we believe that the CAMv3 default rule will prohibit more pro-consumer vertical integration than is in the interest of registrants.

\* \* \*

In sum, we believe that SW best grapples with the complexities of any competition policy concerning vertical integration and balances registrants' interests in benefiting from the likely competitive virtues of these arrangements while retaining protection against their possible harms. We have attempted to protect competition and registrant welfare, rather than protecting incumbent competitors. We have attempted to avoid the over-and under-inclusiveness of the per se rules. Relative to the other rules, we rely on what we view as reasonable levels of cross-ownership and market share as objective measures that ICANN can use. We also recommend that ICANN rely on the expertise and experience of the national competition authorities rather than attempting to replicate that expertise itself, possibly on an ad hoc basis.

However, the other proposals suggest several ways in which ICANN might modify the SW proposal. First, ICANN also could make the SW proposal more restrictive by choosing lower market share and/or cross-ownership thresholds, or by adding a measure of control by the acquiring firm. While we do not think that these changes are necessary,

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<sup>18</sup> We have proposed measuring a registry's market share as its share of total registrations across TLDs and a registrar's market share as its share of "new creates" within a TLD.

<sup>19</sup> In other words, applicants are "guilty until proven innocent" in CAMv3 and the opposite in SW.



we believe that these modifications would allow ICANN to achieve its goals without altering the basic structure of our proposal. Second, if ICANN believes that SW proposal does not sufficiently address the concerns of misuse of sensitive information, we suggest that ICANN require integrated entities to maintain firewalls. We believe that this less restrictive alternative can deal with the issue, rather than restricting vertical integration solely to deal with that concern. Third, if ICANN believes that the SW proposal creates too much risk that registrars or registries to achieve market power, it could include a backstop provision. That provision could require registrars or registries that achieve substantial market power to divest their ownership of entities at the other level.

# 2010-10-28-16 Annex Vertical Integration Exhibit F

Vertical Integration – Annex Exhibit F – Chart of GAC Advice\* and Staff Recommendations



Reference and Source	GAC Advice*	Discussion Notes
<p>GAC-BD-VI-2010-10-23-01 (<u>GAC Comments on AGB v4</u>)</p>	<p>Governments generally support restrictions on vertical integration and cross-ownership as important devices for promoting competition, preventing market dominance and averting market distortions. The GAC notes in this regard the Salop and Wright report and warrants that vertical separation may be warranted where a market participant wields, or may in the future wield, market power.</p>	<p>The GAC seems to be signalling support for vertical separation requirements where there is the possibility of market power distorting the market.</p> <p>The first sentence would be odd if read on its own as an assertion that (all or most) governments generally support restricting vertical integration in (all or most) industries. Governments more often do not impose restrictions on vertical integration in most industries (e.g. agriculture, construction, finance, real estate, food services, etc.). Also it is probably more common for governments to refrain from imposing vertical separation requirements on computer/software/hardware or Internet businesses.</p> <p>This advice could be inferred as a statement that the world's governments want ICANN to be responsible for governing the ownership structure of any company in the world that wants to operate a top-level Internet domain. This seems to be inconsistent with statements that ICANN should stick to its narrow technical mandate and not assume management of matters that are typically left to governments.</p>
<p>GAC-BD-VI-2010-10-23-02 (<u>GAC Comments on AGB v4</u>)</p>	<p>However, the GAC also recognises that if market power is not an issue, the ability of registrars with valuable technical, commercial and relevant local expertise and experience to enter the domain names market could likely lead to benefits in</p>	<p>The GAC is describing several benefits of vertical integration in cases where market power is not an issue. If ICANN were to prevent all registrars from entering the registry operator market, then ICANN would be retarding competition and innovation. It is noted that small-scale community-based applicants would particularly benefit</p>

\*\*"GAC Advice" means GAC statements that may constitute advice under Article XI, Section 2.1.j of the ICANN Bylaws based on inclusion in formal Communiqués or correspondence to the Board.

Vertical Integration – Annex Exhibit F – Chart of GAC Advice\* and Staff Recommendations



Reference and Source	GAC Advice*	Discussion Notes
	<p>terms of enhancing competition and promoting innovation.</p> <p>An important additional benefit which the GAC expects would flow from such an exemption would be that community-based TLD applicants would be able to cast their net more widely in securing partners with the necessary expertise and experience in the local market to undertake what would be relatively small scale registry functions.</p>	<p>from being able to contract with registrars with expertise and experience in local markets to operate registries.</p>
<p>GAC-BD-VI-2010-10-23-03 (<a href="#">GAC Comments on AGB v4</a>)</p>	<p>The GAC therefore urges ICANN to resolve the current debate about registry-registrar separation with a solution that fosters competition and innovation in the DNS market by allowing exemptions, subject to some form of regulatory probity that ensures a level playing field, for certain registrars as potentially valuable newcomers to the registry market. ICANN may find it useful to consider the experience of competition regulators around the world in addressing this issue. ICANN may find it useful to consider the experience of competition regulators around the world in addressing this issue.</p>	<p>The first clause urges ICANN to allow "exemptions," which could be read as advice to not adopt either a "strict separation" or a "free trade" model, since neither of those models provides for "exemptions" (i.e. VI would either be always prohibited or always allowed).</p> <p>It might however be possible to read the first sentence as consistent with a "free trade" model, since that would permit the competition and innovation that GAC is asking for, while presumably relying on appropriate governmental competition and consumer protection agencies to provide the "regulatory probity that ensures a level playing field" as they presumably do for every other sort of commerce.</p>

\*\*GAC Advice" means GAC statements that may constitute advice under Article XI, Section 2.1.1 of the ICANN Bylaws based on inclusion in formal Communiqués or correspondence to the Board.

## 2010-10-28-17 Annex Rec6

**ANNEX TO BOARD SUBMISSION NO. 2010-10-28-17**

**TITLE:** **Response to Report on Implementation of GNSO  
New gTLD Recommendation No. 6 (Morality &  
Public Order Objection Process)**

Attached as Exhibit A is a table reproducing the table at pp. 13-23 of the Report on Implementation of GNSO New gTLD Recommendation # 6, dated 21 September 2010, see <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>, with the addition of a column on the right in which ICANN provides an initial response to the recommendations along with a stated rationale for that response.

Attached as Exhibit B is the 4 August 2010 letter from the GAC to Peter Dengate Thrush. See <http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>.

Attached as Exhibit C is "GNSO new gTLD Policy Recommendation 6 - Chart of GAC Advice and Staff Recommendations."

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## **2010-10-28-17 Annex - Rec6-Exhibit-A**

The following table reproduces the table at pp. 13-23 of the **Report on Implementation of GNSO New gTLD Recommendation # 6**, dated 21 September 2010, (*see* <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>), with the addition of a column on the right in which ICANN initially responds to the recommendations.

<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>1</b>	<b>Definition of the 'Morality' &amp; 'Public Order Objection' in AGv4</b>		
1.1 <b>Full Consensus</b>	Change Name of Objection	ICANN should remove the references to Morality & Public Order in the Draft Applicant Guidebook as far as these are being used as an international standard and replace them with a new term. Further details about what is meant with the new term would need to be worked out to ensure that it does not create any confusion or contravene other existing principles such as GNSO New gTLD's Principle G and Recommendation 1.	Agreed. The name of the resolution can be revised, as can the Applicant Guidebook ("AGB"), in accordance with the intent of this recommendation. The various options provided in 1.2 below will be explored.
1.2 <b>Full Consensus</b>	New Name	The name of the Rec6 objection should not be "Morality and Public Order." The Rec6 CWG identified the following alternative names for consideration, with varying levels of support:	See Response to 1.1 above.
<b>No Consensus-Strong Support</b>		"Objections Based on General Principles of International Law"	
<b>Divergence</b>		"Objections based on the General Principles of Ordre Public or International Law"	
<b>Divergence</b>		"Public Interest Objections"	
<b>Divergence</b>		"Objections Based on the Principles of Ordre Public"	



Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>2</b>	<b>International Principles of Law</b>		
2.1 <b>Full Consensus</b>	Other treaties	<p>ICANN should seriously consider adding other treaties as examples in the Draft Applicant Guidebook, noting that these should serve as examples and not be interpreted as an exhaustive list. For example, the following treaties could be referenced:</p>	<p>Agreed. A more extensive list of treaties and other international instruments could be included in the AGB, with the statement that they serve only as examples.</p> <p>However, when referring to treaties, one must take into consideration not only their ratification status, but also the reservations and declarations that may be made when States ratify or accede to the treaties. These reservations and declarations may indicate how the States will interpret and apply certain provisions of the treaties. States may thereby in practice limit the scope of certain provisions through such reservations and declarations.</p>
		<ul style="list-style-type: none"> <li>• Universal Declaration of Human Rights (1948)</li> <li>• Declaration on the Elimination of Violence against Women</li> <li>• International Covenant on Economic, Social and Cultural Rights (1966)</li> <li>• International Covenant on Civil and Political Rights (1966)</li> <li>• Convention against Torture and Other Cruel, Inhuman</li> </ul>	<p>Consider, for example, Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination (1966), pursuant to which, “with due regard to the principles embodied in the Universal Declaration of Human Rights”, States Parties shall make “an offence punishable by law all</p>

		<ul style="list-style-type: none"> <li>or Degrading Treatment or Punishment (1984)</li> <li>• International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)</li> <li>• Convention on the Elimination of all Forms of Discrimination against Women (1979)</li> <li>• Slavery Convention</li> <li>• Convention on the Prevention and Punishment of the Crime of Genocide</li> <li>• International Convention on the Elimination of All Forms of Racial Discrimination (1966)</li> <li>• Convention on the Rights of the Child (1989)</li> </ul>	<p>dissemination of ideas based on racial superiority or hatred”. The United States Senate, when giving its consent to the ratification of this Convention, made the following reservation: “... the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.”</p>
2.2 <b>Full Consensus</b>	AGB Revision	The AGB should refer to “principles of international law” instead of “international principles of law.”	The AGB could be revised in accordance with the intent of this recommendation.
2.3 <b>No Consensus – Strong Support</b>	Gov’t Objection for National Law (alternative)	The Applicant Guidebook should allow individual governments to file a notification (not an objection) that a proposed TLD string is contrary to their national law. The intention is that an “objection” indicates an intent to block, but a “notification” is not an attempt to block, but a notification to the applicant and the public that the proposed string is contrary to the government’s perceived national interest. However, a national law objection by itself should not provide sufficient basis for a decision to deny a TLD application.	The AGB can make clear that governments should feel free to express concerns to applicants, but through ICANN that should be done by using the already existing mechanism of the public comment forum. The AGB can be revised to indicate how governments can communicate directly with applicants. Agreed that a government’s statement of concern would not in itself be deemed to be an objection; nor would the statement be taken into account in any objection

			<p>proceeding that may be commenced.</p> <p>It should be stressed that a government's filing of an objection should not be interpreted as the expression of an intent to block the gTLD. One would expect that most governments will participate in the New gTLD Dispute Resolution Procedure in good faith. Such participation would include accepting the dismissal of objections. Governments should not consider that blocking a gTLD is the logical or necessary step to take after the dismissal of an objection.</p> <p>More generally, it is agreed that a national law objection by itself does not constitute grounds for rejection of a gTLD application.</p>
<p>2.4 <b>No Consensus- Strong Support</b></p>	<p>Gov't Objection for National Law (alternative)</p>	<p>The Applicant Guidebook should <b>not</b> include as a valid ground for a Rec6 objection, an objection by an individual government based on national public interest concerns that are specified by the objection government as being contrary to national laws that are not based on international principles.</p>	<p>Agreed. No revision of the AGB is necessary to implement this recommendation. <i>See also</i>, Response to 2.3 above.</p>

<b>2.5 Full Consensus</b>	Gov't Objection for National Law	If individual governments have objections based on contradiction with specific national laws, such objections may be submitted through the Community Objections procedure using the standards outlined in AGv4.	Agreed. No revision of the AGB is necessary to implement this recommendation.
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>3</b>	<b>Quick Look Procedure</b>		
<b>3.1 No Consensus- Strong Support</b>	Explicit Guidelines	Further and more explicit guidelines needed, such as common examples from a substantial number of jurisdictions where the term "manifestly" has been defined through judicial decisions, and in particular where such analysis was in the context of disputes relating to Principles of Ordre Public (or whatever term is used per Rec. 1.2), be added to the Quick Look Procedure.	Agreed. More guidelines can be provided.  The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides:  "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application."

The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website: <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. *E.g.*, Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la Recevabilité de la requête n° 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la Recevabilité de la requête n° 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

<b>3.2 Consensus</b>	Standards for an Abusive Objection	Further guidance as to the standards to determine what constitutes an abusive objection is needed and consideration of possible sanctions or other safeguards for discouraging such abuses.	The jurisprudence of the European Court of Human Rights provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, <i>Décision partielle sur la Recevabilité de la requête n° 61164/00 présentée par Gérard Durringer et autres contre la France et de la requête n° 18589/02 contre la France (2003)</i> .  An objector whose objection is dismissed as an abuse of the right to object will forfeit the filing fee that it paid.
<b>3.3 Consensus</b>	National Law not a valid ground for an objection	In determining whether an objection passes the quick look test, there should be an evaluation of the grounds for the objection to see if they are valid. National law not based on international principles should not be a valid ground for an objection.	Agreed. No revision of the AGB is necessary to implement this recommendation.
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>4</b>	<b>Contracted Expert Consultation</b>		
<b>4.1 Full Consensus</b>	Board Responsibility	Ultimate resolution of the admissibility of a TLD subject to a Rec6 objection rests with the Board alone and may not be delegated to a third party.	While relying upon the determinations of experts regarding these issues, it is the case that the Board retains ultimate responsibility for the new gTLD program.  No revision of the AGB is necessary to implement this recommendation.

<p>4.2 <b>Consensus</b></p>	<p>Board Consultation with Experts</p>	<p>Under its authority to obtain independent expertise as stated in Article XI-A of the ICANN Bylaws, the Board shall contract appropriate expert resources capable of providing objective advice in regard to objections received through this process.</p>	<p>The existing process provides for the designation of a dispute resolution service provider (“DRSP”, which is the ICC International Centre for Expertise for Rec 6 objections). Objections to applied-for strings are submitted to the DRSP, not to the Board. The DRSP then appoints a panel of experts. In an adversarial proceeding, the expert panel considers the objection and the applicant’s response to the objection, and then renders a reasoned “expert determination”, which either sustains the objection or rejects it.</p> <p>Note that this is also inconsistent with the GNSO’s Implementation Guideline H, which states that “[e]xternal dispute resolution providers will give decisions on objections.”</p> <p>The process will not be changed to provide for the submission of objections directly to the Board or for the Board to contract directly with the experts who consider objections.</p>
<p>4.3 <b>No Consensus- Strong Support</b></p>		<p>Such experts advising the ICANN Board are to be independent of any conflict in accordance with other provisions in the AGB. Their advice will be limited in scope to analysis of objections, based upon the criteria as expressed within these recommendations.</p>	<p>Under the proposed process, the experts are not directly “advising the ICANN Board”, but rather rendering an expert determination. See Response to 4.2 above. As a matter of day-to-day management, ICANN does not expect its Board to review</p>

			<p>and discuss the neutral advice and recommendations received for each and every objection.</p> <p>It is certainly agreed, however, that the experts should not have any conflict of interest. The New gTLD Dispute Resolution Procedure, Article 13(c), provides for the experts to be impartial and independent.</p>
<p>4.4 <b>No Consensus-Strong Support</b></p>		<p>The number of experts to be consulted, the method of their selection and terms of their engagement, are to be determined by the Board subject to these recommendations.</p>	<p>Agreed, to the extent that this recommendation refers to the dispute resolution process set out in AGBv4, which calls for three experts for each panel. But the Board will not consult experts directly. See Response to 4.2 above.</p>
<p>4.5 <b>No Consensus-Strong Support</b></p>		<p>The contracted advisors will be expected to have specific expertise in interpreting instruments of international law and relating to human rights and/or civil liberties. The CWG recommends that the Board augment this with complementary expertise in other relevant fields such as linguistics.</p>	<p>The experts who are appointed by the DRSP are not “contracted advisors” in the sense that may be intended here (see Response to 4.2 above). The New gTLD Dispute Resolution Procedure, Article 13(b)(iii), stipulates in general terms the qualifications of the experts. The AGB could be revised to develop this point, referring to complementary expertise.</p>
<p>4.6 <b>No Consensus-Strong Support</b></p>	<p>Name of Process</p>	<p>This process for Rec6 objections should not be referred to as a Dispute Resolution Process.</p>	<p>The rationale for this recommendation has not been explained. If the recommendation is based upon the idea that “dispute resolution” implies a procedure that yields a final and binding decision (i.e., in this context, a decision that</p>



			<p>is binding even upon the Board), this point can be clarified.</p> <p>As stated above in Response to Recommendation 4.1), the Board retains ultimate responsibility for the New gTLD Program. Thus, while relying upon the determinations of experts regarding these issues and the day-to-day analysis and management by ICANN staff following such determinations, the Board does reserve the right under exceptional circumstances to consider an individual application for a new gTLD to determine whether approval would be in the best interest of the internet community.</p> <p>In light of this clarification, no revision of the AGB appears to be necessary.</p>
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>5</b>	<b>Threshold for Board decisions to reject an application based on objections</b>		
5.1 <b>No Consensus-Strong Support</b>	Higher Threshold	A higher threshold of the Board should be required to uphold an objection.	The existing process does not provide for the Board to consider and approve individual applications for new gTLDs (of which there may be hundreds in the first round). Under exceptional circumstances,
5.2 <b>Consensus</b>		The higher threshold should be at least 2/3.	

5.3 <b>Consensus</b>		Approval of a string should only require a simple majority of the Board regardless of the input from the experts.	the Board may consider an individual application for a new gTLD to determine whether approval of that application would be in the best interest of the internet community. In that event, the Board’s existing rules and procedures for making decisions would apply.
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>6. Incitement to discrimination criterion.</b>			
6.1 <b>Consensus</b>	Revision to Criteria	This criteria should be retained, but rephrased as follows: “Incitement to and instigation of discrimination based upon race, age, colour, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion, or national origin.”	This revision of the criterion would extend the scope of Rec6 objections beyond the legal norms that are generally accepted under principles of international law. For example, “discrimination based upon ... political or other opinion” is, in fact, widely accepted and practiced in democratic societies. Employment by the government may be based upon a person’s political opinions (known and widely practiced in the United States as the “spoils system”). The <i>Proporz</i> system in post-war Austria allocated jobs in the government and in other important sectors according to political party membership. Accordingly, the AGB will not be revised in accordance with this recommendation.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>7. The use of ‘incitement’ as a term for the determination of morality and public order.</b>			
7.1 <b>Consensus</b>	Replace “incitement”	<p>The new proposed language should read:</p> <ul style="list-style-type: none"> <li>• <b>Incitement and instigation</b> of violent lawless action;</li> <li>• <b>Incitement and instigation</b> of discrimination, based upon race, age, colour, disability, gender, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion, or national origin.</li> <li>• <b>Incitement and instigation</b> of child pornography or other sexual abuse of children.</li> </ul>	<p>There is a distinction in some contexts between “incitement” and “instigation”. For example, in international criminal law, “incitement” has been held to be an inchoate crime (in which the crime is completed despite the fact that the person incited fails to commit the act to which he or she has been incited), while “instigation” is not an inchoate crime (hence, punishable only where it leads to the commission of the substantive crime). The “direct and public incitement to commit genocide” is punishable pursuant to Article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide.</p> <p>See also the European Union’s Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, which provides for Member States to take the measures necessary to ensure that certain intentional conduct is punishable, including “publicly inciting to violence or hatred directed against a group of persons</p>

			<p>or a member of such a group defined by reference to race, colour, descent or national or ethnic origin” (Article 1(1)(a)).</p> <p>In light of the nature of a gTLD string, incitement alone may suffice to make a string worthy of objection.</p> <p>The AGB could be revised in some way to reflect the intent but it would be likely to include an “or” rather than an “and”.</p>
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>8. String only?</b>			
8.1 <b>No Consensus-Strong Support</b>	Analysis based on string and context	The experts should conduct their analysis on the basis of the string itself. It could, if needed, use as additional context the intended purpose of the TLD as stated in the application.	Agreed (subject to 4.2 above). No revision of the AGB is necessary to implement this recommendation.
8.2 <b>Divergence</b>	Analysis based on string only (Alternative)	The experts should conduct their analysis on the basis of the string only.	See above § 8.1.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>9. Universal Accessibility Objective with Limited Exceptions</b>			
9.1 <b>Consensus</b>	Limiting Blocking of TLDs	The Rec6 CWG hopes that the mechanisms it proposes in this Report will help limit blocking of whole TLDs at the national level. Blocking of TLDs should remain exceptional and be established by due legal process. The group also recognized that reduced blocking of TLDs is of little value if the result is that the opportunity to create new TLDs is unduly constrained by an objection process. The absence of blocking is of little value if it creates a name space that does not reflect the true diversity of ideas, cultures and views on the Internet.	Agreed. No revision of the AGB is necessary to implement this recommendation.

Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>10. Independent Objector</b>			
10.1 <b>Divergence</b>	Modifications to role of IO	<p>The Rec6 CWG proposes modifications to the mandate and function of the Independent Objector as described in section 3.1.5 of the AGv4, without changing its scope. Unlike the current intention as expressed in the AGv4, it is suggested that the Independent Objector may not initiate an objection against a string if no community or government entity has expressed an interest in doing so. A valid Independent Objector objection must be tied to a specific party who claims it will be harmed if the gTLD is approved. The Independent Objector must not encourage communities or governments to file objections, however the Independent Objector should be mandated to:</p>	<p>The proposed modifications to the IO’s “mandate and function” would, in fact, change its “scope” in ways that are inconsistent with the existing process and the independence of the IO.</p> <ul style="list-style-type: none"> <li>▪ The rationale for authorizing the IO to file an objection if no other objection on the relevant grounds has been filed remains pertinent.</li> <li>▪ The provision of procedural assistance to potential objectors would represent a change in the IO’s role that ICANN considers to be inappropriate.</li> <li>▪ Under the existing process, the appropriate DRSP shall receive, register and publish all objections, as part of the DRSP’s responsibility to administer the dispute resolution procedure (which also includes the important task of appointing the expert panel). It would not be appropriate for the IO to undertake these tasks in parallel with or in place of the DRSP.</li> <li>▪ The “Quick Look” evaluation is to be</li> </ul>
		1. Provide procedural assistance to groups unfamiliar with ICANN or its processes that wish to register an objection;	
		2. Receive, register and publish all objections submitted to it by bona fide communities and governments of all levels (which can demonstrate direct impact by the proposed application);	
		3. Perform a “Quick look” evaluation on objections against a specific set of criteria of what is globally objectionable, to determine which ones are to be forwarded to the Board for consideration as legitimate challenges to applications;	

		4. Be given standing for objections which survive “Quick Look” evaluation, but whose backers lack the financial resources and/or administrative skills necessary to process their objections;	<p>performed by the panel of experts and may result in a final determination dismissing the objection. For the IO to make such a determination would be incompatible with his/her mandate to file objections.</p> <ul style="list-style-type: none"> <li>▪ Objections are not, in any case, to be forwarded to the Board. The existing process provides for objections to be submitted to the DRSP and then heard by an expert panel, which renders a determination that either upholds the objection or rejects it.</li> </ul> <p>Accordingly, the AGB will not be revised in accordance with this recommendation.</p>
		The scope of the Independent Objector -- limited to filing objections based only on Community and Public Policy grounds -- is unchanged from the current AGB. Applications processed by/through ALAC or the GAC are not required to use this process. Organizations using this process will be expected to pay a fee to register objections, though this may be waived for small groups without sufficient financial means.	See comments above.
		As the potential exists for the position of Independent Objector to be misused to harass or impede a legitimate applicant, special attention must be given to the transparency of the Independent Objector’s actions. All correspondence is by default open and public unless required otherwise to protect privacy or other rights.	In the existing process, the IO is accountable before the Expert Panel. If the IO submits an objection that is manifestly unfounded or an abuse of the right to object, the objection will be dismissed in the “Quick Look” procedure. An objection

			filed by the IO that passes the “Quick Look” test is still subject to the same scrutiny by the experts as any other objection. So the IO would not have a privileged position, wielding unchecked power.
		The “independence” of the Independent Objector relates to the role’s unaffiliation with any applicant or contracted party. The Independent Objector role remains accountable to ICANN with regards to its integrity and fairness.	Agreed. No revision of the AGB is necessary to implement this recommendation.
10.2 <b>Consensus</b>	Requests by GAC or ALAC	If requested in writing by the GAC or ALAC the Independent Objector will prepare and submit a relevant Objection. The Independent Objector will liaise with the GAC or ALAC in drafting such an Objection. Any Objection initiated from a GAC or ALAC request will go through exactly the same process as an Objection from any other source and must meet the same standard for success as an Objection from any other source.	The GAC and ALAC are encouraged to express concerns with applications through the existing public comment forum process, which the IO will review. But allowing the IO’s should not serve at the pleasure of the GAC or ALAC, as this would infringe on his/her independence and mandate to act in the public interest. The IO does not act as the agent of any other person or entity.  No revision of the AGB is necessary to implement this recommendation.



Rec. No. and Level of Support	Issue	Working Group Recommendation	ICANN Response and Rationale
<b>11. Timing of Rec6 Dispute Resolution</b>			
11.1 <b>No Consensus-Strong Support</b>	Early Resolutions	Applicants should be encouraged to identify possible sensitivities before applying and where possible try to consult with interested parties that might be concerned about those sensitivities to see how serious the concerns are and to possibly mitigate them in advance.	The AGB will be revised to incorporate this recommendation regarding identification of possible sensitivities.
11.2 <b>Full Consensus</b>		The dispute resolution process for Rec. 6 objections should be resolved sooner in the process to minimize costs.	<p>The opportunity to file an objection – and thereby to set in motion the dispute resolution process – follows the initial evaluation stage, which comprises string reviews and applicant reviews. The initial evaluation thus involves only the applicant; no third party (such as an objector) incurs any costs. Reversing that sequence would be more likely to generate increased, wasted costs.</p> <p>Accordingly, the AGB will not be revised in accordance with the rationale behind this recommendation.</p>
11.3 <b>Full Consensus</b>		Applicants should be informed of Rec6 complaints as early as possible to allow applicants to decide whether they want to pursue the string.	Agreed. The objector is required to send a copy of its objection to the applicant simultaneously with its submission to the DRSP. See New gTLD Dispute Resolution Procedure, Article 7(b). Further, the DRSP is required to post at least a weekly notice

			of filed objections. Hence, no revision of the AGB is necessary to implement this recommendation.
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>12. Use of the Community Objections.</b>			
12.1 <b>Full Consensus</b>	Available to At-Large and GAC	The CWG notes that ICANN GAC and At-Large Advisory Committees or their individual governments in the case of the GAC have the possibility to use the ‘Community Objection’ procedure. A “Community Objection” can be filed if there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.	The objector, whatever the entity, satisfies the existing Community Objection criteria. Governments are contemplated in the existing Community Objection criteria.  No revision of the AGB is necessary to implement this recommendation.
12.2 <b>Full Consensus</b>	Fees for ALAC and GAC	The CWG recommends that the fees for such objections by the GAC or the At-Large Advisory Committees be lowered or removed.	The rationale for this recommendation and the manner of implementing it have not been explained.  Currently, ICANN does not see the need to establish lower fees or any form of discrimination in the treatment of objections depending on the identity of the objector or the type of objection. Every objector would like to have its fees lowered or removed, but the fees and expenses of the experts and the DRSP must still be paid, so this recommendation would require some other entity – not identified – to pay those fees.

			Accordingly, the AGB will not be revised in accordance with this recommendation.
12.3 <b>Divergence</b>		ICANN should consider looking into a slight lowering of this threshold for Objections from the GAC or At-Large Advisory Committees. Staff should explore ways to reasonably lower the required standard for a successful At-Large or GAC Advisory Committee objection in the areas of standing (3.1.2.4), level of community opposition (3.4.4) or likelihood of detriment (3.4.4).	Specific details of the proposed modifications, with their rationale, would need to be presented for consideration. Currently, ICANN does not see the need to establish lower thresholds or any form of discrimination in the treatment of objections depending on the origin of the objection.  For the present, therefore, the AGB cannot be revised in accordance with this recommendation.
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>13. Guidebook Criterion 4</b>			
13.1 <b>Full Consensus</b>	Revision to Criterion 4	The current language from the forth criterion of AGv4 reads: <ul style="list-style-type: none"> <li>“A determination that an applied-for gTLD string would be contrary to equally generally accepted identified legal norms relating to morality and public order that are recognized under general principles of international law.”</li> </ul> However, the current language should be revised to read: <ul style="list-style-type: none"> <li>“A determination that an applied-for gTLD string</li> </ul>	Agree that the fourth standard can be revised to reflect the revisions to the language of Recommendation 6 upon completion.

		would be contrary to specific principles of international law as reflected in relevant international instruments of law.”	
<b>Rec. No. and Level of Support</b>	<b>Issue</b>	<b>Working Group Recommendation</b>	<b>ICANN Response and Rationale</b>
<b>14</b>	<b>Next Steps for Rec6.</b>		
<b>No Consensus-Strong Support</b>		The Rec6 CWG recommends that the ICANN New gTLD Implementation Team form a Recommendation 6 Community Implementation Support Team (Rec6 CIST) to provide input to ICANN Implementation Staff as they further refine implementation details for Recommendation 6.	The formation of a new “formal” team with a specific mandate does not appear to be possible or desirable, given the current timeline and budget. Furthermore, the community, including members of the New gTLD Recommendation #6 Cross-Community Working Group, will have an opportunity to comment upon ICANN’s response to the Rec6 CWG Report and to the final AGB.

## **2010-10-28-17 Annex - Rec6-Exhibit-B**



**Governmental Advisory Committee  
Chair**

Mr. Peter Dengate Thrush  
Chairman of the Board  
ICANN

4 August 2010

**RE: Procedures for Addressing Culturally Objectionable and/or Sensitive Strings**

Dear Peter,

The GAC firmly believes that the absence of any controversial strings in the current universe of top level domains (TLDs) to date contributes directly to the security and stability of the domain name and addressing system (DNS) and the universal resolvability of the system. As a matter of principle, and consistent with Sections 3(b) and 8(a) of the *Affirmation of Commitments* and the core values contained in Article 1, Section 2 of ICANN's Bylaws, the GAC believes that the objective of stability, security and universal resolvability must be preserved in the course of expanding the DNS with the addition of new top level domains to the root. The GAC urges the Board to ensure that this fundamental value, which preserves the integrity of the DNS, is incorporated as an element of the public interest standard to which it has committed in the *Affirmation of Commitments*.

In this regard, the GAC believes that procedures to identify strings that could raise national, cultural, geographic, religious and/or linguistic sensitivities or objections are warranted so as to mitigate the risks of fragmenting the DNS that could result from the introduction of controversial strings.

While the GAC appreciates that the proposed objection procedure on "Morality and Public Order" grounds included in DAGv4 was intended to satisfy the concern noted above, the GAC strongly advises the Board to replace the proposed approach to addressing objections to new gTLD applications based on "Morality and Public Order" concerns with an alternative mechanism for addressing concerns related to objectionable strings. The terms "morality and public order" are used in various international instruments, such as the Paris Convention for the Protection of Industrial Property, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (ICCPR). Generally, these terms are used to provide the basis for countries to either take an exemption from a treaty obligation or to establish by law limitations on rights and freedoms at the national level. Judicial decisions taken on these grounds are based on national law and vary from country to country. Accordingly, the GAC advises that using these terms as the premise for the proposed approach is flawed as it suggests that there is an internationally agreed definition of "Morality and Public Order". This is clearly not the case.

The GAC therefore recommends that community-wide discussions be facilitated by ICANN in order to ensure that an effective objections procedure be developed that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.

Yours sincerely,



Heather Dryden  
Chair of the Governmental Advisory Committee,  
Senior Advisor to the Government of Canada

# 2010-10-28-17 Annex - Rec6-Exhibit-C



GNSO New gTLD Policy Recommendation 6 - Chart of GAC Advice\* and Staff Recommendations



Reference	Source	GAC Advice*	Relevant Applicant Guidebook Version 4 Terms	Additional Discussion
GAC-BD-New gTLD Rec6-2010-08-04-01	4 August 2010 letter	Procedures to identify strings that could raise national, cultural, geographic, religious and/or linguistic sensitivities or objections are warranted so as to mitigate the risks of fragmenting the DNS that could result from the introduction of controversial strings.	See Module 3 of Applicant Guidebook version 4, section 3.4.3 at: <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf</a>	The current standards for objections pursuant to GNSO Policy Recommendation 6 are set out in section 3.4.3 of Applicant Guidebook, version 4. Further, the New gTLD Recommendation #6 Cross-Community Working Group ("Working Group") has made some recommendations (although not with full consensus) with respect to revisions to the standards. See Report linked to <a href="http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm">http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm</a> . Those recommendations are currently under consideration.
GAC-BD-New gTLD Rec6-2010-08-04-02	4 August 2010 letter	The GAC strongly advises the Board to replace the proposed approach to addressing objections to new gTLD applications based on "Morality and Public Order" concerns with an alternative mechanism for addressing concerns related to objectionable strings.	See new gTLD Dispute Resolution Procedures at <a href="http://icann.org/en/topics/new-gtlds/draft-drp-procedure-clean-28may10-en.pdf">http://icann.org/en/topics/new-gtlds/draft-drp-procedure-clean-28may10-en.pdf</a>	During its 25 September 2010 Board meeting, the Board resolved that "[t]he Board will accept the Rec6 CWG recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and will work to resolve any inconsistencies. Staff will consult with the Board for further guidance as required." See <a href="http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.9">http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.9</a> . The Governmental Advisory Committee ("GAC") has not provided any input on an alternate mechanism
GAC-BD-New gTLD Rec6-2010-08-04-03	4 August 2010 letter	The GAC advises that using the terms "morality and public order" as the premise for the proposed approach is flawed as it suggests that	See Module 3 of Applicant Guidebook version 4, section 3.3.1 at: <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-</a>	This is in line with the Recommendation from Working Group and ICANN agrees that these terms should be revised and it will be consistent with GAC advice. Although it should be noted that GNSO new gTLD Policy Recommendation 6 itself is contrary to this advice: "Strings must not be contrary to

\* GAC Advice" means GAC statements that may constitute advice under Article XI, Section 2.1.i of the ICANN Bylaws based on inclusion in formal Communiqués or correspondence to the Board.

GNSO New gTLD Policy Recommendation 6 - Chart of GAC Advice\* and Staff Recommendations



Reference	Source	GAC Advice*	Relevant Applicant Guidebook Version 4 Terms	Additional Discussion
GAC-BD-New gTLD Rec6 - 2010-08-04- 04	4 August 2010 letter	<p>there is an internationally agreed definition of "Morality and Public Order."</p> <p>The GAC recommends that community-wide discussions be facilitated by ICANN in order to ensure that an effective objections procedure be developed that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.</p>	<p>28may10-en.pdf</p> <p>See Report linked to <a href="http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm">http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm</a></p>	<p>generally accepted legal norms relating to morality and public order that are recognized under international principles of law."</p> <p>The Working Group was developed in response to the GAC suggestion that a cross-community effort be commenced to identify improvements to the implementation of the GNSO New gTLD Recommendation 6. This group included at least three members of the GAC.</p>

\* GAC Advice" means GAC statements that may constitute advice under Article XI, Section 2.1.i of the ICANN Bylaws based on inclusion in formal Communiqués or correspondence to the Board.

## **2010-10-28-18 Annex Geographic Names**

**ANNEX TO BOARD SUBMISSION NO. 2010-10-28-18**

**SUBMISSION TITLE:           New gTLDs—GAC Issues letter including  
geographic names**

The table below provides a timeline relating to the treatment of geographic names in the new gTLD process.

Following the timeline is the current protections for geographic names in the applicant guidebook.

<i>Date</i>	<i>Position</i>
<b>Lisbon 28 March 2007 GAC comminque</b>	<p>GAC Adopts “<i>Principles regarding new gTLDs</i>”, containing two paragraphs addressing the issue of geographic names at the top and second level:</p> <p>2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.</p> <p>2.7 Applicant registries for new gTLDs should pledge to:</p> <ul style="list-style-type: none"> <li>a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD;</li> <li>b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.</li> </ul>
<b>Los Angeles GNSO submits final report to Board</b>	<p>Recommendation 20. An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.</p> <p>Implementation Guideline P: ... Opposition must be objection based.</p> <p>Reserved Names Working Group Report: There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.</p> <p>However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC principles, and the advisory role vested to it under the ICANN bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN bylaws.</p>

<p><b>Los Angeles 31 October 2007 GAC Communiqué</b></p>	<p>Appreciates work done by GNSO regarding the proposal for principles, recommendations and implementation guidelines for new gTLDs. GAC draws attention to the fact that the proposal does not properly take into account paragraph 2.2 in the <i>GAC principles regarding new gTLDs</i>, in particular the avoidance of country names. In practice some countries would not be in a position to avail them of the proposed objection mechanism especially those not participating in ICANN activities.</p> <p>Will monitor the implementation and provide further input as necessary. Agree to reflect on the need to provide advice on the final report by the GNSO on the intro of new gTLDs.</p>
<p><b>Los Angeles ccNSO Council Resolution</b></p>	<p>The ccNSO council resolved in Los Angeles, 31st October 2007, regarding the introduction of new gTLDs:</p> <p>Principle on meaningful representation of the name of a territory listed on the ISO 3166-1 in a non ASCII script</p> <p>- No name of a territory listed on the ISO 3166-1 or a meaningful abbreviation of it, whether represented in a non ASCII script or in any recognised language represented in that script, shall be available as a gTLD. This principle should be revisited once the IDN ccPDP recommendation, if any, is adopted by the Board.</p> <p>Principle on meaningful representation of the name of a territory listed on the ISO 3166-1 in ASCII</p> <p>- No name of a territory listed on the ISO 3166-1 or a meaningful abbreviation of it, whether represented in ASCII script or in any recognised language, shall be available as a gTLD. This principle should be revisited once the IDN ccPDP recommendation, if any, is adopted by the Board.</p>
<p><b>Paris June 2008</b></p>	<p>Board approves GNSO Recommendations for Introduction of New gTLDs and directs staff to develop implementation plan.</p>
<p><b>Paris 26 June 2008 GAC Communiqué</b></p>	<p>On the introduction of the gTLDs the GAC expressed concern to Board and GNSO that the GNSO proposals do not include provisions reflecting GAC Principles regarding new gTLDs, namely 2.2 and 2.7 (see Lisbon, 2007)</p>
<p><b>8 September 2008</b></p>	<p>Paul Twomey and staff had a conference call with the GAC to discuss their concerns about the treatment of 2.2 and 2.7 in the new gTLD process. This was followed up with a letter to the GAC on 2 October 2008.</p>
<p><b>2 October 2008</b></p>	<p>Letter from Paul Twomey to Janis Karklins regarding treatment of geographic names following teleconference with the GAC. Letter outlines proposal for way forward re para 2.2:</p> <ul style="list-style-type: none"> <li>• Supporting documentation, evidence of non-objection, from the relevant government or public authority will be required for strings which represent a country or territory name. ISO 3166-1 list will be used as reference list.</li> <li>• Place names was considered very broad and were defined as: <ul style="list-style-type: none"> <li>○ sub-national geographic identifiers such as counties, states, provinces. The ISO 3166-2 identified as the reference list, and support documentation, evidence of non-objection required;</li> <li>○ city names are challenging because a city name can also be a generic term, or a brand name, and in many cases no city name is unique. Therefore, an applicant that clearly intends to use the TLD to leverage the city name, will require supporting documentation.</li> </ul> </li> <li>• Regional language and people descriptions—difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognized established rights for such descriptions</li> </ul>

	<p>Paragraph 2.7 (a)</p> <ul style="list-style-type: none"> <li>• ICANN would be reluctant to place blanket restrictions on the use of geo names at the second level due to anticipated multi-national companies expected to apply for a brand name. Names with national and geographic significances difficult to define.</li> </ul> <p>Paragraph 2.7(b)</p> <ul style="list-style-type: none"> <li>• Names with national and geographic significance are difficult to define, as is what constitutes an ‘abuse’ of a name. UDRP protects rights at the second level.</li> </ul> <p><a href="http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf">http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf</a></p>
<b>22 October 2008</b>	<p>Explanatory Memorandum – Geographic Names Process – considers the positions of the GNSO recommendations and the GAC principles and explains the rationale behind the treatment of geographic TLDs in the Applicant Guidebook.</p> <ul style="list-style-type: none"> <li>• The GAC does not agree that the objection and dispute resolution procedures described by the GNSO policy recommendations is adequate for ensuring that governments and public authorities are aware of applications for strings which represent their country or territory names, or certain other geographic and geopolitical descriptions.</li> <li>• The Reserved Names Working Group, while not recommending the reservation of geographic names, believing the objection process to be adequate protection, the report recognized that applicants interested in applying for a geographic name should be advised of the GAC principles.</li> <li>• The approach outlined in the letter to the GAC of 2 October 2008, for country and territory names, sub-national names and city names was repeated in the explanatory memorandum.</li> <li>• Continents and UN Regions were called out as geographic names and would require support or non-objection from a substantial number of the relevant governments and/or public authorities.</li> </ul> <p><a href="http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf">http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf</a></p>
<b>23 October 2008</b>	<p><b>Applicant Guidebook Version 1 published</b></p> <p><i>2.1.1.4.1 Requirements for Strings Intended to Represent Geographical Entities</i> The following types of applications must be accompanied by documents of support or non-objection from the relevant government(s) or public authority(ies).</p> <ul style="list-style-type: none"> <li>• Applications for any string that is a meaningful representation of a <i>country or territory name</i> listed in the ISO 3166-1 standard (see <a href="http://www.iso.org/iso/country_codes/iso_3166_databases.htm">http://www.iso.org/iso/country_codes/iso_3166_databases.htm</a>). This includes a representation of the country or territory name in any of the six official United Nations languages (French, Spanish, Chinese, Arabic, Russian and English) and the country or territory’s local language.</li> <li>• Applications for any string that represents a <i>subnational place name</i>, such as a county, province, or state, listed in the ISO 3166-2 standard.</li> <li>• Applications for a city name, where the applicant clearly intends to use the gTLD to leverage from the city name.</li> <li>• An application for a string which represents a continent or UN region appearing on the Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings list at <a href="http://unstats.un.org/unsd/methods/m49/m49regin.htm">http://unstats.un.org/unsd/methods/m49/m49regin.htm</a>.</li> </ul> <p><a href="http://www.icann.org/en/topics/new-gtlds/comments-en.htm">http://www.icann.org/en/topics/new-gtlds/comments-en.htm</a></p>
<b>28 December 2008</b>	<p>ccNSO comments on version 1 of Applicant Guidebook – geographic names <a href="http://forum.icann.org/lists/gtld-evaluation/msg00015.html">http://forum.icann.org/lists/gtld-evaluation/msg00015.html</a> Issues:</p> <ul style="list-style-type: none"> <li>• the restriction of the 6 official United Nations languages and the country or</li> </ul>

	<p>territory’s local language needs to be amended to translation in any language.</p> <ul style="list-style-type: none"> <li>• All country names and territory names are ccTLDs – not gTLDs</li> <li>• <i>country and territory names and meaningful abbreviations thereof</i> of countries and territories in the ISO-3166-1 list, in all languages and scripts, are not allowed as gTLDs until the IDN ccPDP process has concluded.</li> </ul>
<b>18 February 2009</b>	<p>Analysis of public comment published, and included responses to comments received from the ccNSO.</p> <ul style="list-style-type: none"> <li>• The solution offered by the ccNSO to not allow country and territory names in the gTLD process until outcome of the ccPDP, will mean that country or territory names in ASCII at the top level would not be available before August 2011.</li> <li>• In considering the comments received on the issue of country and territory names in the gTLD space, the definition of meaningful representation will be expanded to include a representation of a country or territory name in any language to address the ccNSO’s concern that “almost all non-Latin and Latin scripts can be entered as a gTLD without any restriction except that the country in question can object.”</li> </ul> <p><a href="http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf">http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf</a></p>
<b>Cairo 5 November 2008 GAC Communiqué</b>	<p>Appreciates level of engagement inter-sessionally with ICANN staff which lead to better reflection of the GAC principles in New gTLDs in the DAG, particularly principles 2.2 and 2.6. As a result became more sensitive to the potential blurring of the existing distinction between the ccTLD and gTLD namespace.</p> <p>Questions related to consideration of country and territory names need to be addressed further. Will continue consideration of whether the strings being meaningful representations or abbreviations of a country or territory name in any script or language should not be allowed in the gTLD space until the related ccTLD PDP is completed.</p> <p>The procedure recommended in 2.7a of the GAC principles also needs to be further considered in the DAG.</p>
<b>18 February 2009</b>	<p><b>Applicant Guidebook Version 2</b></p> <p><i>2.1.1.4.1 Categories of Strings Considered Geographical Names</i></p> <p>The following types of applications are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant government(s) or public authority(ies):</p> <ul style="list-style-type: none"> <li>• An application for any string that is a meaningful representation of a <i>country or territory name</i> listed in the ISO 3166-1 standard (see <a href="http://www.iso.org/iso/country_codes/iso_3166_databases.htm">http://www.iso.org/iso/country_codes/iso_3166_databases.htm</a>), as updated from time to time. A meaningful representation includes a representation of the country or territory name in any language.</li> </ul> <p>A string is deemed a meaningful representation of a country or territory name if it is:</p> <ul style="list-style-type: none"> <li>o The name of the country or territory; or</li> <li>o A part of the name of the country or territory denoting the country or territory; or</li> <li>o A short-form designation for the name of the country or territory that is recognizable and denotes the country or territory.</li> </ul> <ul style="list-style-type: none"> <li>• An application for any string that is an exact match of a <i>sub-national place name</i>, such as a county, province, or state, listed in the ISO 3166-2 standard<sup>5</sup>, as updated from time to time.</li> <li>• An application for any string that is a representation, in any language, of the <i>capital city name</i> of any country or territory listed in the ISO 3166-1</li> </ul>

	<p>standard.</p> <ul style="list-style-type: none"> <li>• An application for a <i>city name</i>, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.</li> <li>• An application for a string which represents a <i>continent or UN region</i> appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list at <a href="http://unstats.un.org/unsd/methods/m49/m49regin.htm">http://unstats.un.org/unsd/methods/m49/m49regin.htm</a>.</li> </ul> <p>In the case of an application for a string which represents a continent or UN region, documentation of support, or non-objection, will be required from a substantial number of the relevant governments and/or public authorities associated with the continent or the UN region.</p> <p><a href="http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm">http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm</a></p>
<p><b>Mexico City 4 March 2009 GAC Communiqué</b></p>	<p>GAC comments on the Draft Applicant Guidebook for new gTLD specify that:</p> <ul style="list-style-type: none"> <li>• The GAC expects ICANN to apply GAC gTLD principles in respect to the handling of geographic names and in particular principles 2.2 (including place names) and 2.7 that are not comprehensively addressed in the implementation proposals.</li> <li>• Strings being meaningful representations or abbreviations of a country and territory name in any script or language should not be allowed in the gTLD space until the related IDN ccTLD policy development processes have been completed</li> <li>• The proposed introduction of new gTLDs and in particular any process relating to the protection of geographic names should not result in an unreasonable administrative burden for government administrations</li> </ul>
<p><b>Board Workshop Mexico City</b></p>	<p>Board discussed v2 of Applicant Guidebook as it relates to geographic names and was in general agreement with the content. Considered that the ‘meaningful representation’ definition used for country and territory names was too broad and required tightening. Also considered that the threshold for continent and UN Regions was unworkable and needed refining. GAC principle 2.7 was considered difficult to implement and agreed to seek input from the GAC about how to do this</p>
<p><b>Board resolution 6 March 2009</b></p>	<p>Resolved (2009.03.06.07), the Board is generally in agreement with the proposed treatment of geographic names at the top-level, and staff is directed to revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard, and greater specificity in the support requirements for continent names, and post the revised position for public comment.</p> <p>Resolved (2009.03.06.08), staff is directed to send a letter to the GAC by 17 March 2009 identifying the implementation issues that have been identified in association with the GAC’s advice, in order to continue communications with the GAC to find a mutually acceptable solution. The Board would request a preliminary response by 24 April 2009 and a final report by 25 May 2009.</p>
<p><b>Correspondence relating to above Resolution  17 March 2009</b></p>	<p>Twomey to Karklins, 17 March 2009 <a href="http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf">http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf</a></p> <ul style="list-style-type: none"> <li>• Outlines Board resolution of 6 March 2009</li> <li>• Board believes treatment of geographic names at the top level provides a workable compromise between paragraph 2.2 and the GNSO’s policy recommendation 20.</li> <li>• Seeks the GAC’s members input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level, specifically paragraph 2.7.</li> </ul>
<p><b>24 April 2009</b></p>	<p>Karklins to Twomey, 24 April 2009 <a href="http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf">http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf</a></p>



	<ul style="list-style-type: none"> <li>• Geographic Names at the top level: <ul style="list-style-type: none"> <li>○ Rights of governments or public authorities in relation to the rights of the sovereign state or territory which they represent cannot be limited or made conditional by any procedures that ICANN introduces for new gTLDs.</li> <li>○ It would be sensible to enable Governments (or the GAC) to object to an application for a gTLD on public interests grounds without going through the time and cost of the formal objection process.</li> <li>○ ccNSO approach that country and territory names on the ISO list are treated as ccTLDs seems to be a sensible approach to ensure that geographic names are afforded sufficient protection.</li> </ul> </li> <li>• Geographic names at the second level: <ul style="list-style-type: none"> <li>○ Registries should be asked to indicate how they intend to incorporate GAC advice in their management of second level domains.</li> <li>○ .info procedure could be drawn upon as an example</li> <li>○ at a minimum, the names contained on three lists [ISO 3166-1; United Nations Group of Experts on Geographical Names, Part III Names of Countries of the World; and List of UN member states in 6 official UN languages prepared by the Working Group on Country Names of the United nations conference on the standardization of Geographical Names] must be reserved at the second level at no cost for the governments of all new gTLDs.</li> </ul> </li> <li>• Potential misuse of respective names on the second level <ul style="list-style-type: none"> <li>○ In the event that a government notifies ICANN that there is misuse of any second level domain name, ICANN shall notify the registry and request the suspension of the said name pending the withdrawal of the objection.</li> </ul> </li> </ul>
<p><b>15 May 2009</b></p>	<p>Chair of GNSO to GAC, 15 May 2009 <a href="http://gnsso.icann.org/correspondence/gnsso-ltr-to-gac.pdf">http://gnsso.icann.org/correspondence/gnsso-ltr-to-gac.pdf</a></p> <ul style="list-style-type: none"> <li>• Understands need to provide adequate protection for existing legal rights and believes such protection is defined in GNSO Recommendation 3. Recommendation 20</li> <li>• Concerned that the GAC request to allow governments to or the GAC itself to object to an application without going through the formal objection process may be seen as a way to circumvent the process. There must be a level playing field for all participants in the new gTLD process.</li> <li>• GNSO Council considers that geographic names are already afforded special treatment in the Applicant Guidebook recognizing the GAC claim that geographic names are special cases deserving of special rules.</li> <li>• Concerned that governments being allowed to force any gTLD registry to suspend any name at the second level, does not give the registrant any avenue of recourse and is inconsistent with the rights determination procedures of the UDRP.</li> </ul>
<p><b>26 May 2009</b></p>	<p>Karklins to Twomey, 26 May 2009 <a href="http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf">http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf</a></p> <ul style="list-style-type: none"> <li>• Proposal in relation to geographic names at the second level is acceptable to the GNSO, and is repeated in the letter.</li> <li>• Notes that on other issues relating to geographic names at the top level and the potential misuse of the respective names on the seconds, the GNSO and GAC are not in agreement. The GAC will engage in further discussion in</li> </ul>

	Sydney.
9 April 2009	<p><b>ccNSO comments on version 2 of the Applicant Guidebook</b>  <a href="http://forum.icann.org/lists/2gtld-guide/msg00018.html">http://forum.icann.org/lists/2gtld-guide/msg00018.html</a></p> <ul style="list-style-type: none"> <li>• Reiterates principle that all country and territory names are ccTLDs – not gTLDs</li> <li>• The dividing line between gTLDs and ccTLDs will be blurred and sooner or later disappear if ICANN allows country and territory names to be gTLDs</li> </ul>
16 May 2009	<p><b>Board Workshop in Vienna</b></p> <ul style="list-style-type: none"> <li>• Agreed to revised definition of country and territory names, which no longer refers to ‘meaningful representation’</li> <li>• Agreed to revised approval level of regional names</li> <li>• Agreed that country and territory names be allowed in new gTLD process as ccTLDs are two letter country codes; and everything else is a gTLD.</li> </ul>
30 May 2009	<p>Changes to treatment of geographic names in Applicant Guidebook:</p> <ul style="list-style-type: none"> <li>• In response to Board resolution of 6 March, meaningful representation of country and territory names definition provided in Applicant Guidebook Version 2 is replaced with a definition providing more clarity and less ambiguity for applicants.</li> <li>• The GAC’s recommendation (letter of 26 May 2009) of a reservation of country/territory names contained on three lists at the second level is reflected in the draft registry agreement</li> </ul>
30 May 2009	<p><b>Excerpt from Guidebook – Geographical Names – contains revised definitions</b></p> <p><i>Categories of Strings Considered Geographical Names</i></p> <p>The following types of applications are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:</p> <ol style="list-style-type: none"> <li>1. An application for any string that is a <i>country or territory name</i>. A string shall be considered to be a country or territory name if: <ol style="list-style-type: none"> <li>a. it is an alpha-3 code listed in the ISO 3166-1 standard.<sup>1</sup></li> <li>b. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.</li> <li>c. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.</li> <li>d. it is the short- or long-form name association with a code that has been designated<sup>2</sup> as “exceptionally reserved” by the ISO 3166 Maintenance Agency.<sup>3</sup></li> <li>e. it appears in the “Remarks” column next to a code designation in the ISO 3166-1 standard as any of: “often referred to as,” “includes,” “comprises,” “variant,” or “principal islands,” or a translation of the name in any language.</li> <li>f. it is a separable component of a country designated on the “List of Separable Country Names,”<sup>4</sup> or is a translation of a name appearing on the list, in any language.</li> <li>g. it is a permutation or transposition of any of the names included in items “a” through “f”. Permutations include removal of spaces, insertion of punctuation, and removal of grammatical articles like “the.”</li> </ol> </li> <li>2. An application for any string that is an exact match of a <i>sub-national place name</i>, such as a county, province, or state, listed in the ISO 3166-2 standard.</li> <li>3. An application for any string that is a representation, in any language, of the <i>capital city name</i> of any country or territory listed in the ISO 3166-1 standard.</li> </ol>

	<p>4. An application for an associated with the city name.</p> <p>5. An application for a string which represents a <i>continent or UN region</i> appearing on the “Composition of macro geographical (continental) regions, geographical subregions, and selected economic and other groupings” list.5</p> <p>In the case of an application for a string which represents a continent or UN region, documentation of support will be required from at least 60% of the relevant governments in the region, and there may be no more than one written objection to the application from relevant governments in the region and/or public authorities associated with the continent or the UN region.</p> <p><a href="http://www.icann.org/en/topics/new-gtlds/draft-geographical-names-30may09-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-geographical-names-30may09-en.pdf</a></p>
<b>31 May 2009</b>	<p>Analysis of public Comment Analysis on V2 of the Applicant Guidebook, which includes response to the ccNSO’s comments.</p> <ul style="list-style-type: none"> <li>• While understanding the concern that it is important to maintain the distinction between a ccTLD and a gTLD, there is also anticipation that governments may want a .country name TLD, and at this time, this is only possible under the new gTLD process. The GAC has expressed the sentiment of a government’s sovereign rights over the use of their respective country name. Therefore, it would seem inappropriate to deny a government (or better that ICANN does not have the authority to deny) the right to submit or support an application for a .country name TLD under the new gTLD process. The new gTLD process is clear that an application for a country or territory name must be accompanied by government support.</li> </ul> <p><a href="http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf">http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf</a></p>
<b>Sydney 24 June 2009 GAC Communiqué</b>	<p>Discussed the Draft Applicant Guidebook version 2 and felt it did not yet respond to all the concerns raised by governments, in particular the need for adequate protection of geographic names (on the top and the second levels) and delegation/re-delegation procedures</p>
<b>6 July 09</b>	<p>ccNSO comments on Excerpt from Guidebook – Geographical Names <a href="http://forum.icann.org/lists/e-gtld-evaluation/msg00006.html">http://forum.icann.org/lists/e-gtld-evaluation/msg00006.html</a></p> <ul style="list-style-type: none"> <li>• Reiterates previous comments</li> <li>• Wants the ‘meaningful representation’ definition be reinserted into the Guidebook</li> <li>• Allowing a TLD which represents a country name is likely to create a situation where ICANN will be caught up in the internal policy of a country</li> </ul>
<b>18 August 2009</b>	<p>GAC comments on Applicant Guidebook v2</p> <ul style="list-style-type: none"> <li>• Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the g TLD space.</li> <li>• gTLD strings with geographic names other than country names or territories (so called geo TLDs) should follow specific rules of procedure. Government or public authority should be able to initiate redelegation process perhaps because of infringement of competition legislation, misuse or breach of contract, or breach of the terms of support or non-objection. In cases of change in the ownership structure, ICANN should establish a new process of approval or non-objection.</li> </ul> <p><a href="http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf">http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf</a></p>
<b>22 September 2009</b>	<p>Letter from Peter Dengate-Thrush responding to GAC comments</p> <ul style="list-style-type: none"> <li>• it is only possible to provide country name TLDs under the new gTLD process at this time. Treatment of country and territory names in V2 was developed in context of points raised by GAC, ccNSO, and the GNSO policy recommendations. Safeguards have been developed to respect sovereign rights. It is ultimately the government or public authority’s discretion whether to support or not support an application.</li> </ul>

	<ul style="list-style-type: none"> <li>Nothing to prevent a government or public authority conditioning the granting of their approval of TLD requests to the TLD operator and so can influence policy making. If designated a community TLD will have restrictions in its agreement.</li> </ul> <p><a href="http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf">http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf</a></p>
<b>4 October 2009</b>	<p><b>Applicant Guidebook Version 3</b></p> <p><i>2.1.1.4.1 Strings Considered Geographical Names</i></p> <p>The following types of applications are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:</p> <ol style="list-style-type: none"> <li>1. An application for any string that is a <i>country or territory name</i>. A string shall be considered to be a country or territory name if: <ol style="list-style-type: none"> <li>i. it is an alpha-3 code listed in the ISO 3166-1 standard.</li> <li>ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.</li> <li>iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.</li> <li>iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.</li> <li>v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.</li> <li>vi. It is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”</li> </ol> </li> <li>2. An application for any string that is an exact match of a <i>sub-national place name</i>, such as a county, province, or state, listed in the ISO 3166-2 standard.</li> <li>3. An application for any string that is a representation, in any language, of the <i>capital city name</i> of any country or territory listed in the ISO 3166-1 standard.</li> <li>4. An application for a <i>city name</i>, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.</li> <li>5. An application for a string which represents a <i>continent or UN region</i> appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.5</li> </ol> <p>In the case of an application for a string which represents a continent or UN region, documentation of support will be required from at least 69% of the relevant governments in the region, and there may be no more than one written objection to the application from relevant governments in the region and/or public authorities associated with the continent or the UN region.</p> <p><a href="http://icann.org/en/topics/new-gtlds/comments-3-en-htm">http://icann.org/en/topics/new-gtlds/comments-3-en-htm</a></p>
<b>Seoul 28 October 2009</b>	<p>Provided comments on the Applicant Guidebook version 2 in its letter to the Board dated 18 August 2009. Chairman of the Board replied on 22nd September. Following discussions in Seoul the GAC felt that many of its concerns remain outstanding, related in particular to the need to respect national public interests and sovereign rights regarding strings with geographical meaning.</p>
<b>21 November 2009</b>	<p>Letter from ccNSO to Board raising concerns about the treatment of geographic names. The ccNSO also submitted these comments via the public comments on v3 of the Applicant Guidebook.</p> <p><a href="http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf">http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf</a></p> <ul style="list-style-type: none"> <li>Requests that ICANN prohibit the introduction of gTLDs consisting of the</li> </ul>

	<p>name of a territory listed in ISO 3166-1 or a meaningful abbreviation of it</p> <ul style="list-style-type: none"> <li>• Distinction between ccTLDs and gTLDs, as stated in RFC 1591 and acknowledged by ICANN in its own words, is that ccTLDs are country or territory designations while gTLDs are not.</li> <li>• V3 of Applicant Guidebook fails to address multitude of post-delegation issues ICANN is likely to face in connection with the introduction of country/territory designations in the gTLD space.</li> </ul>
<b>15 February 2010</b>	<p>Analysis of public comment on v3 of the Applicant Guidebook and includes response to ccNSO's comments.</p> <ul style="list-style-type: none"> <li>• The Board is aware of the possibility of entities seeking a .country name with appropriate government support, although this possibility is not the only consideration with regard to geographic names. If one of the practical characteristics of a ccTLD is to remain (for the time being) its two-character nature, then the only mechanism for delegating and deploying such strings is that of a new gTLD. As a basic principle, ICANN would not want to be in a position of opposing such delegation against the clear wishes of a national government.</li> <li>• It is acknowledged that post- delegation problems may arise with a .country name where a government may wish to see different arrangements apply because of changed circumstances.</li> <li>• A government or public authority has the option of applying conditions on a TLD operator as part of their initial support for a .country name, thereby putting itself in a position to influence the policies of the operator.</li> <li>• If a geographic name TLD designates itself as a community TLD it will have specific restrictions in its agreement which, if breached (for example, through registration restrictions), enable the government to lodge an objection and the decision maker can order the registry to comply or face sanctions. It is possible that a Government may take some comfort from the existence of a contract between ICANN and the .country operator, particularly if the government does not have a mechanism to provide input or contribute to the operations and management of its ccTLD.</li> </ul> <p><a href="http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf">http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf</a></p>
<b>Nairobi 10 March 2010</b>	<p>GAC comments on Applicant Guidebook V3  <a href="http://www.icann.org/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf">http://www.icann.org/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf</a></p> <ul style="list-style-type: none"> <li>• Provides an interpretation of para 2.2 of the GAC principle: "...strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP, and other geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority."</li> <li>• Raised concerns about the lack of post-delegation procedures if the government or public authority withdraws its support for a registry. Suggested that a possible way to address this would be to include a clause in the registry agreement requiring that in the case of a dispute between the relevant government and registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction.</li> <li>• Definition of geographical strings continues to be insufficient and is not in line with GAC principles 2.2 and 2.7, for example commonly used abbreviations or regions not listed in ISO 316-2 should also be considered geographic names.</li> </ul>
<b>10 March 2010 Board resolution</b>	<p>The Board resolved in Nairobi (2010.03.12.25) ICANN shall also consider whether the Registry Restrictions Dispute Resolution Procedure (or a similar post-delegation dispute resolution procedure) could be implemented for use by government-supported TLD operators where the government withdraws its support of the TLD.</p>

21/22 May 2010	<p>Board workshop in Dublin</p> <p>Board agrees with ccNSO and GAC proposal to make country and territory names unavailable in the first round of the new gTLD process. They reconfirmed their support for the current definition of country and territory names in version 3 of the Applicant Guidebook.</p>
31 May 2010	<p><b>Version 4 Applicant Guidebook</b></p> <p><b>2.2.1.4 Geographical Names</b></p> <p>Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name.</p> <p><b>2.2.1.4.1 Treatment of Country or Territory Names<sup>4</sup></b></p> <p>Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:</p> <ol style="list-style-type: none"> <li>i. it is an alpha-3 code listed in the ISO 3166-1 standard.</li> <li>ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.</li> <li>iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.</li> <li>iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.</li> <li>v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.</li> <li>vi. It is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”</li> </ol> <p>The following types of applied-for strings are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:</p> <ol style="list-style-type: none"> <li>1. An application for any string that is a representation, in any language, of the <i>capital city name</i> of any country or territory listed in the ISO 3166-1 standard. In this case, it is anticipated that the relevant government or public authority would be at the national level.</li> <li>2. An application for a <i>city name</i>, where the applicant declares that it intends to use the gTLD for purposes associated with the city name. City names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired. An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if: <ol style="list-style-type: none"> <li>(a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and</li> </ol> </li> </ol>

	<p>(b) The applied-for string is a city name as listed on official city documents.<sup>5</sup> In the case of an application that meets conditions (a) and (b), documentation of support will be required only from the relevant governments or public authorities of the city named in the application.</p> <p>3. An application for any string that is an exact match of a <i>sub-national place name</i>, such as a county, province, or state, listed in the ISO 3166-2 standard.</p> <p>4. An application for a string which represents a <i>continent or UN region</i> appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.<sup>6</sup></p> <p>In the case of an application for a string which represents a continent or UN region, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written objection to the application from relevant governments in the region and/or public authorities associated with the continent or the UN region.</p> <p>Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round.</p> <p>Explanatory Memorandum: Withdrawal of Government Support—Post delegation procedures  <a href="http://www.icann.org/en/topicsnew-gtlds/withdrawal-government-support-28may10-en.pdf">http://www.icann.org/en/topicsnew-gtlds/withdrawal-government-support-28may10-en.pdf</a></p> <p>Recommends adoption of GAC’s language that ICANN must comply with a legally binding decision in the relevant jurisdiction in the event of a dispute between a relevant Government and the registry operator; and processes and remedies also available under the Registry Restrictions Dispute Resolution Procedure are available to governments in cases where the geographic name is applied of as a community based TLD.</p>
<p><b>5 August 2010</b></p>	<p>Letter from Peter Dengate Thrush responding to GAC comments on v 3 of Applicant Guidebook</p> <ul style="list-style-type: none"> <li>• Country and territory names will not be available for delegation in the first round of the new gTLD process.</li> <li>• The definition of country and territory names will remain in order to provide clarity for applicants, and appropriate safeguards for governments and the broad community.</li> <li>• Recalls that much of the treatment of geographic names in the Applicant Guidebook was developed around the GAC Principles regarding new gTLDs.</li> <li>• Outlines communication with the GAC on geographic names since October 2008, regarding 2.2</li> <li>• Paragraph 2.7 was resolved via a formal request from the Board and correspondence between the former CEO Paul Twomey, and former GAC Chair, Janis Karklins.</li> <li>• GAC’s suggestion of including a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction is adopted.</li> <li>• Registry Restrictions Dispute Resolution Procedure is available to governments in cases where the geographic name is applied for as a community-based TLD.</li> </ul>
<p><b>23 September 2010</b></p>	<p>Letter from Heather Dryden providing GAC comments on v4 of the Applicant Guidebook:</p> <ul style="list-style-type: none"> <li>• Guidebook still does not take fully into consideration the GAC’s concerns</li> </ul>

	<p>about extending protection of geographic names. Definition of geographical strings continues to be insufficient and inconsistent with GAC gTLD principles and earlier advice. In particular, names by which countries are commonly known as and which do not appear in ISO should be given same protection as country names that do appear.</p> <ul style="list-style-type: none"> <li>• Asks ICANN to ensure that the criteria for community objections are implemented in a way that appropriately enables governments to use this instrument to protect their legitimate interests.</li> <li>• Revise city names proposal in Guidebook to ensure that this potential loophole does not arise.</li> <li>• Reiterates position that governments should not be required to pay a fee for raising objections to new gTLD applications.</li> </ul>
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**Current protection for geographic names in the applicant guidebook:**

The initial GAC advice on the treatment of geographic names in the new gTLD process was set out in the GAC Principles regarding new gTLDs, specifically the following paragraphs:

2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities; and

2.7 Applicant registries for new gTLDS should pledge to:

- a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD;
- b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

The treatment of geographic names in the applicant guidebook was developed largely to respond to the GAC principles, while taking account of the GNSO view that there should be no geographical reserved names as “recommendation 20: an application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted” will allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed.



*Responding to paragraph 2.2*

Country and territory names, as defined in the Applicant Guidebook, will not be available in the first round of new gTLDs.

Geographic names, as defined in the Applicant Guidebook, will require evidence of support, or non-objection, from the relevant government/s or public authority/s. The geographic names are categorized as follows:

- any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard,
- an application for a city name where the applicant declares that it intends to use the gTLD for purposes associated with the city name,
- an application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard, and
- an application for a string listed as UNESCO<sup>1</sup> region or appearing on the UN “composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings<sup>2</sup>” list, or a translation of the string in any language.

*Responding to paragraph 2.7*

All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and procedures for the release of these names.

Specification 5 of the Registry Agreement—Schedule of reserved names at the second level in GTLD registries

**5. Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level

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<sup>1</sup> <http://www.unesco.org/new/en/unesco/worldwide>

<sup>2</sup> <http://unstats.un.org/unsd/methods/m49/449regin.htm>

and at all other levels within the TLD at which the Registry Operator provides for registrations:

- 5.1 the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time;
- 5.2 the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
- 5.3 the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

*Responding to possible withdrawal of government support for registry operator*

A clause will be included in the Registry Agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction.

In addition, the processes and remedies of the Registry Restrictions Dispute Resolution Procedure are available to governments in cases where the geographic name is applied for as a community-based TLD.

Submitted by:	Donna Austin	Kurt Pritz
Position:		Senior Vice President, Services
Date Noted:	28 October 2010	
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## **2010-10-28-20 Annex-to-ICM**

**ANNEX TO BOARD SUBMISSION NO. 2010-10-28-xx**

**SUBMISSION TITLE:           Review of Proposed ICM Registry Agreement for Potential Inconsistencies with GAC Advice**

**Additional Information for the Board:**

The full Summary and Analysis of the Public Comment received on the Registry Agreement is attached here as Attachment A.

A chart identifying each of the communications containing GAC advice on the .XXX sTLD is attached as Attachment B.

ICM's identification of how the terms of its proposed Registry Agreement are consistent with GAC advice is attached as Attachment C.

An short chart identifying where ICANN is in the process of consideration of ICM's application is provided below.



Submitted by:                   John Jeffrey  
Position:                        General Counsel and Secretary  
Date Noted:                    20 October 2010  
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# **2010-10-28-20 Attachment-A-XXX-Summary-Analysis**

## **Summary and Analysis of Comments for Revised Proposed Registry Agreement for .XXX sTLD and Due Diligence Documentation.**

**Comment Period: 24 August 2010 to 23 September 2010**

*This summary is not a full and complete recitation of the relevant comments received. It is an attempt to capture in broad terms the nature and scope of the comments. The summary has been prepared in an effort to highlight key elements of these submissions in an abbreviated format, not to replace them. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional.*

### **BACKGROUND**

On 25 June 2010, the Board of Directors determined to accept and act in accordance with some of the Independent Review Panel's findings in relation to ICM Registry LLC's (ICM) challenging ICANN's denial of ICM's application for the .XXX sTLD.

The Board of Directors directed ICANN staff to conduct expedited due diligence of ICM and to proceed into draft contract negotiations with ICM (board resolution 2010.06.25.20). See <http://www.icann.org/en/minutes/resolutions-25jun10-en.htm#5>.

On 5 August 2010, the Board directed staff, upon receipt of ICM's application documentation, to post ICM's supporting documents and proposed registry agreement for public comment for a period of no less than 30 days. See <http://www.icann.org/en/minutes/resolutions-05aug10-en.htm#9>.

### **SUMMARY AND ANALYSIS**

#### **General Overview**

Approximately 720 comments were received during the public comment period.<sup>1</sup> A small number of postings were identified as sent in error, obvious spam, or repeat postings, and every attempt is made to exclude these posting from statistical analysis. In addition, the total comments do not necessarily equal the number of individual commenters, as some made multiple (though not duplicate) submissions, ICANN reviewed each of the submissions received.

As evidenced in prior public comment periods during the course of ICM's application for the .XXX sTLD, many comments addressed the general merits of a .XXX sTLD, and did not address the documents on which ICANN was seeking comment. Here, ICANN was seeking comment on the substance of ICM's due diligence materials and draft .XXX sTLD Registry Agreement, yet ICANN instead received substantial numbers of comments "for" or "against"

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<sup>1</sup> Comment submissions are posted in the chronological order they are received by ICANN systems at ICANN's main offices at Marina del Rey, California (UTC-7). The date and time stamp in the submission header is applied by the sender's system and does not necessarily correspond with the date and time received by ICANN. Because of the limited number of submissions received after the formal close of the comment period, all are included in this summary.

entering a Registry Agreement without reference to the content of the agreement or the due diligence materials posted.

A majority of comments originated from a variety of email and webform campaigns. For example, over 400 comments in support of approving the .XXX sTLD appear to have originated from a campaign run by ICM. There were also a substantial number of form or campaign postings in opposition to the .XXX sTLD, generated from a few different campaign sources. The campaigns which addressed the substance of the public comment period are discussed in the main summary sections below, with more detailed extract summaries set out in Appendix A.

Due to the large number of submissions, it is not feasible to provide a summary of each individual comment. Further, many comments, while providing substantive analysis of the items posted for comment, re-state the positions put forth by other commenters. To that end, ICANN does not provide links to each of the related positions, but has attempted to make sure that the substance of the comments is reflected here.

As with other voluminous public comment periods, ICANN applied the following criteria to each submission to identify, which would be individually summarized:

- (1) The submission must substantively discuss the Registry Agreement or Due Diligence documentation posted for public comment. Submissions that only contain a statement such as “sign the Registry Agreement” or “no to the Registry Agreement” are not individually summarized. Submissions that provide discussion on the general merits or perceived issues with the introduction of the .XXX sTLD, or impressions regarding the overall process surrounding the ICM application were not individually summarized, though information about those submissions are provided in the statistical analysis.
- (2) The submission is not visibly a form response or substantially similar to a form response. ICANN attempts to identify each major thread of form responses outside of the individual summary section.
- (3) The submission must contain substantial discussion capable of summarizing.

## **SUMMARY OF INDIVIDUAL SUBMISSIONS**

George Kirikos, President of Leap of Faith Financial Services, Inc., provided comments in opposition to the draft .XXX sTLD Registry Agreement. Mr. Kirikos cited: (1) lack of support of the adult industry, with a self-defining – and unidentified – segment of the adult community serving as the sponsoring community; (2) lack of support from the broader Internet community, stating that all new TLDs should serve the broader public interest and should be subject to a “costs vs. benefits analysis”; (3) the .XXX sTLD Registry Agreement does not include price caps, which could create premium pricing for high value domain names, as well as place registrants at risk of unlimited increases in fees. Further, all TLD agreements should contain price caps; the lack of price caps in one registry agreement could induce other registries with price caps in their agreements to seek removal of those caps under “equitable treatment” clauses; and (4) the trademark protection provisions require the community to take time and money to make defensive registrations, while ICANN places its names on a reserved list for free. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00000.html>.



“Itzmail” commented that Whois Privacy Protection should be allowed in the .XXX sTLD to protect free speech in restrictive regimes. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00001.html>. Another commenter, Eric Shannon, states “ICANN should not allow whois privacy.” See <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00004.html>. Mr. Shannon’s call for elimination of Whois privacy appears to relate to minimization of costs for the protection of trademarks.<sup>2</sup> In response to Itzmail’s comment, Stewart Lawley – on behalf of ICM – clarified that approved proxy services are authorized under the proposed Registry Agreement. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00002.html>.

Quentin Boyer, Director of Public relations at Pink Visual, notes the difficulties surrounding ICANN’s consideration of ICM’s application, and echoes the concerns raised by others regarding the self-definition of the sponsored community. Mr. Boyer notes that even if sponsorship is a closed issue, “ICANN ought to at least require ICM to define the “Policies and Best Practices that the Sponsored Community has (by ICM’s own definition) apparently already ‘agreed’ to.” Mr. Boyer also provided guidance to ICANN in considering future sTLDs, stating “ICANN should also establish objective criteria for demonstrating the support of the affected business sector at issue in any sTLD proposal.” Mr. Boyer concludes that the Registry Agreement as written ignores the community that should be properly represented here, and will serve the interests of ICM and third party registrars to profit from sales in the .XXX sTLD. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00048.html>.

Diane Duke, on behalf of the Free Speech Coalition, provided a lengthy letter. She urges that the “Board should not be prepared to approve ICM’s application unless it is convinced that ICM can actually accomplish what it promises.” Ms. Duke raises many questions regarding the sufficiency of the sponsored community when there already exists a community of responsible online adult entertainment providers – those who subscribe to the FSC’s code of ethics – and those providers do not support the ICM application for the .XXX sTLD. Ms. Duke raised the issue of confusion or misrepresentation regarding the level of support for the sponsorship community. One issue is the concern that those who pre-registered in the .XXX sTLD are being identified as supporters of ICM, despite an ICM statement “that pre-registrations would not be used as a show of support for .XXX.” Ms. Duke notes a lack of transparency into ICM’s use of this preregistration information to show support for the .XXX, and requests that the ICANN Board to “make sure that pre-registrations are not considered as a component of sponsorship community support for ICM.”

The FSC notes additional transparency concerns with the items posted for public comment, including the cloaking of the names of IFFOR Board members and proposed members of the policy council until a time “after ICM and IFFOR are enabled as content regulators.” FSC calls for the release of the following information to allow for full information on the .XXX sTLD Registry Agreement:

1. The list of the IFFOR Board members;
2. The list of proposed members of the Policy Council;
3. IFFOR’s Business Plan/Financials;
4. Business Plan/Financials Years 1-5 utilizing 125,000 initial Registrations;
5. The list of .XXX sTLD pre-registrants who have been identified to ICANN;

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<sup>2</sup> Eric Shannon also suggested a provision that all revenue from the .XXX sTLD be donated to “charity in support of the victims of the adult industry.” <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00004.html>. According to Mr. Shannon, the removal of Whois proxy protection and the donation of revenue will reduce the appearance that “.xxx is a business opportunity for ICANN.”

## 6. ICM's Proof of Sponsorship Community Support as submitted to ICANN.

The FSC requested the information above through ICANN's Documentary Information Disclosure Policy, and requested that, upon disclosure, the community have an additional 30 days to review this information and provide public comment. As part of the transparency argument, Ms. Duke raises the issue of how any group should be forced to consent "in advance to unknown regulations to be imposed by unknown people not directly responsible" to the adult entertainment community.

The FSC also noted that ICM is making promises both to the adult community and to those who want to burden sexually oriented expression regarding the policies that will be generated, and ICANN may ultimately be involved in the resulting conflicts. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00088.html>.

The FSC provided two additional submissions to the public comment forum. One was an overview of a petition drive, where it posed the following statements on a questionnaire: (1) "I am a member of the online adult entertainment community and I opposed ICM's application for a .XXX sTLD" and (2) "I have defensively pre-registered .XXX domain names and I oppose .XXX." FSC reports that 201 out of 213 respondents checked approval for the first question, and 56 out of 213 respondents supported the second statements. FSC provided redacted email addresses for each of the 213 respondents, and a preliminary check against the persons submitting comments into the public comment forum did not reveal duplication. See <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00705.html>.

The Free Speech Coalition also submitted a lengthy statement regarding the sponsored community, noting "FSC and the adult community believe that the facts surrounding level of support, or lack thereof, for ICM's proposal within the sponsorship community have been and are being confused or misrepresented." Diane Duke, writing on behalf of the FSC, attached a copy of a discussion thread from XBIZ.net, an adult community discussion board where Stuart Lawley engaged with members of the online adult community on that and other topics related to the .XXX sTLD. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00704.html>.

ICM, through Stuart Lawley, submitted a response to the FSC's first statement, stating that the questions raised therein have been asked and answered, and should not be "reopened" pursuant to the Board's determination in Brussels to accept the finding of the Independent Review Panel that the Board already determined that ICM met the sponsorship criteria. ICM challenged FSC's position as the "'the' trade association for the global adult entertainment industry" and notes that FSC's has approximately 1,000 members and its activities are directed exclusively towards the U.S. ICM notes that "IFFOR is of a global nature, and to date, ICM has received pre-reservations from over 9,000 members of the Sponsored Community from over 80 different counties." ICM states that the definition of the sponsored community has not changed since ICM submitted its application to ICANN in March 2004 – it has always been self-defining. On the topic of pre-registration service, ICM states that pre-registrations have been "cited numerous times [] as evidence of the sponsored community's desire to register names in .XXX," and provides statistics on pre-registrations identified as "defensive" in the system. Further, the issue of the sponsored community was decided prior to the launch of the pre-registration service. On the IFFOR Policies, ICM notes that the baseline policies are "specif[ied] in detail, and particular the

processes by which additional policies and procedures will be developed.” ICM challenges the suggestion that either ICANN or the public has insufficient information as “patently absurd”. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00090.html>.

Nick Hentoff of AttorneyWebNet noted his support for the Registry Agreement, and commented that Registry Agreements and registrar agreements should include provisions that domain registrants are third party beneficiaries of those agreements. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00091.html>.

Jason Hart, President of Northstar Productions LLC and a stated member of the adult online community, echoed concerns raised by others, that there is no need for an organization to represent a “responsible” global online community when such a community already exists through the FSC. Mr. Hart also echoed concerns relating to the transparency of information available on ICM’s application, including the omission of IFFOR Board and policy council member names, and the lack of established “IFFOR Policies and Best Practices” with which the sponsored community will be required to comply. Mr. Hart also called for additional information to be made available prior to the close of the public comment period, to allow for “the appropriate level of feedback to the ICANN Board for it to make an informed decision.” <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00106.html>.

Danny Younger provided an extensive analysis of whether the proposed Registry Agreement is consistent with GAC advice, concluding that it is not. Mr. Younger’s analysis, “predicated on the premise that any GAC commentary referencing the proposed .XXX sTLD [is] GAC Advice,” is broken up into a number of headings, including: (i) controversial strings; (ii) personal names; (iii) country names and geographical identifiers; (iv) historical, cultural and religious names; (v) trade mark rights; (vi) access to illegal and offensive content; (vii) protecting vulnerable members of the community; (viii) maintaining accurate registrations and interaction with law enforcement; (ix) public interest benefits; (x) sponsored community and public interest criteria; (xi) enforceable contract provisions; (xii) ‘opposition to the introduction of .XXX’; (xiii) ‘deficiencies [sic] identified by the sponsorship and community evaluation panel’; and (xiv) ‘GAC advice on new TLDs’. Mr. Younger concludes under many headings that more specific guidance is needed from the GAC or that more specific provisions should be required from ICM. Mr. Younger also notes that after the Board accepted the certain findings of the Independent Review Panel, more outreach to the GAC should have occurred. Mr. Younger specifically notes the absence of information on how ICM’s application serves the global public interest as a whole. Mr. Younger also urges the Board to consider whether the approval of the .XXX sTLD will result in lessening the burdens of government. Mr. Younger’s answer to that question is no – but the GAC should be consulted. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00144.html>.

A member of the adult community identified as “Tickler” expressed his lack of support for the .XXX sTLD. Tickler provided multiple reasons for objection, including a lack of detail in the .XXX proposal to make informed comments, including the need for domain dispute and resolution procedures to be fleshed out, the sources of members for the IFFOR Board needs to be clarified, as well as more details on the “mandates and financing.” Tickler also questioned the reach of the IFFOR policy, and whether it would reach content on sites in existing TLDs, which sites are reached through redirecting traffic from a .XXX registration. Tickler also noted that the “whole issue with IFFOR has problems”, including the fact that it is created and financed by ICM, not run by the adult industry, deals in very general terms.

proposes a labeling system and is not needed, and that those who have come out in support of ICM are engaging in practices contrary to the IFFOR rules.

Tickler joined others in requesting additional action by ICANN, including:

1. Verify that companies that ICM has listed in support are viable "adult" businesses,
2. Verify that companies listed in support in fact do support ICM's current application for a .XXX TLD,
3. Determine how many pre-registrations claimed by ICM are in fact defensive registrations,
4. Determine how many pre-registrations are registrars or companies hoping to re-sell domain names.

Tickler also provided commentary on the GAC's advice on the .XXX, noting the ability for nations to block the .XXX sTLD through ISP communities, the risks of "inflammatory phrases" in TLDs without input from the true sponsored community. Tickler also discussed concerns with the self-defining nature of the .XXX sTLD sponsored community, and the lack of representation or support from the "REAL" adult community. See: <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00292.html>

Allan B. Gelbard, an attorney to many members of the adult entertainment community, wrote to express his personal opposition to the .XXX sTLD. As it relates to provisions in the registry agreement, Mr. Gelbard notes that granting the Registry Agreement and "forcing trademark holders to pay ICM to defensively protect their marks" may constitute contributory trademark infringement under U.S. laws, which could expose ICANN and ICM to litigation, as well as potential antitrust litigation. Mr. Gelbard then reiterates many of the arguments already made during the comment period, regarding ICM's "attempt[ ] to mislead the ICANN Board as to the level of industry support", specifically in the use of pre-registrations to demonstrate community support, and calls for the disclosure of information requested by other commenters. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00311.html>.

A commenter identified as Nigel questions whether the approval of the .XXX sTLD Registry Agreement will be in line with ICANN's core values, as it will fail to preserve and enhance the operational stability and global interoperability of the domain name system, and the ignoring of the "international outcry" of adult webmasters will also go against ICANN's core values. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00313.html>.

Ed Pressman raised the issue that IFFOR appears to be a "pass-through" organization with a "prima facie conflict of interest" with ICM. Mr. Pressman pointed to issues such as ICM selecting the IFFOR Board members, and ICM will be afforded the only permanent Board seat on IFFOR to demonstrate the conflict of interest. Mr. Pressman also raised a concern that "little actual thought has been put into any of the serious governance issues" and questioned why ICANN would hand oversight over such issues to ICM or an organization run by ICM. Mr. Pressman urged ICANN to slow the process for the selection of the governance organization. Mr. Pressman then declared a personal interest due to his work with "an effort to develop an application that will objectively and scientifically deal with many . . . of the major governance issues involved in this matter," and urges ICANN to invite others to provide solutions to the governance issues that will be posed in the .XXX TLD. See: <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00347.html>.

Tom Hymes, an FSC Board member and employee of AVN, writes in his personal capacity in opposition to the .XXX sTLD Registry Agreement. Mr. Hymes states that the sTLD process is flawed “due to its lack of transparency and the unfortunate decision to exclude the sponsor community from any direct role in the application, and also the fact that ICANN’s internal processes for determining the accuracy of claims made by applicants are insufficient, at best.” Mr. Hymes also expresses his hope that the Board will consider the issues raised by the GAC, and not determine those issues to be solved. Mr. Hymes states that ICANN has an active role to take in protecting rights of those at risk of censorship through the approval of this application. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00702.html>.

The Intellectual Property Constituency (IPC) of ICANN’s Generic Names Supporting Organization (GNSO) provided comment noting the strong commitment to rights protection mechanisms in the .XXX sTLD proposed Registry Policy. The IPC noted that additional “detail and transparency” to allow for implementation and application of the policies, particularly in light of the “uniquely sensitive implications” to rights holders as it relates to the .XXX sTLD. The IPC encourages the inclusion of additional detail, and provides specific questions, including: (1) ability for persons and entities not qualified for registration in the .XXX sTLD to recover names through the UDRP process; (2) proxy service provider restrictions; (3) details on the Charter Eligibility Dispute Resolution Process, Rapid Takedown and Registrant Disqualifications, and “STOP processes; (4) information on the “tie-breaker” mechanism; (5) scope of definition of “trademark holders” with access to discounted registrations; (6) how non-resolving names will be provided to those submitting pre-registration; and (7) definitions of “culturally significant names” or “country and geographic designators reserved list” and how they relate to trademark rights. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00718.html>.

Some commenters provided suggestions for the operation of the .XXX sTLD – and potential items for inclusion within a Registry Agreement – without expressing support for or opposition to the Registry Agreement as currently proposed.

For example, Markus Grob suggests that the .XXX Registry Agreement should require registrations of subdomains based on existing TLDs, and not allow registrations directly at the second level. Mr. Grob also suggested that adult content should be migrated to the .XXX sTLD and off of the existing TLDs for “eas[e of] filtering for children.” *See*: <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00006.html>

Mark Randazza, while “agnostic” on the sTLD, notes that the introduction of the certain measures might “push [him] over the fence to supporting this proposal.” These measures include: (1) forbidding “passive holding” of domain names, and requiring use (not including “pay per click” sites); (2) “high value non-branded” domains are not available for general registration, and the Registry Operator may sell ad space on these domains; (3) creation of an arbitration process allowing for (i) quick takedown of sites and (ii) “blacklisting” of domains; (3) allowing existing adult sites to specify “unregisterable” status of protected names in the .XXX sTLD for payment of a nominal fee; (4) banning of content with underage or unwilling models; (5) a higher registration fee, with \$50 going towards a legal defense fund to fight obscenity prosecution; and (6) creation of “repeat infringer policies” to take down web hosting domains with infringing content. *See* <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00097.html>

## **OVERALL ANALYSIS OF COMMENTS**

As with the prior comment period relating to ICM's application, many of the public comment submissions either did not address the documents posted for public comment, or the submissions focused on similar issues within those documents. Well over 50% of the submissions were based on common templates or campaigns. Some commenters provided helpful suggestions on ways that the Registry Agreement could be made more precise, and some pointed out information that the ICANN Board may wish to consider when considering a proposed Registry Agreement. While the public comment period was not seeking a community vote on whether to proceed with the .XXX sTLD, ICANN received nearly evenly divided commentary.

## **I. Comments in favor of the .XXX Registry Agreement**

Over half of the commenters<sup>3</sup> supported ICANN entering the .XXX Registry Agreement. Only one major trend of those comments relates to the substance of the posted documents: *"The delegated policy making authority, in conjunction with the not-for profit IFFOR, is clearly articulated in the posted documents and allows for multi-stakeholder input whilst at the same time adhering firmly to its charter."*

The other top reasons provided in support of entering the .XXX Registry Agreement and allowing registrations to begin were:

- The .XXX sTLD will provide a mechanism to filter adult-oriented content and protect kids;
- Registrations should begin, to allow for market forces to determine the need for the .XXX sTLD; and
- ICANN should abide by the decision of the Independent Review Panel and end the process surrounding ICM's application.

Within the comments in support of the .XXX Registry Agreement, over 90% of those submissions were made through common template or campaign submissions, set forth in Appendix A below. Nearly 60% of the commenters in support of the Registry Agreement claimed to be affiliated with the sponsored community to be served by the .XXX sTLD.

## **II. Comments in Opposition to the .XXX Registry Agreement or the .XXX sTLD**

The comments received in opposition to the .XXX Registry Agreement also revealed major trends supporting the opposition:

### **A. Requests for More Information**

As set out in the individual summaries, FSC called for two types of information: (1) for ICANN to verify information as it relates to pre-registrations in the .XXX sTLD; (2) for disclosure of information previously redacted by ICM or withheld as confidential, including the identities of the IFFOR Board members and the IFFOR Policy Council. This call for more information, accompanied by a request for an extension of the public comment period, was echoed in many common template and freeform submissions.

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<sup>3</sup> Or nearly two-thirds of all commenters, if FSC's report of 213 survey recipients is not counted.

Many commenters also repeated concerns regarding the fact that the policies that registrants in the .XXX sTLD will have to agree to – policies to be formed through the IFFOR – have not yet been formed or identified.

**B. *Requests for Clarification of Policies***

Separate from the argument that Policies are not well defined, there were calls for clarification of ICM’s registration policies, particularly in relationship to trademark protections.

**C. *Additional Registry Agreement Related issues cited in opposition***

- Registry Agreement is inconsistent with GAC advice;
- The Registration Fee is too high and will impose high costs on small business owners;
- Adult content is not well defined, and could result in over classification of content into the .XXX sTLD, of particular concern if governments move to mandate content into the .XXX sTLD;
- The Sponsored Community is improperly defined and/or does not actually support the creation of the .XXX sTLD; and
- ICM misrepresented to ICANN the scope of support from the sponsored community.

**D. *Non-Registry Agreement Related issues cited in opposition***

Many commenters supported objection to the .XXX Registry Agreement on more general issues not directly related to the content of the Registry Agreement or the Due Diligence Material. The major reasons cited include:

- A lack of support from the general internet community;
- No proof of a demand for the establishment of the .XXX sTLD;
- The creation of the .XXX sTLD will not solve issues relating to kids’ ability to access adult material – create a .KIDS instead;
- Content tagging already exists and the .XXX sTLD will not add further benefit;
- The risk of forced content migration to the .XXX sTLD through legislation, and the risk of censorship;
- The only party to benefit will be ICM; and
- ICANN will become involved in content discrimination through opening the .XXX sTLD.

All of these issues have been raised before in earlier public comments.

**III. Sponsored Community Definition Issues**

Many of those commenting in opposition to the .XXX Registry Agreement raised concerns regarding the sufficiency of the definition of the Sponsored Community. The issue of the sufficiency of the sponsored community comprised a large part of the issues considered by the Independent Review Panel in its February 2010 Declaration.

As seen in Mr. Kirikos' and the FSC comments, among others, there is a concern that the definition of the sponsored community, comprised of providers "who have voluntarily determined that a system of self-identification would be beneficial and have voluntarily agreed to comply with all [IFFOR] Policies", is too self-defining and is not capable of being objectively determined. Moreover the FSC and its supporters argue that though they are adult entertainment providers who are the likely registrants within the .XXX sTLD, that they are not truly members of the sponsored community because they do not agree to be bound to undetermined policies. Further, they argue, FSC's Code of Ethics already provide for such self-regulation. ICM responded to these arguments, noting the IRP's decision as accepted by the Board, and further noting that the self-defining nature of the sponsored community has been in place in prior agreements.

Another aspect of challenge to the sponsored community definition and measured support has to do with ICM's alleged use of the pre-registration lists to identify community support for the .XXX sTLD. Commenters cited a 2007 statement by ICM that certain pre-registrations would not be used to demonstrate the support of the sponsored community, and request confirmation from ICANN and ICM that pre-registrations are not being used in that fashion. Many commenters noted that they preregistered domain names in the .XXX sTLD to protect their own business interests, but that pre-registration does not equate to support for the .XXX sTLD, and they in fact do not support the creation of the .XXX sTLD. <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00341.html>; see also <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00143.html> (also noting that the industry has a means for self identification of sites for labeling).

Within the public comment process, there have been calls for ICANN to identify and determine who is a member of the sponsored community or adult entertainment stakeholders, and who is not. See, e.g., <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00262.html>. ICANN has not attempted to verify the identity or affiliation of any person submitting public comment to the ICM forum, whether the person was in support of or opposed to the .XXX sTLD Registry Agreement. Further, ICANN has not attempted to verify the industry association or status of registrations within the ICM pre-registration information provided to ICANN.

Because of the prevalence of self-identification as a member of the Sponsored Community or as a member of the Adult Industry, ICANN provides some estimated numbers of how those members self-identifying compared to the overall contributions to the public comment forum.<sup>4</sup>

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<sup>4</sup> This chart provides an estimate of the overall comments received. Due to requests for removal from the comment thread, identified duplication and spam, there is some imprecision in the exact totals, but not to a statistically significant degree. The columns "w/FSC" reflect FSC's report on the 213 survey responses regarding the .XXX Registry Agreement. ICANN performed a spot-check and did not observe duplication between FSC's self-reported survey and those who commented directly to ICANN. For completeness, ICANN staff also reports totals without FSC's survey results.



Position	Submissions Received		Percentage of Submissions		Webform/Standard Form Submissions		Self Identified Adult Industry	
	w/FSC	w/o FSC	w/FSC	w/o FSC	w/FSC	w/o FSC	w/FSC	w/o FSC
Support Registry Agreement	455	455	50%	65%	448	448	333	333
Do not Support Registry Agreement OR No XXX	434	231	48%	33%	304	111	349	146
Neutral	7	7	1%	1%	0	0	0	0

#### **IV. Extension of Public Comment**

Regarding the call for the extension of the public comment period, that request was not granted. The extension was requested for an additional 30 days past the release of information provided in response to the FSC's request submitted under ICANN's Documentary Information Disclosure Policy (DIDP). The DIDP request did not result in the release of any additional information, as whatever information ICANN had that was responsive to the request was designated as confidential by ICM. ICANN requested that ICM release the confidential designation, and ICM denied ICANN's request.

#### **NEXT STEPS**

This summary will be presented to the ICANN Board for consideration at the 28 October 2010 Board meeting.

#### **CONTRIBUTORS**

Due to the large volume of postings, a listing of individual contributors will not be included in this report. Each of the contributors can be viewed via their public comments posted at <http://forum.icann.org/lists/xxx-revised-icm-agreement>

## APPENDIX A – LISTING OF CAMPAIGN/TEMPLATE RESPONSES RECEIVED

Consistent with previous public comment periods in relation to ICM’s application for the .XXX sTLD, various public comments were observed to be completely or partially adopting the form of template text submissions originating from various external campaigns.

The more commonly observed template responses that were received by the public forum have been outlined:

### V. Common Templates in Support of Entering Registry Agreement:

#### A. *“Please Approve the .XXX Registry Agreement” postings*

ICM Registry created three variations of common template submissions. According to ICM, in a report on the email newsletter campaign, ICM sent emails to its subscribed database of pre-registrants and registered identified supporters. The email contained a click-through option, where a the user could click to post a comment, and a comments would be submitted to ICANN’s public comment forum. ICM’s report is available at <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00696.html>.

As detailed in ICM’s report, over 400 postings were received through ICM’s efforts.<sup>5</sup> There was a “Long Form” posting, as well as two shorter postings – one including a statement that the submitter is a member of the sponsored community, and urging approval of the .XXX Registry Agreement, and a second with a short statement urging approval of the .XXX Registry Agreement without any identification of affiliation. The “Long Form” statement topically addresses some of the substance within the Registry Agreement raised in other comments, including a statement that the delegated policy making authority is “clearly articulated in the posted documents.” The shorter form comments do not address substantive issues within the posted documents. Most of the comments received through ICM’s thread contain a common subject line “Please Approve the .XXX Registry Agreement.”

#### 1. Long Form:

***Subject: Please approve the .XXX Registry Agreement***

*Dear ICANN,*

*Please approve the Registry Agreement for the dot-xxx top-level domain in the form posted on your website.*

*I believe that the labelling of adult content online is a good and useful step forward.*

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<sup>5</sup> The 22 September and 23 September 2010 comment threads show nearly 300 entries related to ICM’s campaign, entries that were posted in bulk within a very short period of time on 23 September 2010. The comments were received by ICANN in “real” time, as noted in the date and time stamp of the submission header, but a system limitation required them to be posted in bulk.

*The company behind dot-xxx, ICM Registry has spent many years trying to make the extension a reality, and has given considerable thought into how a self-regulated adult area online would work.*

*The delegated policy making authority, in conjunction with the not-for profit IFFOR, is clearly articulated in the posted documents and allows for multi-stakeholder input whilst at the same time adhering firmly to its charter.*

*I urge you to execute the Registry Agreement as soon as possible and so let the registration of .XXX names begin.*

**2. Short form variants:**

**(a) Commenter self identifying with sponsored community:**

***Subject: Please approve the .XXX Registry Agreement***

*Dear ICANN,*

*As a member of the Sponsored Community for the dot-xxx top-level domain I urge you to execute the Registry Agreement as soon as possible and let registration of .XXX names begin.*

**(b) Commenter not identifying with sponsored community but in favor of .XXX sTLD:**

***Subject: Please approve the .XXX Registry Agreement***

*Dear ICANN,*

*I urge you to execute the Registry Agreement with ICM Registry as soon as possible and so let the registration of .XXX names begin.*

Some comments within the public comment forum addressed ICM's campaign submissions. ICM reported that it received three complains from those claiming to have clicked the link in error. ICANN also received complaints directly from persons who posted through ICM's email links, noting that they did not mean to consent to a public posting. ICANN removed three such postings. In addition, there were other comments received suggesting that postings through ICM's links – many titled "Please approve the .XXX Registry Agreement" and from members of the sponsored community – are not actually from people working in the adult entertainment industry. See <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00092.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00285.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00697.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00700.html>; <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00713.html>.

## **VI. Common Templates In Opposition to Proposed Registry Agreement or the .XXX sTLD**

### **A. *Request for Documentation posting***

There were approximately 15 submissions provided by persons identified as members of the sponsored community for the .XXX sTLD to request ICANN's verification of information submitted by ICM and requesting the release of additional information as requested by the FSC. Each person requesting information in this form noted that they do not support the application for the .XXX sTLD. The text included in this form submission mirrors the requests made by the FSC at <http://forum.icann.org/lists/xxx-revised-icm-agreement/msg00088.html>, summarized above. Some commenters modified the list or scope of information requested, but the common template language was substantially similar to the following text:

*Dear ICANN,*

*I am a member of the .XXX sTLD sponsored community. I do not support ICM's application for the .XXX sTLD.*

*I request that ICANN does the following:*

- 1. Verify that companies which ICM has listed in support are viable adult businesses,*
- 2. Verify that companies listed in support in fact do support ICM's current application for a .XXX sTLD,*
- 3. Determine how many pre-registrations claimed by ICM are in fact defensive registrations,*
- 4. Determine how many pre-registrations are registrars or companies hoping to re-sell domain names.*

*Additionally, I also request the following information also be released as requested in the DIDP from the FSC:*

- 1. The list of the IFFOR Board members;*
- 2. The list of proposed members of the Policy Council;*
- 3. IFFOR's Business Plan/Financials;*
- 4. Business Plan/Financials Years 1-5 utilizing 125,000 Initial Registrations;*
- 5. The list of .XXX sTLD pre-registrants who have been identified to ICANN;*
- 6. ICM's Proof of Sponsorship Community Support as submitted to ICANN.*

**B. “Do Not Approve .XXX” posting.**

The following form comment appears to be generated through a campaign run from the techyum.com website: <http://techyum.com/2010/08/comment-period-now-open-on-xxx-make-your-voice-heard/#more-1565>. Over 40 submissions contained nearly identical text to this submission.

***Subject: Do Not Approve .XXX***

*Dear ICANN,*

*This email is a comment in opposition to the Proposed Registry Agreement for the .XXX sTLD by ICM Registry. The .XXX sTLD should be rejected in finality for the following reasons:*

*\* The .xxx TLD is opposed by every sector and community it affects. This includes people working in the adult entertainment industry (including Hustler, Vivid, Penthouse, porn’s Free Speech Coalition, and Adult Friend Finder), anti-porn family and religious organizations (including The Family Research Council), thought leaders in the technology sector, and the ACLU.*

*\* Despite ICM’s constant assurances of various industry representation and support, there is no evidence of community support for .XXX.*

*\* The .xxx TLD will do nothing to solve problems surrounding adult content, manage adult content or protect children from inappropriate content. The higher purposes of ICM’s proposal have been abandoned. (As of this email the page on ICM Registry’s website about “Promoting Online Responsibility” for .XXX is blank and reads “\*Information to follow\*” as does the page titled “Contracts, Policies and Bylaws.”)*

*\* There has been absolutely no proof of an “unmet need” for the .XXX TLD.*

*\* There is no concrete, agreed-upon definition of “adult content.”*

*\* The ACLU expresses serious concerns about the implications of .XXX outside the U.S., where in some countries, regulations around .XXX would certainly be enforced punitively. To this effect, the .XXX TLD raises human rights concerns.*

*\* .XXX makes no business sense except to profit from defensive registration (brand squatting).*

*\* Senators Max Baucus (D-MT) and Mark Pryor (D-AR) have introduced legislation to make the use of .XXX compulsory for all web sites that are “harmful to minors.”*

*\* .XXX raises serious issues around spurious and unsupported TLD’s in regard to the impact of ICANN on rulings on civil and human rights, and ICANN’s role in content-based discrimination.*

*In light of the above, I object to .XXX and urge ICANN to reject .XXX.*

**C. *"I run adult websites and I do NOT want the .xxx tld" Posting***

Nearly 50 comments were received containing a very short statement in opposition to the .XXX sTLD. The comments were submitted under a variety of headings. The comments read:

***Subject: I run adult websites and I do NOT want the .xxx tld!***

*I run adult websites and I do NOT want the .xxx tld!*

**D. *Industry Self-Regulation posting***

A couple of postings that did not address the substance of the Registry Agreement or the due diligence documentation were nearly identical in form, stating:

*I am completely against .xxx. Our industry has self-regulated itself from day one and to be perfectly honest, I think we have done a brilliant job. ICM's argument is ridiculous at best. More viruses are found in mainstream than on any adult website. Online stores such as Amazon.com and many other retail / service outlets have chargebacks much higher than most of our industry. As a site owner, the only place I see fraud is from the consumer. As for "the children", any responsible owner has ratings and codes in place on their site. All we need are the parents to tun their browser settings on.*

*No matter what the banks, regulators and government have thrown our way over the years, we have always stepped up to the plate and come into compliance. .XXX is not going to help anyone: all it will achieve is to ghettoize adult sites and leave us vulnerable to censorship. It will compromise privacy policies, content creativity, hinder free speech, and take away our choices.*

*ICM does not care one iota about our industry, to them this is just a money making opportunity, that will end with the small independent webmaster going out of business and create overall hardship within the industry itself.*

*I have been in the industry, as a business owner, for the last 15 years. I know hundreds of adult webmasters and none of them are in favor of .XXX*

**E. *Community Already Represented posting***

A couple of identical posts were made by self-identified members of the adult online community expressing the opinion that the community that ICM seeks to have represented in the .XXX sTLD is already established through adherence to the FSC Code of Ethics. The postings read:

*Opposition To ICM's Proposed .XXX sTLD*

*Gentlemen:*

*Please consider these comments in opposition to ICM's Proposed .XXX sTLD. I am a professional member of the adult online community, the part most impacted by the ICANN Board's decision. My company, [\*], the registered owner of [\*] will be adversely affected if the ICM proposal is accepted. In this recessed economy, we, like many other companies, are struggling to keep our doors open. We do not need the added cost of registering another domain name, at grossly inflated charges, in an attempt to remain competitive. It is very clear by their actions that ICM is attempting to force the adult online community to subscribe to their domain, not in the interest of any entity, but themselves.*

*ICM is pushing unnecessarily for a "responsible" global online community when the adult entertainment community already has an entity through which Internet publishers and others can self-identify as a responsible global online adult entertainment community through the Free Speech Coalition and its Code of Ethics. We do not need, nor do we desire, any similar Code to be established for us by a third-party profit making institution.*

*In summary, ICM's Proposal is a self-serving solution to a problem that does not exist.*

*Thank you for your consideration.*

**F. View Industry Movie posting**

At least four comments followed all or part of the following common template inviting ICANN to view a movie created by the adult entertainment industry regarding issues "created" by the .XXX sTLD. The common language reads:

*Please Do Not Approve .XXX*

*To Whom It May Concern,*

*First, let me state my complete and total opposition to .XXX and ICM Registry. It is a sham, a land grab, and is NOT supported by the adult entertainment industry. I have been in the online adult industry since [\*], have followed this debacle from day one, and can honestly say that it is of no value to the adult industry, but rather comes with so many negative ramifications that it will harm the industry that it purports to assist.*

*I will keep it brief here, and simply ask all ICANN and other interested parties to view a short film that was created by leaders in the adult entertainment industry in August which shows, through satire, the many disastrous issues that .XXX creates. Appearing in the film are Larry Flynt (Huster CEO), Allison Vivas (PinkVisual CEO), John Stagliano (Evil Angel CEO), Ron Cadwell (CCBill CEO), Peter Acworth (Kink CEO), Mitch Farber (Netbilling CEO), and a host of other adult industry leaders. The film was written by longtime industry advocate and writer Theresa "Darklady" Reed and directed/produced by Wasteland CEO Colin Rowntree.*

*Please view the film at <http://dotxxxopposition.com/>*

*Again I am completely opposed to .XXX.*

# 2010-10-28-20 Attachment-B-to-Annex-to-ICM



**Attachment B to BOARD SUBMISSION NO. 2010-10-28-xx**

**SUBMISSION TITLE:**

**Review of Proposed ICM Registry Agreement for Potential Inconsistencies with GAC Advice**

**GAC Advice/Consultation**

Staff has identified four communications from the GAC comprising the advice received by the ICANN Board as it relates to the proposed ICM Registry Agreement for the .XXX sTLD. Those **REDA** items are listed below, with summarization of the relevant portions:

<p>Wellington Communiqué 28 March 2006 <a href="http://gac.icann.org/communications/gac-2006-communication-25">http://gac.icann.org/communications/gac-2006-communication-25</a></p>	<p>GAC published the “Wellington Communiqué” detailing its recent meeting and addressing a 11 February 2006 letter from ICANN’s President that detailed the sTLD process and the steps the ICANN Board undertook in reviewing the .XXX sTLD Application. The Wellington Communiqué stated that the letter did not provide sufficient detail regarding the rationale for the Board determination that the .XXX application had overcome the deficiencies noted in the Evaluation Report. The GAC requested a written explanation of the Board decision surrounding the sponsored community and public interest criteria. The GAC outlined the public policy aspects and requested the Board confirm that any agreement with ICM contains enforceable provisions covering these issues. Finally, the GAC stated that several members are “emphatically opposed from a public policy perspective to the introduction of a .XXX sTLD.”</p> <p>The Communiqué also stated that to the GAC’s knowledge, the public interest benefits promised by ICM during its November 2005 presentation have not yet been included as ICM’s obligations in the proposed .XXX Registry Agreement.</p>
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<p>Letter from GAC Chair and Chair-Elect to the Chair of the ICANN Board 2 February 2007 <a href="http://www.icann.org/correspondence/tarmizi-to-cerf-02feb07.pdf">http://www.icann.org/correspondence/tarmizi-to-cerf-02feb07.pdf</a></p>	<p>The GAC's Chair and Chair-Elect sent a letter to Vint Cerf requesting that the ICANN Board delay consideration of the Revised Agreement until after the GAC has an opportunity to review at the Lisbon meeting in March 2007. The letter also provided the GAC's formal response to the ICANN call for comments on the Revised Agreement. Specifically, the GAC was not satisfied with the Board's explanation for how the Revised Agreement overcame deficiencies relating to sponsorship community issues, the GAC was still awaiting the Board's response to policy-based queries, and the GAC suggested a face-to-face meeting with the Board during the Lisbon meeting.</p>
<p>Lisbon Communiqué 30 March 2007 <a href="http://gac.icann.org/communications/gac-2007-communication-28">http://gac.icann.org/communications/gac-2007-communication-28</a></p>	<p>The Lisbon Communiqué reaffirmed the position of the GAC as stated in the Wellington Communiqué. The Lisbon Communiqué further stated that the ICANN Board did not provide sufficient information as to address the sponsorship concerns, and by approving the agreement as revised, ICANN would be assuming an ongoing management and oversight role inconsistent with its technical mandate.</p>
<p>Letter from GAC Chair to Chair of the ICANN Board 4 August 2010 <a href="http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf">http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf</a></p>	<p>The letter from the GAC discussed the creation of procedures for Addressing Culturally Objectionable and/or Sensitive Strings, and made a recommendation that an objection procedure be developed "that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs."</p>

## **2010-10-28-20 Attachment-C-ICM**

## The Draft Registry Agreement Reflects GAC Input Re: .XXX sTLD

In 2006 and 2007 the GAC commented on ICANN's consideration of the ICM Registry application, and made several recommendations about the terms of the proposed registry agreement for operation of the .XXX sTLD. That input has been fully reflected – and the recommendations of the GAC have been fully implemented in the draft registry agreement.

The GAC statements are set out below, followed by a discussion of the ways in which this input has been addressed in the proposed agreement.<sup>1</sup>

### **1. The draft Registry Agreement fully reflects the GAC input expressed in its Communiqué from Wellington, New Zealand, dated 28 March 2006.**

Relevant portions of the Communiqué appear in italics below, followed by an explanation of how the Registry Agreement responds to this input. The entire text is attached as Attachment 1.

*GAC Statement: However, the GAC does not believe the February 11 letter provides sufficient detail regarding the rationale for the Board determination that the application had overcome the deficiencies noted in the Evaluation Report. The GAC would request a written explanation of the Board decision, particularly with regard to the sponsored community and public interest criteria outlined in the sponsored top level domain selection criteria.*

Dr. Twomey responded to this request for a written response on 4 May 2006, when he wrote to the GAC, noting that eight of the ten sTLD applications received negative evaluations from the Sponsorship and Other Issues Evaluation Team, and providing further detail on the process the Board followed in re-evaluating six of those applications, including .asia, .jobs, .mobi, .travel, .tel, and .xxx.

On 19 February 2010, an Independent Review Panel ("Panel") issued a Declaration in the Independent Review proceedings filed by ICM Registry challenging ICANN's denial of ICM's application for the .xxx sTLD. The majority of the Panel found that: (i) "the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria;" and (ii) "the Board's reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy." In Brussels, on 25 June 2010, the ICANN Board resolved to accept and act in accordance with those findings. (Resolution 2010.06.25.19) The record of the Independent Review in this matter contains voluminous material that forms the basis for the Panel's conclusions.

*GAC Statement: In its application, supporting materials and presentation to the GAC in November 2005, ICM Registry promised a range of public interest benefits as part of its bid to operate the .xxx domain. To the GAC's knowledge, these undertakings have not yet been included as ICM obligations in the proposed .xxx Registry Agreement negotiated with ICANN.*

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<sup>1</sup> We do not attempt to distinguish GAC "advice" as referenced in Article III, Section 6 and Article XI, Section 2.j. of the ICANN Bylaws from other GAC input. This paper examines all written GAC statements in the same light.

*The public policy aspects identified by members of the GAC include the degree to which .xxx application would:*

*Take appropriate measures to restrict access to illegal and offensive content;*

*Support the development of tools and programs to protect vulnerable members of the community;*

*Maintain accurate details of registrants and assist law enforcement agencies to identify and contact the owners of particular websites, if need be; and*

*Act to ensure the protection of intellectual property and trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers drawing on best practices in the development of registration and eligibility rules.*

The GAC requested (“without in any way implying an endorsement of the ICM application,” and noting that “several members of the GAC are emphatically opposed from a public policy perspective to the introduction of a .xxx sTLD”) confirmation “that any contract currently under negotiation between ICANN and ICM Registry would include enforceable provisions covering all of ICM Registry’s commitments, and such information on the proposed contract being made available to member countries through the GAC.”

The Draft Registry Agreement obligates ICM Registry to enter into a contract (the “Sponsoring Organization Agreement”) with IFFOR. That contract specifies minimum baseline policies (“Baseline Policies”) to be adopted by IFFOR and implemented and enforced by ICM, and delegates authority to IFFOR to adopt, and requires ICM to implement and enforce, additional policies and procedures designed, among other things, to protect free expression rights, promote the development and adoption of responsible business practices designed to combat child pornography, facilitate user choice and parental control regarding access to online adult entertainment, and protect the privacy, security, and consumer rights of consenting adult consumers of online adult entertainment goods and services.

The “Baseline Policies,” which are attached to the agreement, (i) prohibit child pornography, conduct or content designed to suggest the presence of child pornography, and abusive registrations, (ii) obligate registrants to label .xxx sites and any non-.xxx site to which such sites are automatically redirected, permit monitoring to ensure compliance with these Policies and comply with future IFFOR policies; and (iii) obligate ICM to verify that prospective registrants are members of the Sponsored Community, and to authenticate prospective registrants using reasonable technological means to ensure that ICM Registry has accurate contact information. The Baseline Policies further establish requirements for registrant disqualification for violation of the Baseline Policies and/or other IFFOR Policies.

The Registry Agreement and the Sponsoring Organization Agreement obligate ICM to implement and enforce the ICM Registry Policy on “Preventing Abusive Registrations,” which contains specific and robust mechanisms to protect IP rights, prevent registration of an

individual's first and last name without his or her consent, names of cultural or religious significance, country names and geographic designators. The procedures for registrant verification and authentication, including collection and verification of contact information, require ICM to collect and retain accurate contact information for web site operators, whether or not they use a proxy service.

*Offensive and illegal content.* The labeling requirements will empower users and parents or guardians to block access to online adult entertainment sites registered in .xxx and, where a .xxx site automatically redirects to a non-.xxx site, in other TLDs. Child pornography, which is illegal in many, but not all countries, is completely banned from .xxx. National governments will retain authority for regulating content within their jurisdiction.

*Tools and Programs to protect vulnerable Internet users.* The Sponsoring Organization Agreement requires ICM to fund IFFOR's operations, including its policy development activities and its grants-making activities, by paying \$10 per resolving registration to IFFOR. Grants-making activities will include support for tools and programs to protect vulnerable Internet users.

*Accurate registrant contact information.* The ICM Policy on Preventing Abusive Registrations includes a specific and detailed description of the steps ICM will take to ensure that ICM Registry collects accurate contact information for individuals and entities operating sites in .xxx, whether or not they use a proxy service.

*Protection of IP/trademark rights, personal names, country names, names of historical, cultural and religious significance and names of geographic identifiers.* The ICM Policy on Preventing Abusive Registrations includes a specific and detailed description of the steps ICM Registry will take, including the verification and authentication policies described above, rules regarding the use of proxy services, cost-based mechanisms to prevent and respond to attempts to register infringing names, including a rapid take-down procedure. The Policy also specifies the tools ICM will use to prevent registration of country and geographic designators, to permit governments to identify for reservation from registration names that match words of cultural and/or religious significance, and unauthorized registration of personal names.

*Enforcement.* The Sponsoring Organization Agreement specifies in detail ICM's Compliance Reporting System, which requires ICM to maintain an automated, auditable system for receiving, processing, and tracking reports of non-compliant registrations and/or registrants operating in violation of the mandatory policies of the sTLD. ICM's Compliance Manager will be responsible for this System, which will be subject to audit by IFFOR's independent ombudsman, no less frequently than quarterly during the first year and annually thereafter. This system will provide concrete, objective data regarding ICM's policy enforcement obligations.

The Registry Agreement contains numerous enforcement tools. In particular, it:

- Empowers ICANN to terminate the agreement for failure to cure any fundamental and material breach, backed up by a mandatory escrow of registry data;

- Authorizes ICANN to seek specific performance of ICM’s obligations under the Registry Agreement;
- Permits ICANN to seek punitive, exemplary, and other damages for repeated/willful breach of contract;
- Enables ICANN to enforce its rights through binding arbitration.

The statement in the GAC Communique to the effect that “ *several members of the GAC are emphatically opposed from a public policy perspective to the introduction of a .xxx sTLD*” does not – by its terms – reflect the GAC consensus. To the extent ICANN permits its actions to be determined by GAC members not constituting a consensus, it is adopting a standard that permits veto by a subset of GAC participants. This approach is fundamentally at odds with ICANN’s mission and core values, and its obligation to remain rooted in private sector leadership. It is worth noting that the Accountability and Transparency Review Team – which includes prominent and respected representatives of the Government Advisory Committee – appears to acknowledge that it is untenable to demand that ICANN negotiate with GAC members to accommodate non-consensus views:

The GAC notion that any communication it has with the Board constitutes GAC advice has **proven to be unworkable** as there has likely been confusion as to which pieces of Board input have triggered the Board’s obligations to follow GAC advice. ... A reasonable outcome would be for ICANN to establish a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. ... At the same time, the **GAC should agree that only a “consensus” view of its members constitutes an opinion that triggers the Board’s obligation to follow the advice or work with the GAC to find a mutually acceptable solution.** The GAC can continue to provide informal views but these would not trigger any obligation on the Board to follow such input. <http://mm.icann.org/pipermail/at-review/attachments/20101018/63845d4c/attachment-0001.doc>

## **2. The proposed Registry Agreement fully reflects the input contained in the correspondence from the Chair and Chair-Elect of the GAC on 2 February 2007.**

The relevant portion of the letter appears below in italics, followed by an explanation of how the Registry Agreement responds to this input. The full text of the letter is attached as Attachment 2.

*The Wellington Communiqué remains a valid and important expression of the GAC’s views on .xxx.*

See the explanation provided above in Section 1 with respect to the Wellington Communiqué.

*We note that the Wellington Communiqué also requested written clarification from the ICANN Board regarding its decision of 1 June 2005 authorising staff to enter into contractual negotiations with ICM Registry, despite deficiencies identified by the Sponsorship and Community Evaluation Panel. Notwithstanding the ICANN President’s letters to the GAC Chair on 11 February and 4 May 2006, as GAC Chair and GAC Chair Elect, we reiterate the GAC’s*

*request for a clear explanation of why the ICANN Board is satisfied that the .xxx application has overcome the deficiencies relating to the proposed sponsorship community.*

See the discussion above in Section 1 regarding the GAC's request for an explanation of the Board's conclusions regarding ICM. On 19 February 2010, an Independent Review Panel ("Panel") issued a Declaration in the Independent Review proceedings filed by ICM Registry challenging ICANN's denial of ICM's application for the .xxx sTLD. The majority of the Panel found that: (i) "the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria;" and (ii) "the Board's reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy." In Brussels, on 25 June 2010, the ICANN Board resolved to accept and act in accordance with those findings. (Resolution 2010.06.25.19) The record of the Independent Review in this matter contains the basis for the Panel's conclusions.

*In Wellington, the GAC also requested confirmation from the ICANN Board that the proposed .xxx agreement would include enforceable provisions covering all of ICM Registry's commitments. The GAC notes that the ICM Registry referred to this request in material it posted on 5 January 2007, but that ICANN Board has yet to provide such confirmation to the GAC.*

*GAC members feel therefore that if ICANN intends to seek further formal GAC advice (in addition to that provided in Wellington) it would be appropriate to hold face-to-face discussions between GAC and the ICANN Board in Lisbon in March 2007. At this point, GAC members will have had the opportunity to discuss the issue themselves and the ICANN Board would be in a position to report on the results of the public consultation as well as address the other outstanding issues noted above.*

The matter was deferred until Lisbon, where the Board and GAC met face-to-face.

*Finally, we draw your attention to the fact that the Wellington Communiqué highlighted that several GAC members were "emphatically opposed from a public policy perspective to the introduction of an .xxx sTLD" and that this was not contingent on the specificities of the proposed agreement.*

ICM Registry understands and respects the fact that some governments opposed the creation of .xxx in 2007 and likely continue to oppose creation of .xxx in 2010. This statement reflects a diversity of views within the GAC, and is consistent with the Operating Principles requirement (contained in the Principles as amended in March 2010, that the Chair convey the full range of views with respect to areas on which the GAC is unable to achieve consensus.) Moreover, this

It is worth noting that the Accountability and Transparency Review Team work to date has concluded that the notion that the ICANN Board must find some way to accommodate minority GAC views is untenable:

The GAC notion that any communication it has with the Board constitutes GAC advice has proven to be unworkable as there has likely been confusion as to which pieces of Board input have triggered the Board's obligations to follow GAC advice. ... A



reasonable outcome would be for ICANN to establish a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. ... At the same time, the GAC should agree that only a “consensus” view of its members constitutes an opinion that triggers the Board’s obligation to follow the advice or work with the GAC to find a mutually acceptable solution. The GAC can continue to provide informal views but these would not trigger any obligation on the Board to follow such input. <http://mm.icann.org/pipermail/at-review/attachments/20101018/63845d4c/attachment-0001.doc>

The fact that “some members of the GAC” oppose the creation of .XXX on public policy grounds has been on the record since March of 2006, and understood by ICANN for some time before that. Even absent the tentative findings of the Accountability and Transparency Review Team that categorically rejects an approach that permits the GAC to veto policy **implementation - based on longstanding and fully debated ICANN policy – there is absolutely no basis for a decision by the ICANN Board** to refuse to approve the proposed registry agreement between ICANN and ICM Registry based on a statement of the views of a minority of GAC members.

*In the interim and given the significant public and governmental interest in this matter, GAC members would urge the Board to defer any final decision on this application until the Lisbon meeting.*

Done

### **3. The proposed Registry Agreement fully reflects the GAC’s input contained in the GAC Communiqué from Lisbon, dated 28 March 2007.**

Relevant portions of the Communiqué appear in italics below, followed by an explanation of how the Registry Agreement responds to this input. The entire text is attached as Attachment 3.

*The GAC reaffirms the letter sent to the ICANN Board on 2<sup>nd</sup> February 2007. The Wellington Communiqué remains a valid and important expression of the GAC’s views on .xxx. The GAC does not consider the information provided by the Board to have answered the GAC concerns as to whether the ICM application meets the sponsorship criteria.*

See discussion in Section 1 and 2 above.

*The GAC also calls the Board’s attention to the comment from the Government of Canada to the ICANN online Public Forum and expresses concern that, with the revised proposed ICANN-ICM Registry agreement, the Corporation could be moving towards assuming an ongoing management and oversight role regarding Internet content, which would be inconsistent with its technical mandate.*

As discussed below, this concern is fully addressed in the new agreement, which eliminates ICANN’s approval rights with respect to IFFOR policy, and the ability to disapprove IFFOR’s choice of a monitoring provider. Rather, IFFOR’s Baseline Policies, which reflect the various

commitments of ICM Registry in the application process, are set forth in detail in the agreement between ICM and IFFOR

Relevant portions of the input from the Canadian government, dated 2 February 2007, appears in italics below, followed by an explanation of how the Registry Agreement responds to this input. The Canadian comment is attached in its entirety as Attachment 3A.

*We have reviewed the content of the revised proposed agreement with ICM and other materials provided by the company and we are concerned that many terms of the agreement appear to require, permit or encourage ICANN to venture far beyond its core technical functions. Specifically, the proposed agreement appears to give ICANN the right to monitor the fulfilment of ICM's obligations and policy implementation in areas beyond what might reasonably be considered a technically-focused mandate. Some examples:*

- *ICANN is given an opportunity to review and negotiate policies proposed by the Registry Operator or the International Foundation for Online Responsibility (IFFOR), many having nothing to do with ICANN's technical mandate (e.g., promoting child safety and preventing child pornography)*
- *ICANN is also called upon to approve/disapprove of ICM's choice of a monitoring agency*
- *ICANN (and the GAC) will be called upon to identify names of "cultural and/or religious significance" as well as "names of territories, distinct economies, and other geographic and geopolitical names" to be reserved from use in the .xxx domain.*

The Registry Agreement no longer contains the provisions that authorized ICANN's review of and ability to negotiate IFFOR policies. Rather, the Sponsoring Organization Agreement sets out IFFOR's Baseline Policies in detail, and authorizes IFFOR to develop additional policies consistent with its mandate and in accordance with the IFFOR Policy Development Process, which is also fully described in the agreement. Likewise, while the agreement permits any government or distinct economy to identify names of cultural and/or religious significance for reservation from registration, the ICM Policy on Preventing Abusive Registration no longer contemplates input from the GAC or ICANN with respect to names to be included on a list of strings to be reserved from registration (although ICM would welcome input from GAC participants).

We note that the fact that "someone" may complain to ICANN about content is a possibility that ICANN must acknowledge with respect to all existing and all prospective top level domains. That fact is entirely distinct from the question of whether ICANN will venture "far beyond its technical functions." **The only way in which ICANN can "venture" into content control is if it makes a choice to do so, for example, by rejecting a Top Level Domain that has been found by the ICANN Board to meet the formally adopted eligibility criteria** on the grounds that the subject matter is distasteful to some. The .XXX TLD is not different from any other existing or contemplated TLD in that regard.

## **Conclusion**

This analysis demonstrates that input from the Government Advisory Committee regarding the ICM application has been fully taken into account in drafting the proposed registry agreement for

the .XXX sponsored top level domain, and that all actionable “advise” not constituting non-consensus statements about the “range” of views has been adopted and reflected in the proposed registry agreement with ICM. ICM and the sponsoring organization, IFFOR, have developed concrete legal arrangements, policies and procedures to ensure that the public policy benefits and the policy goals of the sTLD are delivered. The proposed registry agreement is enforceable as a matter of law and as a practical matter, and provides ICANN with concrete metrics against which ICM’s compliance can be measured. Finally, the concerns regarding ICANN’s over-involvement have been addressed by the developed policies and by requirement of a sophisticated, auditable web based system for receiving, processing, and documenting resolution of reports of non-compliance.

The GAC letter of 4 August 2010 regarding the “morality and public order” objections process in DAG IV contains an assertion that a new process is needed to evaluate “controversial” gTLD strings, including strings for new and “pending” TLDs, that could give rise to national, cultural, geographic, religious and/or linguistic sensitivities. Because the effect of the Board’s resolution in Brussels on 25 June 2010 was to “approve” the .XXX string, the GAC-proposed process should not apply to the ICM Registry string.

1. The Board resolved to “accept and act in accordance with” the IRP Majority’s finding that ICANN had already determined that .XXX met the relevant criteria, and had no justification for reconsidering that conclusion:

***Resolution of the ICANN Board in Brussels 25 June 2010:*** Resolved (2010.06.25.19), the Board **accepts and shall act in accordance with** the following findings of the Independent Review Process Majority: (i) “the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria;” and (ii) “the Board’s reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy.”

2. In accepting and acting in accordance with the finding of the Independent Review Process Majority, the Board necessarily adopted the conclusions reached by the Majority and described (in the Declaration) below,

*“... the Panel finds instructive the documented policy stated in the Board’s Carthage resolution of October 31, 2003 on “Finalization of New sTLD RFP,” namely, that an agreement “reflecting the commercial and technical terms shall be negotiated upon the successful completion of the sTLD selection process.” (C-78, p. 4.) **In the Panel’s view, the sTLD process was “successfully completed”, as that term is used in the Carthage RFP resolution, in the case of ICM Registry with the adoption of the June 1, 2005, resolutions. ICANN should, pursuant to the Carthage documented policy, then have proceeded to conclude an agreement with ICM on commercial and technical terms, without reopening whether ICM’s application met sponsorship criteria.**” (IRP Declaration Pg 67)*

3. “Completion” of the sTLD selection process necessarily requires approval of the string under the criteria adopted by the Board for the 2004 round.

4. In reaching its conclusion, the IRP Majority accepted ICM’s argument that the 2004 round sTLD review was a two-step process including (1) approval of the string as meeting the criteria followed by (2) contract negotiations:

*147. The Panel accepts the force of the foregoing argument of ICM insofar as it establishes that the June 1, 2005, resolutions accepted that ICM’s application met the sponsorship criteria. The points summarized in subparagraphs (a) through (i) of paragraph 63 above are in the view of the Panel not adequately refuted by the recollections of ICANN’s witnesses, distinguished as they are and candid as they were.*

5. Paragraph 63, accepted by the IRP Majority, lays out the two-step process involving (1) approval of the string followed by (2) contract negotiations:

*63. ICANN, ICM maintains, conducted the 2004 Round of applications for top level domains as a two-step process, in which it was first determined whether or not each applicant met the RFP criteria. If the criteria were met, “upon the successful completion of the sTLD process” (ICANN Board resolution of October 31, 2003, C-78), the applicant then would proceed to negotiate the commercial and technical terms of a registry agreement. (This Declaration, paras. 13-16, supra.) The RFP included detailed description of the criteria to be met to enable the applicant to proceed to contract negotiations, and specified that the selection criteria would be applied “based on principles of objectivity, non-discrimination and transparency”. (C- 45.) On June 1, 2005, the ICANN Board concluded that ICM had met all of the RFP criteria - - financial, technical and sponsorship – and authorized ICANN’s President and General Counsel to enter into negotiations over the “commercial and technical terms” of a registry agreement with ICM. “The record evidence in this case demonstrates overwhelmingly that when the Board approved ICM to proceed to contract negotiations on 1 June 2005, the Board concluded that ICM had met all of the RFP criteria – including, specifically, sponsorship.” (Claimant’s Post-Hearing Submission, p. 11.) While ICANN now claims that the sponsorship criterion remained open, and that the Board’s resolution of June 1, 2005, authorized negotiations in which whether ICM met sponsorship requirements could be more fully tested, ICM argues that no credible evidence, in particular, no contemporary documentary evidence, supports these contentions.*

6. Under the reasoning of the IRP Majority, formally accepted and adopted by the Board on 25 June 2010, no further consideration of the .XXX string is permitted by the rules applicable to ICM Registry’s application.

# **2010-10-28-21 Annex Update on Meeting ICANN's Obligations Under the Affirmation of Commitments**

## **ANNEX TO BOARD SUBMISSION NO. 2010-10-28-21**

**SUBMISSION TITLE:                    Update on Meeting ICANN’s Obligations  
   Under the Affirmation of Commitments**

Background -- 1) Objectives and activities related to the Affirmation of Commitments (Affirmation).

ICANN’s commitments under the Affirmation served as a foundation for the current strategic plan, and this focus was carried through to ICANN’s current budget and operating plan.

The “Affirmation Tracking & Brainstorming” document attached as Exhibit A provides a brief overview of activities undertaken throughout ICANN that relate to the Affirmation. This document reflects the discussions, held within each ICANN department after the Affirmation was signed, on how staff was meeting the Affirmation’s commitments and what ideas they had for building on these activities. The CEO and executive leadership periodically review and update it. This document, along with periodic staff briefings and orientations on the Affirmation (and efforts outlined below), help keep staff focused on ICANN’s commitments and ongoing cycle of improvement.

In addition, a senior staff member, Denise Michel, Advisor to the President & CEO, is dedicated to helping staff meet or exceed the Affirmation’s commitments and set a new standard for accountability and transparency.

Background -- 2) Public wiki database of ICANN Board resolutions.

ICANN is creating a comprehensive and searchable online database of all ICANN Board resolutions going back to ICANN’s founding in 1998. Doing this in a public wiki allows transparent reporting on the implementation of resolutions and encourages comments on whether the community’s expectations were met. Public comments were solicited on the wiki’s design and user interface in June of this year when all 2009 Board resolutions were publicly posted. Informal, positive feedback was received and work continues to provide all 900 + Board resolutions for public use by ICANN’s Cartagena meeting.

Background -- 3) Community review teams.

### Accountability & Transparency Review Team

The Accountability & Transparency Review Team (ATRT) members were selected by Board Chair, Peter Dengate-Thrush, and GAC Chair, Janis Karklins, in March 2010. The team's mandate is set forth in paragraph 9.1 of the Affirmation of Commitments.<sup>1</sup> Team members are advancing their work through conference calls, emails, and in-person meetings in Marina del Rey, Brussels, Beijing, Boston and Cartagena. They divided into the following four working groups to examine assigned issues and develop recommendations:

- WG 1 -- Board performance, selection, composition, accessibility, decision-making, and dispute resolution/complaint handling;
- WG 2 -- GAC role, quality and actionability of GAC input, and ICANN's responsiveness to that input;
- WG 3 -- Community/stakeholder engagement, the quality of PDP output, the level and quality of public input into the ICANN process, and the extent to which such input is reflected in ICANN decision-making; and
- WG 4 -- Independent Review of ICANN Board.

ATRT activities are publicly documented on ICANN's website and wiki. In addition to its discussions with ICANN community groups and Board at the June ICANN meeting in Brussels, the ATRT has encouraged input via direct email and public comment forums. Staff has responded to numerous ATRT and working group requests for information.

In August 2010, the ATRT announced the selection of the Berkman Center for Internet & Society at Harvard Law School as paid "Independent Experts" to assist the ATRT in its review. The Berkman Center staff have been tasked with conducting an analysis of three case studies chosen by the ATRT:

- The introduction of new gTLDs – the Expression of Interest proposal; the Implementation Recommendation Team; the role of the Governmental Advisory Committee (GAC); and vertical integration;
- The .xxx top-level domain application process; and
- The DNS-CERT proposal.



The Berkman Center staff have collected data and interviewed members of ICANN's staff, Board and community with the objective of providing the ATRT with analysis and recommendations to improve accountability and transparency. The Berkman Center staff also are assisting the ATRT's working groups, as needed, in their efforts to examine assigned issues and develop recommendations.

The ATRT is expected to post a draft report for community discussion at ICANN's December meeting in Cartagena. Ultimately, the ATRT is charged with making final recommendations to the Board by December 31, 2010.

#### Security, Stability and Resiliency of the DNS Review Team, and Whois Policy Review Team

ICANN's CEO and the GAC Chair recently appointed the members of the Security, Stability and Resiliency of the DNS (SSR) Review Team, and the Whois Policy (Whois) Review Team, as required by the Affirmation. The SSR Review Team's mandate is set forth in paragraph 9.2 of the Affirmation<sup>ii</sup> and it will focus on ICANN's execution of its plan to enhance the operational stability, reliability, resiliency, security and global interoperability of the DNS. The Whois Review Team's mandate is set forth in paragraph 9.3.1 of the Affirmation<sup>iii</sup> and it will assess ICANN's enforcement of its existing policy on Whois, subject to applicable laws.

#### Review of promoting competition, consumer trust, and consumer choice

The Affirmation's fourth review—promoting competition, consumer trust, and consumer choice—will start one year after new gTLDs are in operation and available to registry businesses. This review's mandate is set forth in paragraph 9.3 of the Affirmation<sup>iv</sup> and it will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of the application and evaluation process, and safeguards.

All of these reviews are to be repeated periodically, as specified in the Affirmation. ICANN staff is providing administrative, operational, and substantive support, as requested by the review teams.

Submitted by:	Denise Michel	Date Noted:	18 October 2010
Position:	Advisor to the President & CEO	Email and Phone Number	denise.michel@icann.org +1-310- 301-8632

<sup>i</sup> Affirmation of Commitments 9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the Chair of the Board of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

<sup>ii</sup> Affirmation of Commitments 9.2 Preserving security, stability and resiliency: ICANN has developed a plan to enhance the operational stability, reliability,

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resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS. ICANN will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation. Particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

<sup>iii</sup> Affirmation of Commitments 9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. One year from the effective date of this document and then no less frequently than every three years thereafter, ICANN will organize a review of WHOIS policy and its implementation to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, as well as experts, and representatives of the global law enforcement community, and global privacy experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

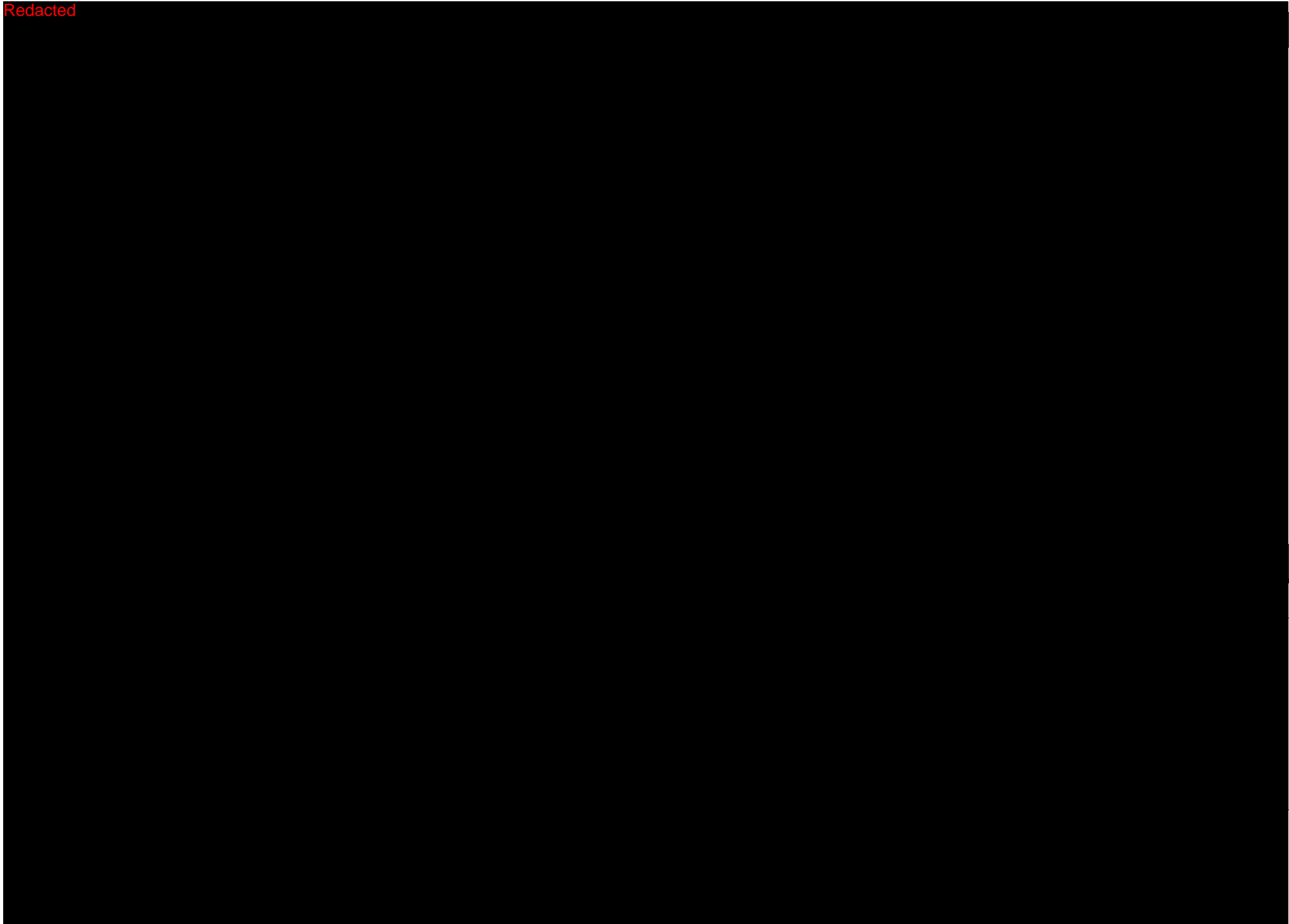
<sup>iv</sup> Affirmation of Commitments 9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in

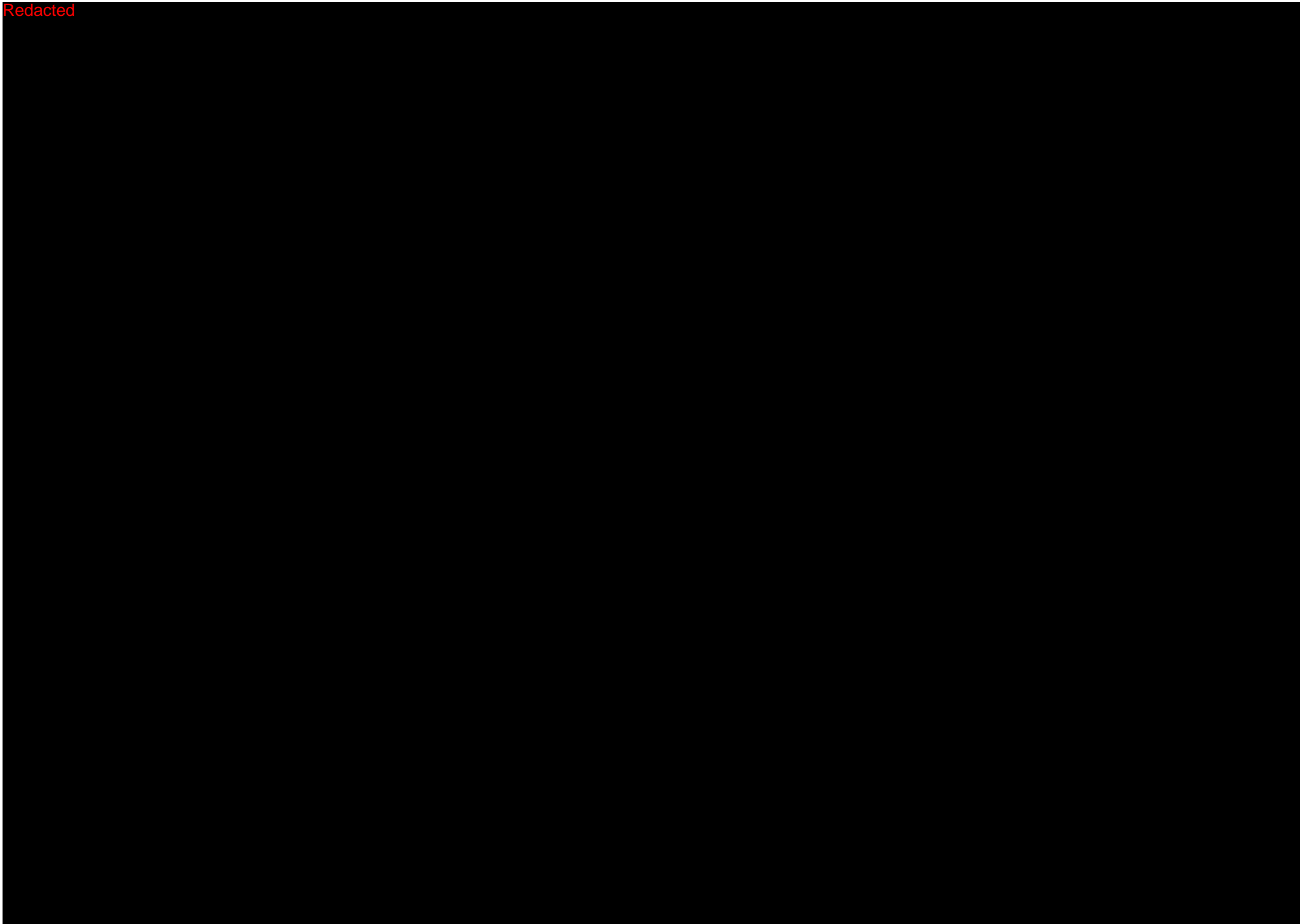
the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

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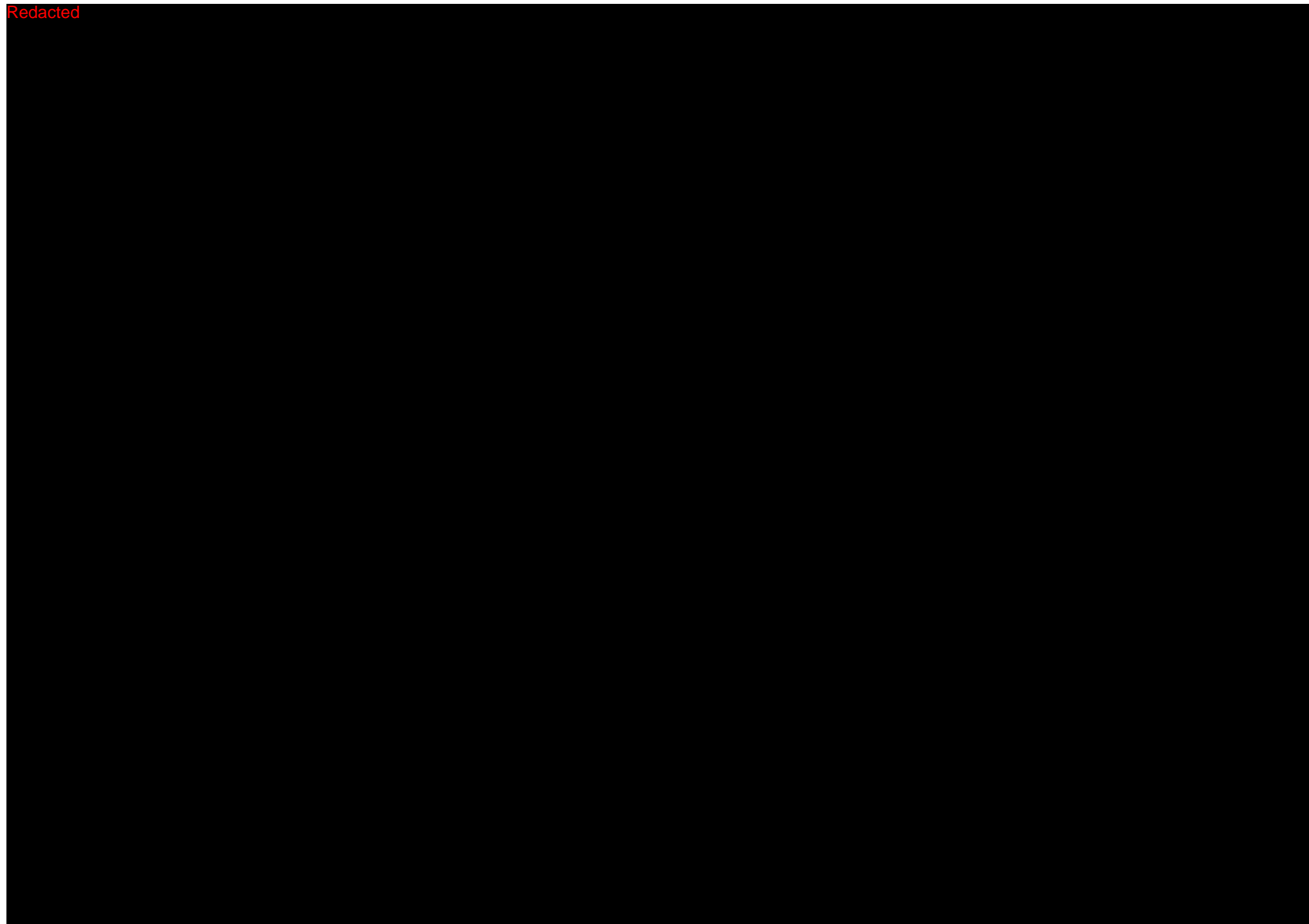




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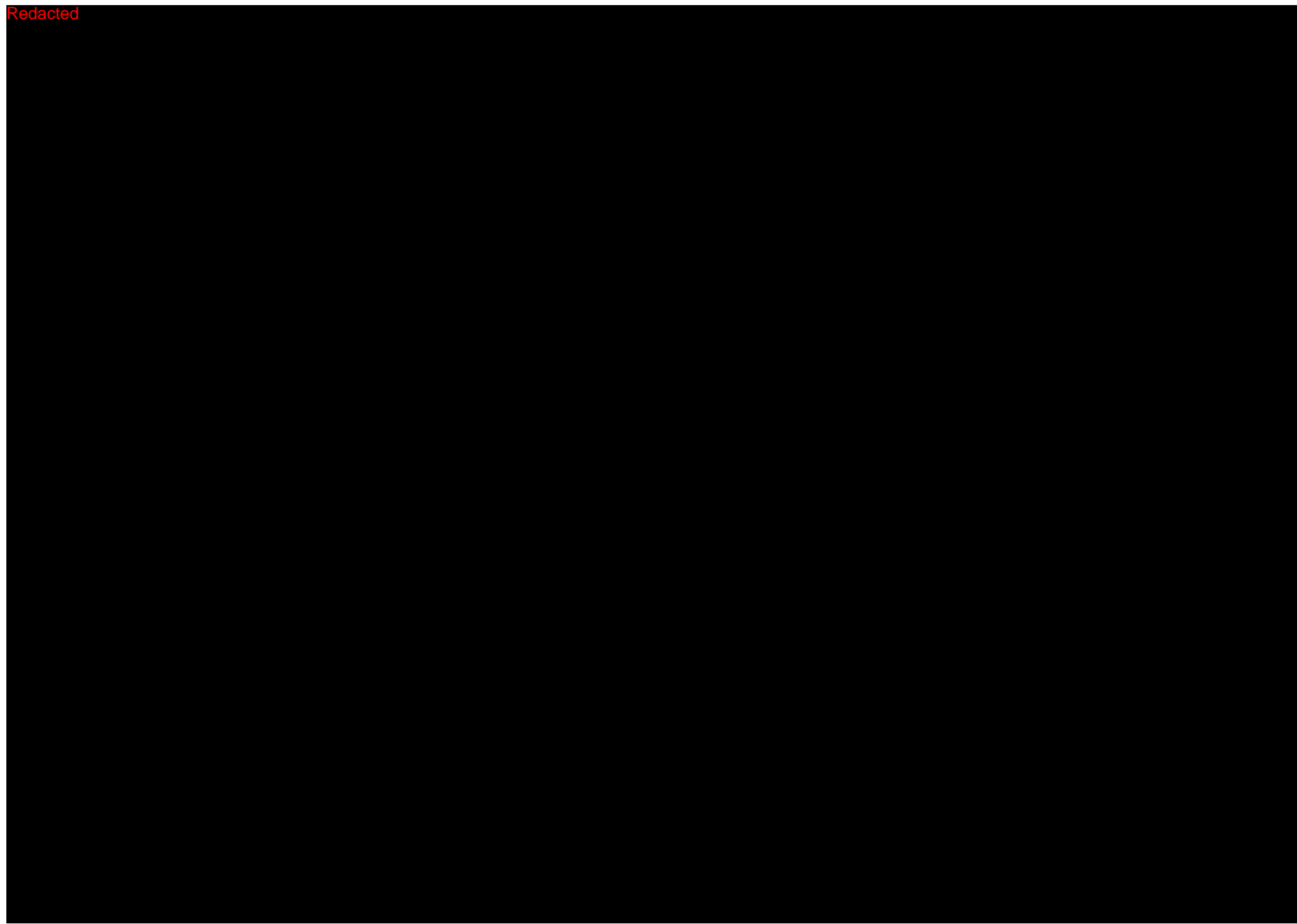


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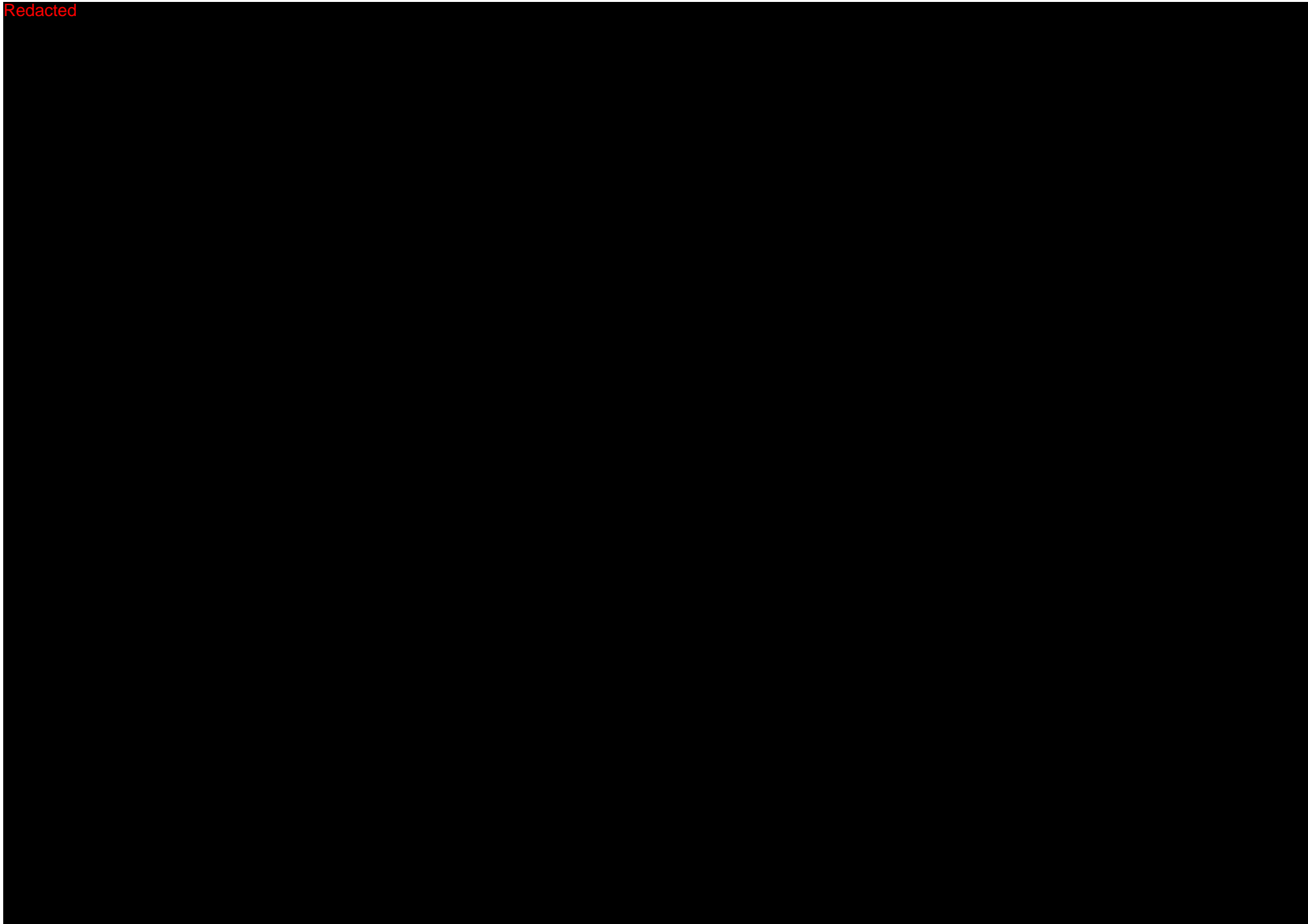
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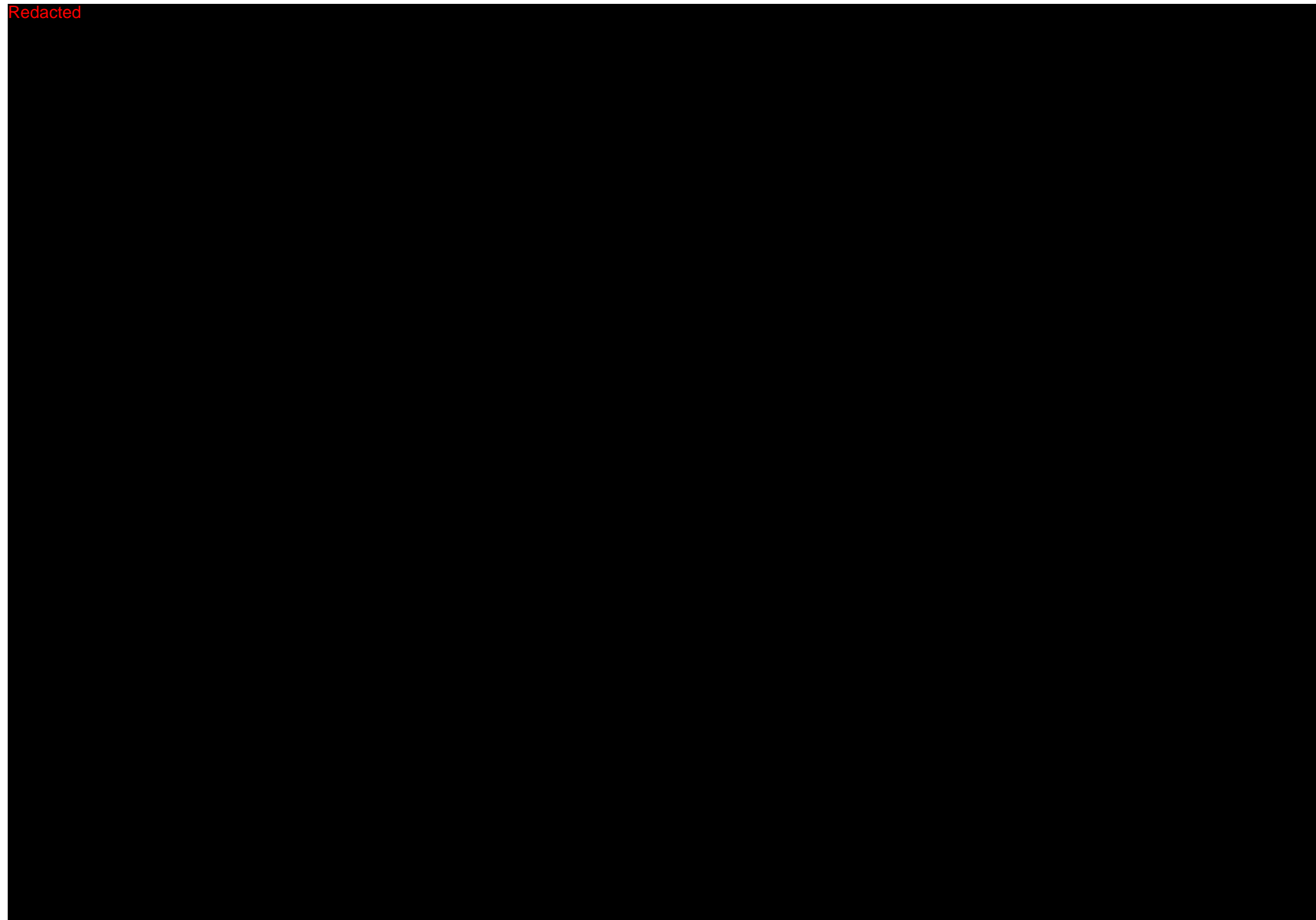


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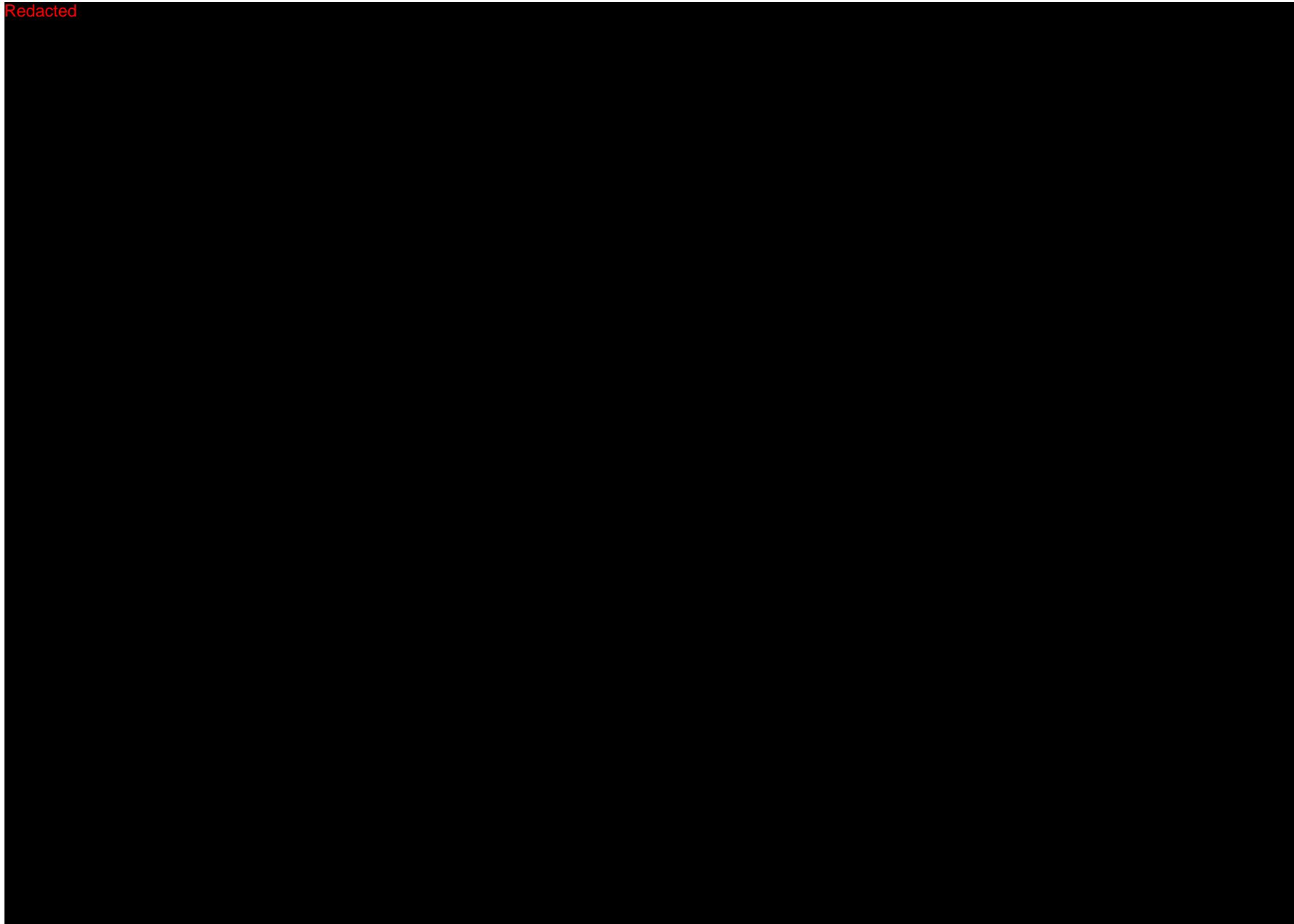


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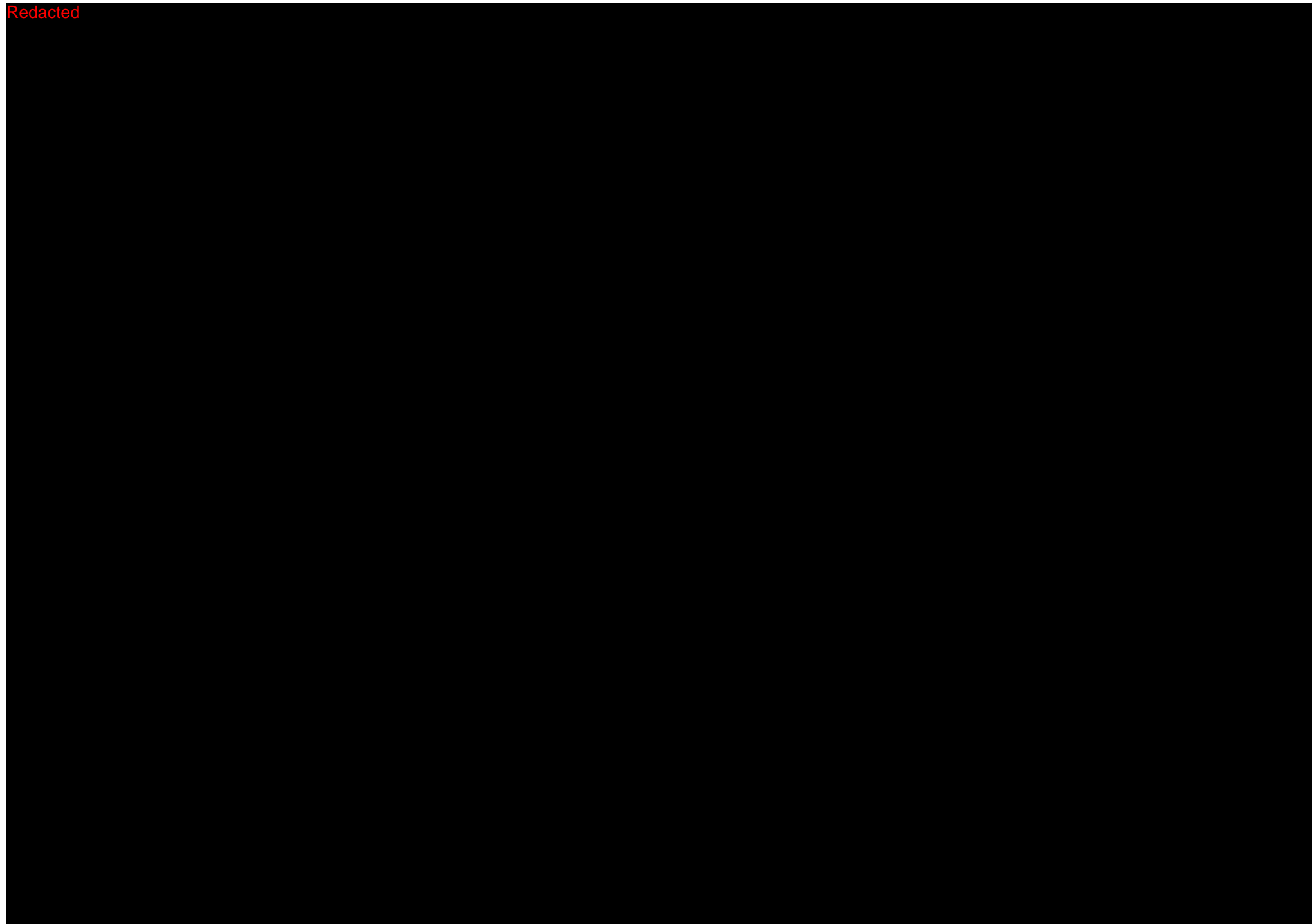
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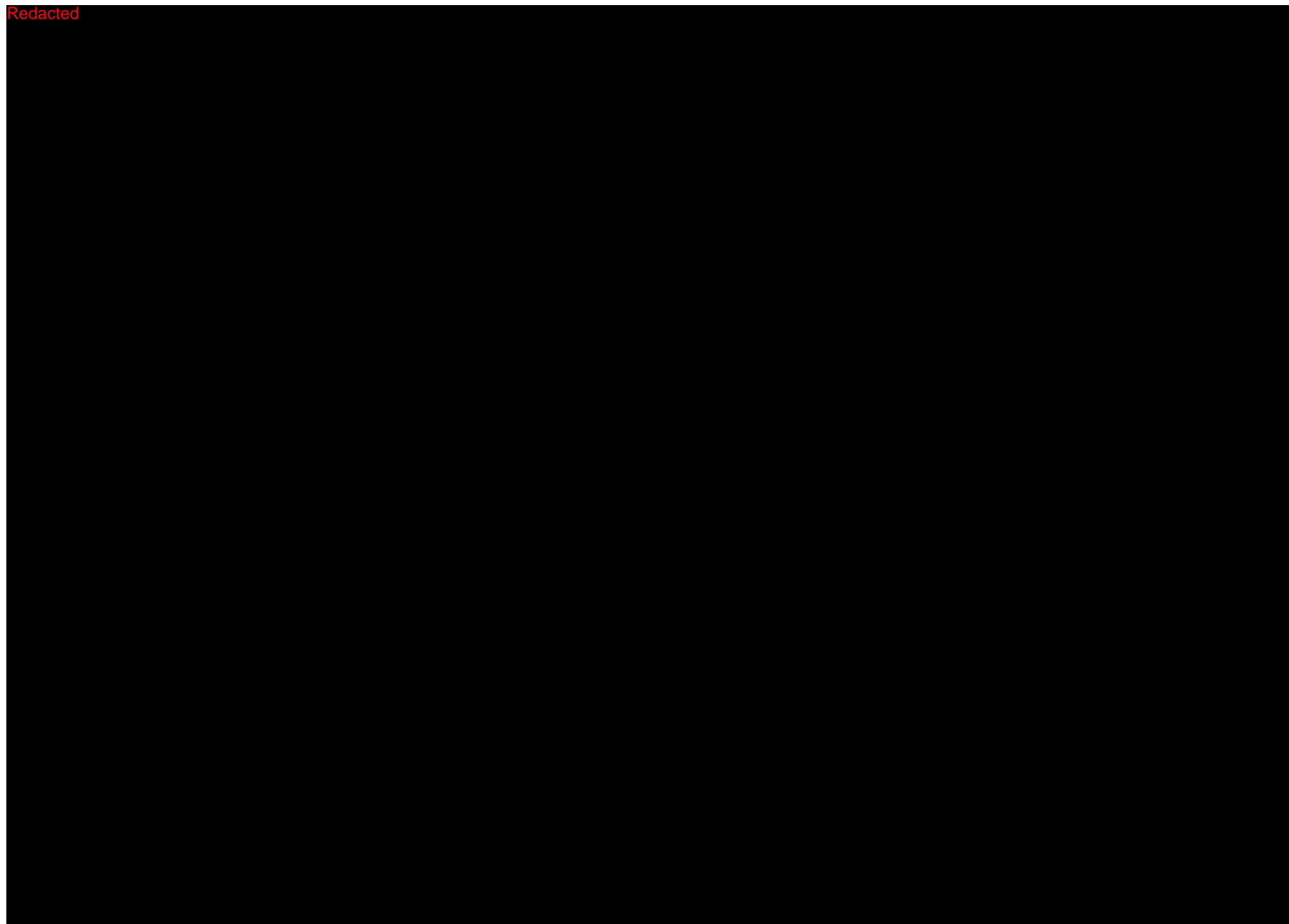
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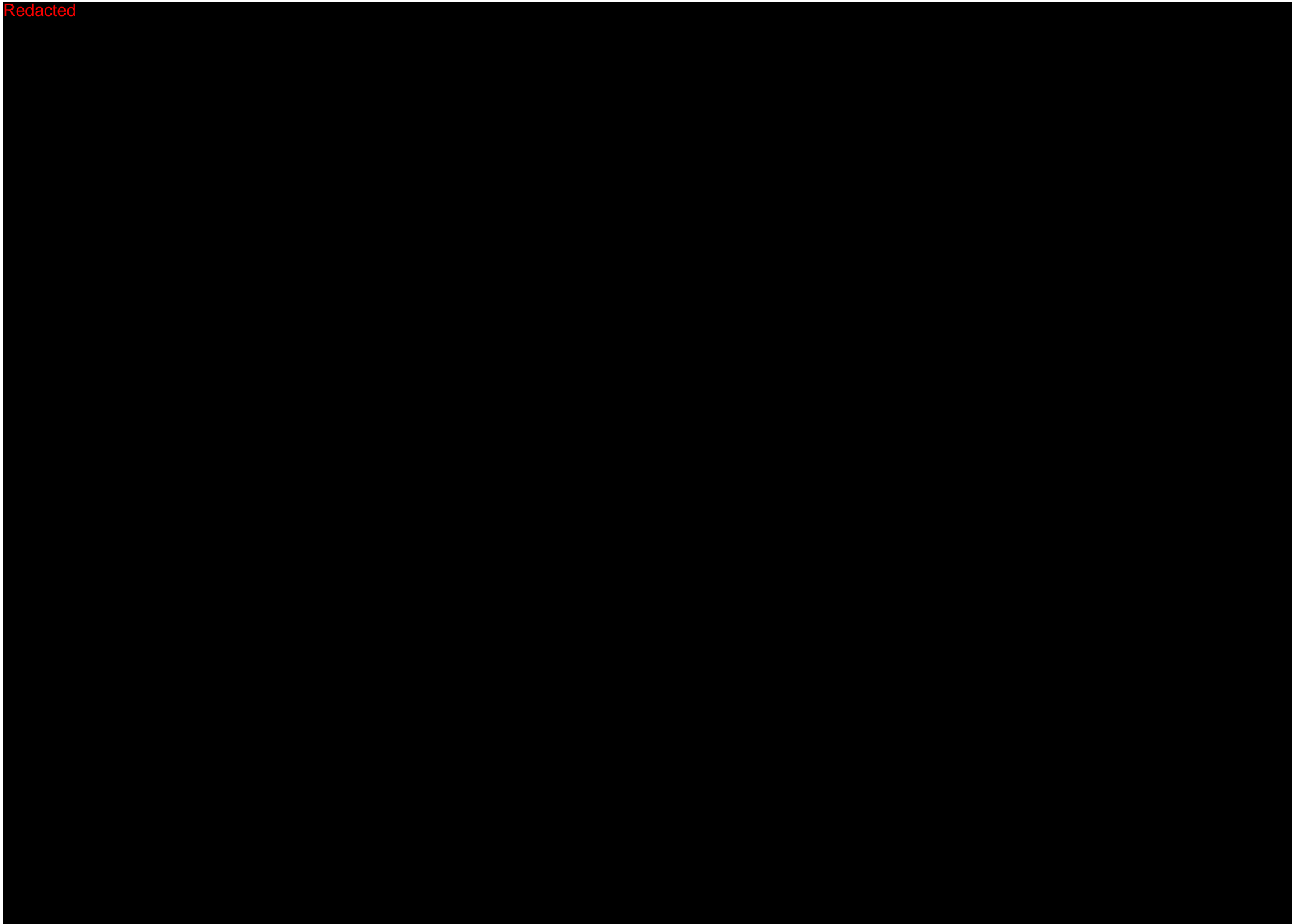
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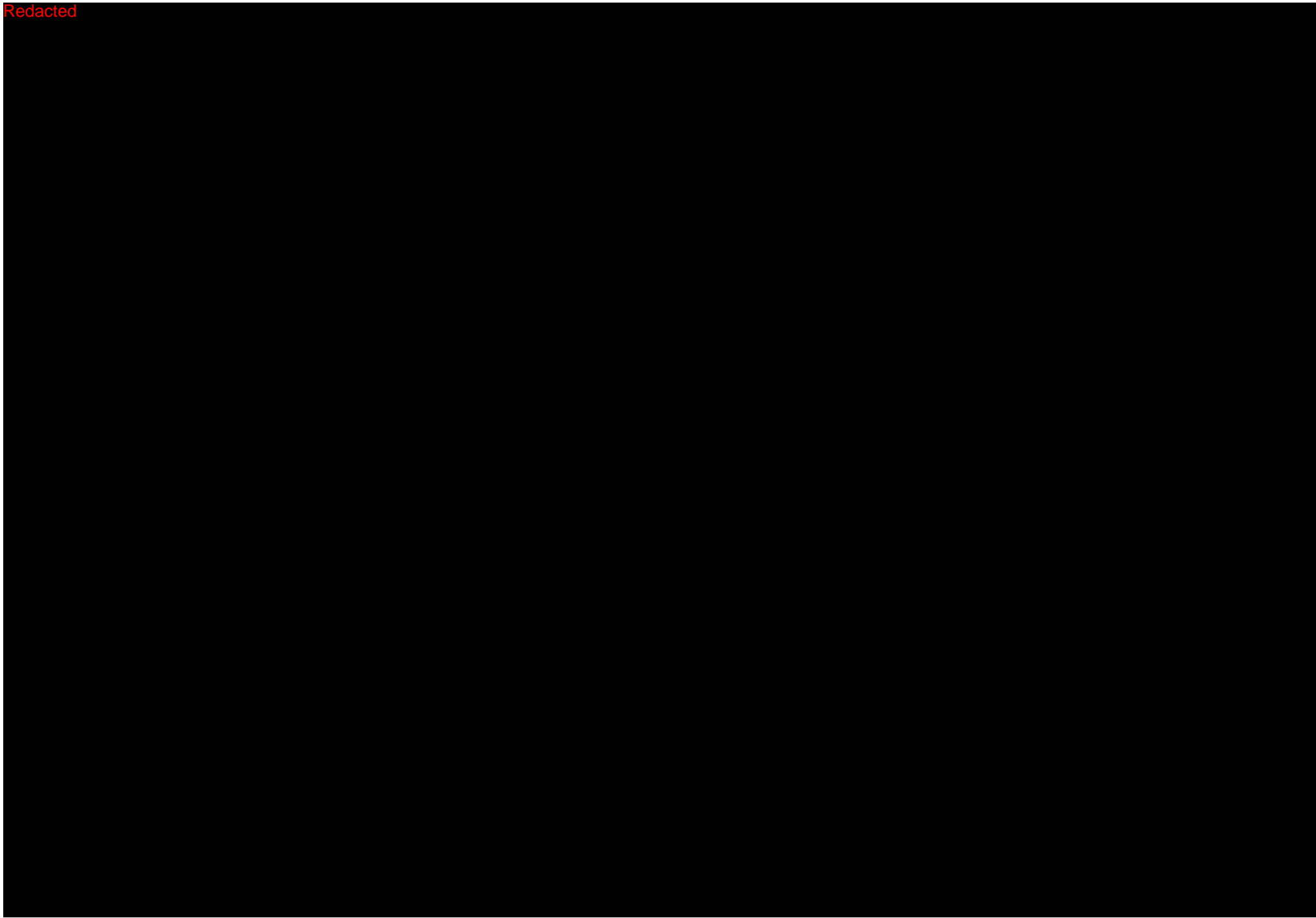
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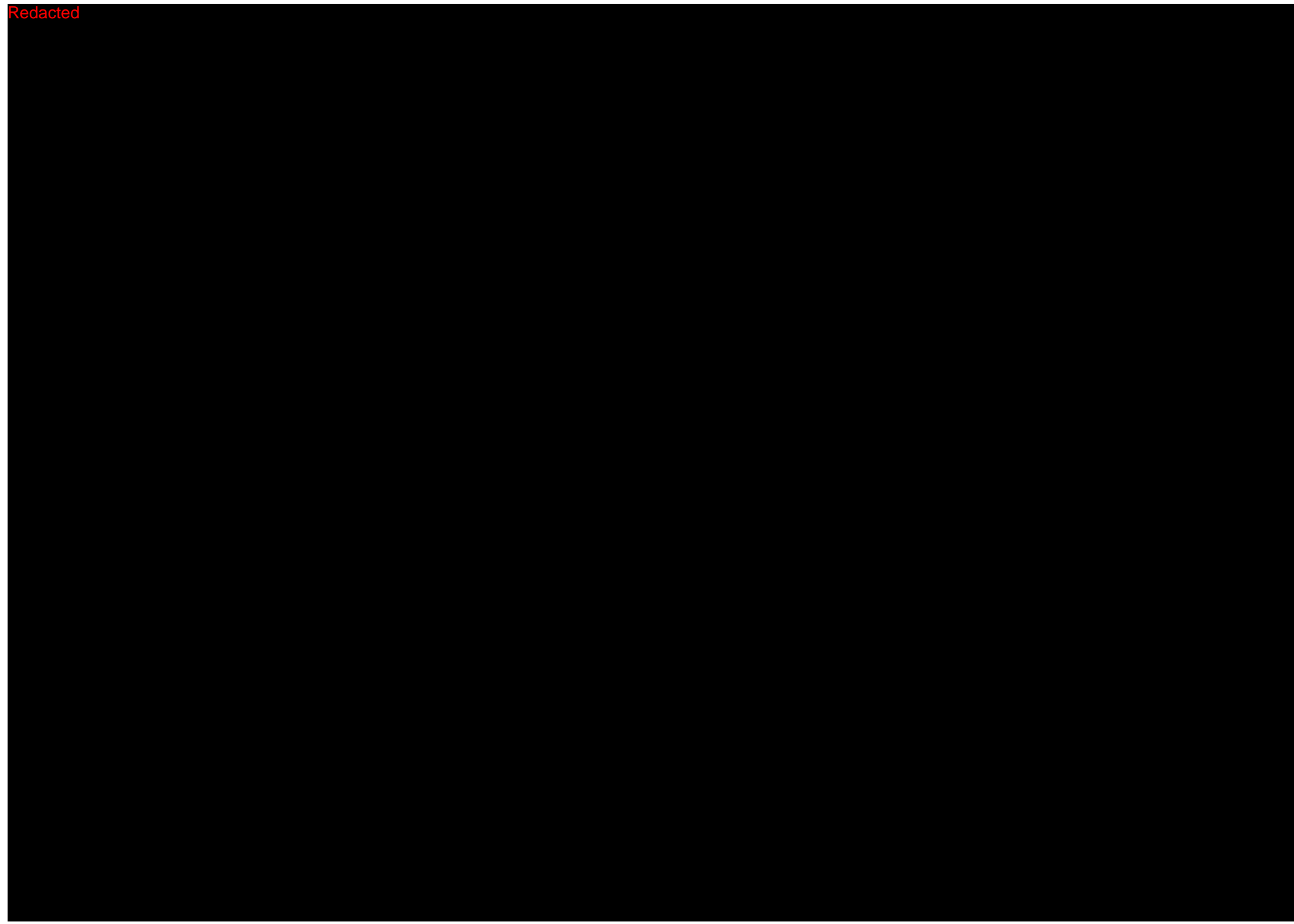
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# Media Clips Board Book\_seventh edition\_13Oct10



## **ICANN Media Clips**

**Date Range:**

23 August – 16 October 2010





## ICANN starts search for new board member

Authority wants net to be more multilingual

**By Derek Baldwin**  
**Business Features Reporter**  
**Published: September 9, 2010**

Dubai Amid a global push to make the internet more multilingual, overseers of the world's domain names are casting a net for a new board member from abroad. The internet Corporation for Assigned Names and Numbers (Icann) has issued a call for applications for a new board member with a global view on web-related issues.

In its call for statements of interest, Icann said it is looking for "an individual with a broad international perspective and a background in internet users' interests, consumer policy and civil society worldwide". The deadline for submissions is September 6.

### Developing policy

Essentially, the new board member would help "to develop policy while serving on the organisation's board of directors", Icann said. The not-for-profit agency based in California is responsible for the global coordination of the internet's unique system of identifiers, such as .com domain names, as well as country codes such as .ae that connect computers across the planet.

Icann recently approved the new non-English high-level domain name in Arabic, .emarat, for the UAE. It said it is undertaking a global search to fill a board seat with an internet user "who does not represent a particular government, corporate or non-profit entity".

Cheryl Langdon-Orr, chairwoman of the at-large advisory committee, said the new board member would ideally have the best interests of the typical internet user at heart.

"This is all about providing a voice for the average everyday internet user in the global non-profit organisation charged with co-ordinating the internet addressing system. Icann wants to hear from all segments of the internet community, including the individuals who often simply feel they don't have a voice in policy formation," she said.

Some of the policy issues now under consideration at Icann include expanding the existing list of 21 generic top-level domains. It is looking to expand its 'Internationalised Domain Names' to

include languages such as Chinese and Korean.

Big changes, the corporation said, are also in store for internet protocols to transition from IPv4 to IPv6.

The move, Icann said, will "vastly expand the available number of global internet addresses, since the current IPv4 addresses are quickly diminishing".

"The internet is defined by its unique ability to give everyone a voice," said Langdon-Orr in a statement. "This is an opportunity to extend that concept of inclusion to Icann's top level."

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## ICANN Taps Atallah as New COO

Monday, September 13, 2010 5:45 PM

By Eliza Krigman

The group that manages the Internet's domain name system announced Monday that **Akram Atallah** will assume the position of chief operating officer as of September 20th.

**Rod Beckstrom**, president and CEO of the Internet Corporation for Assigned Names and Numbers, called Akram a "perfect fit."

The incoming COO will bring ICANN an "amazing understanding of the online and high tech worlds," in addition to "an intuitive grasp of our unique role in the Internet ecosystem," Beckstrom added.

Most recently, Atallah served as CEO of CoreObjects Software, and prior to that position, he spent 12 years at Conexant Systems, Inc., a high-tech company based in California. Highly educated, Atallah holds three degrees from the University of Colorado including a masters of business administration and a masters of science in electrical engineering.

"This is a chance for me to serve in a leadership role for an organization that is at the very heart of the most important communication and information system man has ever created," Atallah said.

Founded in 1998, ICANN is a non-profit corporation whose mission is to ensure a stable and secure global Internet. The group is scheduled to [meet](#) with White House officials later this month regarding illegal online pharmacies.



## ICANN boss: international domain system in peril

By Matthew Lasar  
Sept. 14, 2010

The CEO of the International Corporation for Assigned Names and Numbers (ICANN) offered a stern [warning](#) on Tuesday, telling an Internet forum that agency's mission is "under threat."

If governance of ICANN, "were to become the exclusive province of nation states or [be] captured by any other interests, we would lose the foundation of the Internet's long-term potential and transformative value," Rod Beckstrom warned an audience in Vilnius, Lithuania.



"Decisions on its future should reflect the widest possible range of views and the wisdom of the entire world community," he added, "not just governmental organizations."

ICANN coordinates the world's domain name and Internet address system. Until late last year the United States Department of Commerce mostly oversaw the agency's activities. In September [that system was replaced](#) with a

new agreement that gives ICANN's own internationally advised Government Advisory Committee more of a say in the process.

But it appears that Beckstrom is a bit nervous about where this could go, warning of various parties who "want to bring Internet governance into the framework of intergovernmental organizations exclusively." That prospect could shut businesses, service providers, consumers, and non-profits "out of the governance debate," he warned.

"Make no mistake, if we do not address this now —effectively, together—the multistakeholder model that enabled so many successes will slip from our grasp. We must work in partnership to continue the innovation and openness that are hallmarks of the multistakeholder model."

All apprehensions aside, ICANN has been doing quite a bit of [DNS fast tracking of late](#), approving an array of Chinese country-specific domain names, with specific, Chinese script names for the mainland, Taiwan, and Hong Kong. Beckstrom says that since last year's rollout of ICANN's International Domain Name fast tracking process, the agency has received over 30 requests for names in 22 languages.

"Fourteen have been delegated and more will be soon," he told the forum. "The 22 include Arabic, Chinese and Cyrillic scripts, together used by over 1.5 billion people worldwide."

## ICANN chief calls for multi-stakeholder control Beckstrom warns against consolidating oversight body

Shaun Nichols in San Francisco  
V3.co.uk, 15 Sep 2010

The head of the Internet Corporation for Assigned Names and Numbers (Icann) has warned against letting the corporation become the domain of any one group.

Icann president and chief executive Rod Beckstrom told attendees at the Internet Governance [Forum](#) in Vilnius, Lithuania that the organisation must stay out of the hands of a single interest in order to properly function.

"Most internet users, [businesses](#), service providers, non-profits and consumers would be shut out of the governance debate," he said.

"Make no mistake: if we do not address this now the multi-stakeholder model that enabled so many successes will slip from our grasp."

Specifically, Beckstrom warned against allowing inter-governmental organisations to seize control of Icann.

The organisation has been looking to adopt a new governance model following its handover from the US government to an international government advisory committee.

Beckstrom insisted, however, that the committee should represent the interests of all parties and not just inter-governmental groups.

"If governance were to become the exclusive province of nation states or captured by any other interests, we would lose the foundation of the internet's long-term potential and transformative value," he said.

Other industry players agreed. Lesley Cowley, chief executive of .uk registry Nominet, praised the work of the Internet Governance Forum in providing a platform where disparate stakeholders can come together, share knowledge and solve problems relating to internet governance.

"No single universal regulatory or purely inter-governmental global oversight can ever align itself successfully with the diversity and sheer pace of change in this sector nor the engagement of multi-stakeholders," she said.

"The only model of global internet governance that will achieve this is one that allows all concerned to work together, through multi-stakeholder participation and partnerships. And this is where the IGF comes in."



## **Internet must remain free from government control**

Lack of regulation makes it fertile field for innovation

By Derek Baldwin, Business Features Reporter  
Published: 00:00 September 17, 2010

Dubai: There is no better time than now to ensure that the internet and its world wide web stays globally sound with the help of non-government agencies, says Rod Beckstrom, President and CEO of the Internet Corporation for Assigned Names and Numbers (Icann), the world body that governs the underpinnings of the internet.

Speaking at the Internet Governance Forum (IGF) in Vilnius, Lithuania, Beckstrom reminded leaders that internet governance must be kept out of the hands of intergovernmental organisations.

"The domain name system processes hundred of billions of transactions each day. More transactions than the world's financial markets, more than the telephone systems," Beckstrom said in a statement. "The fact that the internet works is the ultimate tribute to the multi-stakeholder governance model.

"Governments could not do it alone. Its openness, its inclusiveness, its relative lack of regulation make it a fertile field for innovation and competition, an engine for much needed economic growth." In his address, Beckstrom said that the not-for-profit body Icann is striving to maintain all global interests for the future of the internet.

"If governance were to become the exclusive province of nation states or captured by any other interests, we would lose the foundation of the internet's long-term potential and transformative value," he said.

"Decisions on its future should reflect the widest possible range of views and the wisdom of the entire world community — not just governmental organisations."

He said that the US government has recognised that the internet needs to remain open and transparent, free from government control. Beckstrom said Icann's signing of the Affirmation of Commitments with the US government was a step forward.

"With the 2009 Affirmation of Commitments, the United States and Icann formally recognised that no single party should hold undue influence over internet governance.

"The Affirmation acknowledges the success of the Icann model; it commits Icann to remaining a private, not-for-profit organisation, validates the role of the Governmental Advisory Committee and declares that Icann is independent and not controlled by any one entity," he said.

## IDNs to enable internet to help realize its potential

20 Sep, 2010, 05.58PM IST,

By: Manish Dalal

The Internet has clearly revolutionized the way the world communicates and searches for information and services. This change is evident in various aspects of our daily lives - from booking travel tickets, to running searches, to chatting online, to sending e-mail, to trading stocks, to banking online. The list of activities is endless!

The total number of Internet users worldwide reached 1.9 billion earlier this year<sup>1</sup>, with India alone boasting of 81 million<sup>2</sup> users. While the dominant language used on the Internet is English, nearly 60 percent of Internet users are non-English speaking<sup>3</sup>. The geographic expansion of the Internet and the corresponding increase of use by various nations, groups and communities that speak different languages eventually resulted in the need for domain names that consisted of characters from other languages apart from English. While Web content written in various languages has been around for a long time, domain name addresses in local scripts have finally arrived. These domain names in local/regional languages are called Internationalized Domain Names or IDNs.

IDNs are one of the most significant developments to the Internet since its inception. The domain name is a critical way to locate resources on the Internet, and IDNs make the Internet more accessible for non-English speaking countries and local communities by allowing users to access the Internet in their local language.

### IDNs Demystified

Historically, domain names have contained ASCII (American Standard Code for Information Interchange) characters i.e. domain names have used the English alphabet (a,b,c...z), numbers (0, 1...9) and the hyphen (-). Second level IDNs such as IDN.TLD (Top Level Domain) have also been available for a number of years.

In October 2009, ICANN (Internet Corporation for Assigned Names and Numbers) announced the launch of IDN country code top level domains (ccTLDs) that will be written entirely in the local language. `????.????` is an example of an IDN ccTLD in the Hindi language.

By July 2010, thirteen countries announced IDN ccTLD offerings.

India's Department of Information Technology (DIT) and Centre for Development of Advance Computing (C-DAC) are leading the way in this important advancement in scripts computing standards. DIT submitted its application to ICANN in May 2010 for its approval of the launch of the new TLD, .bharat in seven Indian languages -- Hindi, Bengali, Punjabi, Urdu, Tamil, Telugu and Gujarati -- making it possible for many Indians to navigate the Internet using their local/native language. DIT's application has reportedly received the initial clearance for IDNs in all the seven regional languages, but final approval will still be needed<sup>4</sup>. Also, C-DAC is reportedly ready with the technology to affect the change and expects to roll out the IDN ccTLDs in 2011<sup>5</sup>.



## **Why IDNs Are Important**

IDNs make the Internet easier to navigate for the hundreds of millions of people in regions of the world who do not recognize or comprehend ASCII characters. It goes without saying that reading an online edition of a newspaper in your native tongue, say in Hindi or Bengali, is a more dynamic experience if links from articles to more information can be reproduced as Web addresses in local characters versus ASCII characters.

Because business relationships are often based on connections with people at the most fundamental and familiar level, IDNs will help businesses reach individuals in local markets with their information, products or services and brand themselves more effectively. Success in Indian markets often requires brands to go regional in their promotions and advertisements. With IDNs, brands will be able to reach out to users in the language they may recognize and prefer.

Even printed material can have Web site references in the same native script as the material in which it is written. For instance, a billboard advertisement that contains a Web site address with local language characters may potentially be recalled more easily and intuitively by local users.

In cases where Web site addresses do not convey any meaning in particular, it may be even more important to use a script or alphabet that the target audience or intended users can recognize and be able to produce on a computer keyboard.

## **IDNs: Enhancing the User Experience**

IDNs may make it possible for more people to access the Internet and do more things online with greater ease. With IDN ccTLDs, people all over the world will be able to type domain names in their own familiar languages. Businesses may be able to advertise their Web sites in local languages for effective targeting of users. The Internet will have one of its greatest opportunities yet to realize its potential of being a truly global and diversified medium of communication.

VeriSign is committed to upholding the vision of a single global Internet that is equally accessible to all users, everywhere in the world, regardless of what language they speak. Internationalized domain names support that vision by making it possible for millions of current and potential users to access the Internet entirely in their local languages. To complement the IDN initiatives being driven by ICANN, VeriSign is helping to organize a new consortium to help drive adoption of IDN capabilities in standard client software. The IDN Software Developer's Consortium will act as an information clearing house to help identify issues and facilitate solutions for new IDNs. This consortium has the support of a variety of thought leaders and is just beginning to make its mark.

*(The author is Vice President APAC, VeriSign)*

## ICANN ushers in a new international era

### The appointment of ICANN's first-ever Arab-speaking director signals plans for the domains authority to expand its global reach

21 September 2010

Domain names authority the Internet Corporation for Assigned Names and Numbers (ICANN) has appointed a diverse new roster of leaders to its internal bodies. Joining the Board of Directors, Egypt's Cherine Chalaby – erstwhile managing partner at Accenture – is the first Arab-speaking member to represent ICANN since it was created in 1998.

Chalaby's appointment reflects the increasing global reach of ICANN at a time when the domain names system (DNS) is undergoing dramatic changes. So far, these changes have manifested in the release of Arabic country code Top-Level Domains (ccTLDs), unveiled in May. The Arabic designations for Egypt, Saudi Arabia and the United Arab Emirates (UAE) are just a small part of a wider initiative to provide speakers of non-Latin-based languages with ccTLDs that they are comfortable with using. Other countries set to benefit from non-Latin domains include Russia and Thailand.

Alongside these developments, ICANN has been preparing the DNS for the introduction of new generic Top-Level Domains (gTLDs) that will be customised to individuals and businesses. The domains are likely to create a more granular DNS as the generic format moves away from umbrella designations such as .com, .net and .info. ICANN president and CEO Rod Beckstrom has described these changes as a 'seismic shift that will forever change the online landscape'.

Chalaby was drafted into the Board of Directors with Bertrand de La Chapelle of France, formerly European special envoy for the information society, and Germany's Erika Mann from the European Internet Foundation. Other top names recruited to ICANN's internal bodies include Sébastien Bachollet of France and Albania's Sokol Haxhiu. A noted information systems consultant, Bachollet has developed IT strategies for public transport networks and has joined ICANN's At-Large Advisory Committee (ALAC). Haxhiu, meanwhile, will bring his e-governance expertise to the country code Names Supporting Organisation (ccNSO).

Wolfgang Kleinwaechter, chair of ICANN's Nomination Committee, hopes that the new managers will usher in a broader global outlook and increase ICANN's awareness of different cultures. The selections, he said, 'combine renewal with expertise and experience in a way that, we trust, will reinforce ICANN and meet the community's expectations'. This included a commitment to the 'further internationalisation of ICANN'.

## New rules may grow names for Internet domains

Topics and locations could be site suffixes

by **John Yantis** - Sept. 26, 2010 12:00 AM  
The Arizona Republic

A proposal that could add hundreds of new Internet domain names to the network beginning as early as next year has industry insiders concerned about confused users, squabbling businesses and security.

After years of study, a guidebook for registries that want to acquire new generic top-level domains is in its fourth draft. Generic top-level domains, or gTLDs, are typically the three letters at the end of Internet addresses, such as [as.com](http://as.com), .net and .org.

Those who follow the addressing issue say the new domain rules likely will be approved next year or early in 2012.

The proposal has created a brouhaha in Internet circles, with some arguing the market should decide what addresses are acceptable, and others worried the expansion could increase cyber crime.

"It (the expansion) looks like it's on the horizon," said Brad White, a spokesman for the Internet Corporation for Assigned Names and Numbers, the non-profit based in Marina del Rey, Calif., charged with coordinating the worldwide addressing system. The group is considering expanding generic top-level domains beyond the 21 it now allows, arguing there is no reason to artificially set limits.

Some examples include addresses that end in .eco, for use by environmentalists, .food for foodies, or .sports for sports enthusiasts.

The expansion also could allow business names, such as .ford, and place identifiers, such as .nyc or .paris.

At least one proposed domain name is already controversial: .xxx, which would create a sort of red-light district on the Internet.

Those in favor of the changes say opening up the system would allow like-minded groups to find each other more easily and would help companies improve their online identities. ICANN is also considering adding more characters to international domains, now restricted to Latin characters. It aims to add characters in the Arabic, Japanese, Cyrillic and Chinese alphabets that would add significantly to the 1.5 billion estimated Internet users.

The ICANN board is expected to take up domain-name expansion at a meeting in December in Cartagena, Spain, where board members may decide to begin processing new registry applications or say they need more time.

"The technology is there" to go beyond 21 top-level domains, White said.

Still, some that worry opening up Internet addresses will lead to criminals duping consumers.

The International Trademark Association says the plan will lead to higher levels of trademark and intellectual-property abuse.

Others say there will be disputes over the addresses.

### **Coordinating body**

Few people know much about ICANN, formed in 1998 by the U.S. government to coordinate the Internet-addressing system. The plan was to grow ICANN under the U.S. Department of Commerce. Eventually, the government would pull out.

Last year, the Commerce Department transferred the group to a multi-stakeholder, private-sector-led model.

Besides generic top-level domains, ICANN also controls country code top-level domains, such as .us for the United States and .eu for the European Union. Generally reserved for the countries, the domains can be used for other purposes.

For instance, Scottsdale-based Go Daddy, a domain-name registrar, recently began marketing .co, a country code introduced during the summer for Colombia.

A domain-name registry is the wholesaler in the process. It applies for top-level domains. For example, VeriSign Inc. is the registry [for.com](#) and .net.

ICANN makes 18 to 20 cents annually for each registration name, additions, transfers and renewals. The revenue covers its administrative functions.

The group estimates it will cost a registry as much as \$185,000 in application and legal fees to start a new top-level domain.

The registrar in the addressing process is akin to a retailer. Those looking to buy [a.com](#) or .net address deal with a registrar such as Go Daddy.

### **Criminal opportunity**

The Anti-Phishing Working Group, an industry association combating identify theft and fraud from phishing and e-mail spoofing, said a larger number of top-level domain names would allow more opportunities for organized crime to gain a foothold in registries.

They point to a registrar that was convicted in 2008 of cyber crime, including credit-card and document fraud. Officials said the registrar was a haven for cyber criminals who wanted to register websites that supported a range of criminal activity.

"Some members of our community assert that anyone running such a TLD should come under particularly heavy scrutiny and perhaps even regulation or audit to ensure the TLD is run meticulously," the group wrote in a draft report on the issue.

The trademark association argues that the proposal does not protect businesses from cyber squatters, entities that register and traffic Internet domain names with the intent to benefit from another's trademark by confusing consumers.

Experts say it's fairly easy to determine who should get, for example, .ford. Ford Motor Co. could make strong arguments that it owns the copyright and that the creation of the domain is an intellectual-property issue.

But what about a domain such as .delta? Should it go to the airline or the water-faucet manufacturer?

The process for deciding is complex, White said.

"Is it going to make everybody happy? Probably not," he said. "It's the closest we can come because nobody has ever done this before."

Warren Adelman, Go Daddy president and chief operating officer, said he was unsure how consumers would react to so many name combinations.

Go Daddy has had some success with some newer top-level domains, including .co and .me. For instance, the address used for the movie "Despicable Me" was despicable.me.

"Today in the world there are just about 198 million top-level domain names, " Adelman said. "If you look at a world population of 7 billion, it's still a pretty small number."



## Group Voices Concerns With Leahy's Online IP Bill

Tuesday, September 28, 2010 12:35 PM

By Juliana Gruenwald

While it appears unlikely that the Senate Judiciary Committee will act on the legislation this week, the Center for Democracy Technology voiced strong concerns Tuesday with a bill aimed at cracking down on foreign websites that offer illegal copyrighted content or counterfeit goods, saying it could hamper free speech on the Internet and force Internet intermediaries to become the gatekeepers of the Web.

The Combating Online Infringement and Counterfeits Act, introduced earlier this month by Senate Judiciary Chairman **Patrick Leahy**, D-Vt., is on the Senate Judiciary Committee's [agenda](#) for its markup Thursday but the session could get postponed if the Senate decides to adjourn on Wednesday. The committee may take up the measure if Congress returns after November's midterm elections for a lame-duck session, a Leahy spokeswoman said.

Either way, CDT officials raised several alarms about the bill. The bill would give the Justice Department new authority to file a civil action against a domain name linked to a Web site trafficking in illegal copyrighted content or counterfeit goods asking a court to order the registrar, a firm that sells Internet domain name registrations to the public, that registered the domain name to shut it down. The measure also would give the Justice Department power to target foreign registrars or websites by requiring U.S.-based third parties to stop doing business with these foreign targets. This might include requiring a U.S.-based Internet service provider to block access to such sites or requiring a U.S. payment processor to block payments to the site.

"The Justice Department is currently limited in the remedies available to prevent websites dedicated to offering infringing content. These websites are often based overseas yet target American consumers," Leahy said when he introduced his bill earlier this month. He said his measure would "give the Department of Justice an expedited process for cracking down on these rogue websites, regardless of whether the website's owner is located inside or outside of the United States."

CDT official said the bill raises First Amendment concerns by calling for the seizure of domain names, which would lead to the shut down of some websites that might also include legal content. In addition, they note that in allowing the U.S. government to dictate which websites should be taken down, it would set a bad precedent for other governments who might target websites for reasons some might find objectionable.

"Once you start asking ISPs to take a new role as enforcers against improper content, it's hard to see where that stops," CDT Senior Policy Counsel **David Sohn** said in a conference call with reporters.

In addition, CDT General Counsel **John Morris** voiced concern that the bill if enacted it could destabilize the current Internet governance system. In 1998, the United States chose a California-based nonprofit corporation called the [Internet Corporation for Assigned Names and Numbers](#) to take over management of the Internet's domain name system. It currently operates under an agreement with the U.S. Commerce Department.

Morris notes that many foreign governments have been unhappy with the U.S. role in managing the Internet's domain name system and would like to see such responsibilities transferred to the U.N.'s International Telecommunication Union. He noted that the United States has promised for years that it would not "use its historic position over the domain name system to censor content. [But] that is precisely what is happening here" with the bill.

When asked about the bill, ICANN Vice President of Government Affairs for the Americas **Jamie Hedlund** said in a statement that ICANN is "working constructively with committee staff to ensure that the bill does not have the unintended consequence of destabilizing the Internet's Domain Name System."

ICANN is charged with accrediting registrars and has a provision in its [accreditation agreement](#) requiring registrars to assure that domain name holders are not infringing legal content. ICANN can revoke an accreditation of firms that violate the accreditation agreement.

**Steve Tepp**, senior director of Internet counterfeiting and piracy for the U.S. Chamber of Commerce's Global Intellectual Property Center, rejected some of CDT's claims about the bill. "The assertion that this legislation equates to foreign political censorship is erroneous and does not accurately reflect this bill," he said in a statement. "Effective action against criminals whose products can kill and whose illicit profits steal American jobs is vastly different from foreign political censorship."



## CDT Protests Bill Requiring Registrars to Enforce Copyright

September 28, 2010 11:40 AM

By Grant Gross, [IDG News](#)

New legislation that seeks to curb copyright infringement by requiring domain-name registrars to shut down websites suspected of hosting infringing materials raises serious free-speech concerns, a civil liberties group said Tuesday.

The [Combating Online Infringement and Counterfeits Act](#), introduced Sept. 20 by U.S. Senate Judiciary Committee Chairman Patrick Leahy, would block free speech on U.S. and foreign websites if they are taken down by registrars and registries, said the Center for Democracy and Technology.

The bill could also lead to a fragmentation of the Internet, as other countries attempt to enforce their own laws, including censorship, on foreign websites, [CDT officials said](#).

New requirements for registries and registrars to take down websites suspected of copyright violations are "unprecedented in the United States," said Leslie Harris, CDT's president and CEO.

The bill would move the U.S. government toward a policy of requiring Internet service providers to be filters of Web content, Harris said during a press conference. "It's going to be blocking orders for intellectual property, then for terrorism or child safety or cybersecurity," she said.

The bill would allow the U.S. Department of Justice to seek a court order requiring a registry or registrar to shut down a website "primarily designed" to infringe copyright. But even on those sites, there will be free speech protected by the U.S. Constitution, said John Morris, CDT's general counsel.

"There will be some lawful speech on the sites that are blocked," he said. "It's not blocking only unlawful speech, it's blocking some lawful speech as well."

The bill, if passed, could also embolden other countries to block U.S. websites, Morris said. A decade ago, France attempted to block Yahoo from selling Nazi memorabilia, and in recent years, Turkey has blocked YouTube because the site has refused to block access to content the Turkish government has determined to be illegal.

Several other countries have tried to block Web content, and the U.S. should expect more efforts by countries to shut down U.S. sites if the Leahy bill passes, Harris said. "It will be hundreds of countries making decisions for everyone else in the world," she said.



The bill could lead to a new fight over perceived U.S. control over the Internet domain name system and the Internet Corporation for Assigned Names and Numbers (ICANN), Morris added. ICANN, the nonprofit that administers the domain name system, is headquartered in the U.S. and operates through an agreement with the U.S. government.

A spokeswoman for Leahy, a Vermont Democrat, wasn't immediately available to comment on CDT's concerns. But other groups praised the legislation.

Online counterfeiting and piracy is a "destructive force" that hurts the U.S. economy, said Steve Tepp, senior director of Internet counterfeiting and piracy at the U.S. Chamber of Commerce. The bill "addresses this illegal behavior by targeting the worst of the worst counterfeiters and copyright pirates online," he said in a statement. "The assertion that this legislation equates to foreign political censorship is erroneous and does not accurately reflect this bill."

The bill targets activities that the majority of nations have agreed are illegal, Tepp added. "This bill targets illegal activity that costs American jobs and harms consumers," he said. "It is desperately needed and will send a clear signal that online counterfeiting and piracy is a crime and cannot be tolerated."

[Steve Metalitz](#), counsel for the International Intellectual Property Alliance (IIPA), also praised the bill. Opponents of the bill have had a "knee-jerk" reaction, he said.

"Senator Leahy's bill is trying to address a very serious problem in trying to come up with a focused and carefully fashioned remedy," he said at a Tuesday intellectual property forum hosted by the Information Technology and Innovation Foundation. "It potentially could be a very powerful tool [against] some of the least-defensible aspects we encounter."

Grant Gross covers technology and telecom policy in the U.S. government for The IDG News Service. Follow Grant on Twitter at GrantGross. Grant's e-mail address is [grant\\_gross@idg.com](mailto:grant_gross@idg.com).

# Los Angeles Times

## Anti-piracy enforcement vs. a functional Internet

September 28, 2010 | 7:13 pm

By Jon Healey

The Times' Richard Verrier offered a compelling piece today about [online piracy's effect on indie filmmakers](#), noting how Greg Carter's "A Gangland Love Story" (an updated take on "Romeo and Juliet" with rival black and Latino gangs) had found its way onto at least 60 bootlegged-movie websites. We can quibble about Carter's estimate of the monetary damage -- he says he's lost \$100,000 in revenue -- but there's no defense for the sites and uploaders who've made Carter's work available for free.

Many of the movie bootleggers are overseas, often in countries with no interest in enforcing U.S. copyrights. Their only points of contact with the U.S. may be with the companies that register their dot-coms or dot-net domain names and the Internet service providers that connect them to customers here.

Law enforcement officials earlier this year [seized the domain names of nine sites](#) accused of criminal copyright infringement, but at least one of them quickly [reopened for business](#) under a slightly different domain name. Eager for more protection, the Motion Picture Assn. of America and other lobbying groups for copyright holders are backing a bill by Sen. Patrick Leahy (D-Vt.), [S 3804](#), that would allow the Justice Department to seek an injunction from a U.S. court against the domain name of any site whose main purpose is to offer pirated goods through streams, downloads or links. Such an order would not only seize a site's domain name, it would also require ISPs, financial companies and online advertising networks to avoid connecting to or processing transactions from the site.

The bill would also require the Justice Department to maintain a list of sites it determines, by its own reckoning and without court intervention, to be "dedicated to infringing activities." ISPs, credit-card companies and ad networks would be encouraged to block those sites even without a court order to do so.

Introduced eight days ago, the bill was on a fast track -- the Senate Judiciary Committee was scheduled to act on it Thursday, even though no hearings have been held on the measure. But the Senate is likely to adjourn this week, putting off consideration of the bill until after the election -- and, more likely, into the new Congress next year.

That's a good thing. Online piracy is a real problem, especially the spread of sites streaming movies for free while they're still in theaters. Yet the mechanism the bill proposes for attacking the problem -- in essence, a legal shortcut that gives U.S. courts the ability to knock sites off the global Internet and dry up their revenue sources -- would open a nasty can of worms. It's a risky step that bears much more thought and debate than it could receive in the waning days of this year's session.

The Center for Democracy and Technology, a centrist technology advocacy group, released an analysis today that [outlines the bill's major problems](#). These include important free-speech and due-process issues. The most significant ones to me, though, dealt with the message the bill would send to the rest of the world about one nation's ability to control the global Internet. First, the CDT argued, the bill would give the U.S.'s blessing to foreign governments imposing their own laws and standards on Internet users outside their borders:

While the technical mechanisms may vary, the effect is the same: if enacted, S. 3804 would stand for the proposition that countries have the right to insist on removal of content from the global Internet in service to the exigencies of domestic law -- and nothing would limit the application of this approach to copyright infringement....

Further, once the United States sends the green light, the use of domain locking or ISP domain blocking to silence other kinds of content considered unlawful in a given country -- from criticism of the monarchy in Thailand to any speech that "harms the interests of the nation" in China -- will surely spread, impacting bloggers, citizen journalists, human rights advocates and ordinary users everywhere. The precedent that domain locking or blocking can be encouraged through an extrajudicial blacklist only intensifies this risk.

Second, according to the CDT, S 3804 would set a precedent for using ISPs to enforce a government's policy objectives:

There is no shortage of illegal or unsavory content on the Internet, and well-intentioned advocates for various causes will look to ISP domain-name blocking as the new tool for addressing it. In short, once Congress endorses a new policing role for ISPs, that role will surely grow. As ISPs are enlisted for each new policy aim -- however appropriate when viewed in isolation -- the unsupervised, decentralized Internet will give way to a controlled, ISP-policed medium. This would be a fundamental change in how the Internet works.

Third, the bill would make the rest of the world even more nervous about the role played by the U.S. in [ICANN](#) (which administers the most popular top-level domains, including .com and .net) and Internet governance generally. The U.S. has gradually [loosened its oversight of ICANN](#) in response to concerns that decisions about governance were being swayed by [political pressure](#) from Washington. But taking advantage of ICANN being headquartered in the U.S., S 3804 would give the Justice Department the ability to take down .com or .net sites anywhere in the world. Said the CDT:

This type of assertion of global control is the kind of U.S. exercise of power about which other countries of the world have worried -- and about which U.S. foreign policy has sought to reassure the world. Thus S. 3804 directly harms the United States' Internet governance agenda pursued through diplomatic channels over the past ten years.

Michael O'Leary, executive vice president for government affairs at the Motion Picture Assn. of America, said it's absurd to suggest that the motion picture industry would support legislation that encouraged governments to censor content. "The motion picture industry is built on the 1st Amendment," O'Leary said in an interview. "We're simply trying to deal with people that are stealing creative content that Americans produce and trying to profit from it."

Countries that are predisposed to censor don't need the U.S. to set an example for them to follow, O'Leary said. The CDT's opposition to S 3804 has less to do with free speech and Internet governance, he argued, than with "perpetuating piracy in this country." He added, "I think that their response to this has not been constructive."

If O'Leary were talking about any number of other Internet advocacy groups, he might have a point. But the CDT doesn't fall into the "content-should-be-free" camp. Its concerns about sending the Net down a slippery slope toward Balkanization should give lawmakers pause as they try to craft a response to foreign websites that advance their own interests by giving away the work of filmmakers like Carter.

## Atallah making a difference on a global scale with ICANN

Growing up in the Middle East and studying and living for the latter part of his life in North America has given him an international viewpoint

By Derek Baldwin  
 Business Features Reporter  
 Published: October 9, 2010

Dubai - If there was ever a chance to make a difference on a global scale, Beirut native Akram Atallah believes he may have found it.

Named the new chief operating officer for global non-profit Internet Corporation for Assigned Names and Numbers (ICANN), the 48-year-old technical industry executive assumed the helm of the California based organisation in September.



Akram Atallah's new job places him at the heart of ICANN, the group at the epicentre of the internet, which manages domain names and numbers to ensure billions of communication transactions are conducted securely and without interruption daily.

His new job places him at the heart of ICANN, the group at the epicentre of the internet which manages domain names and numbers to ensure billions of communications transactions are conducted securely and without interruption daily.

"This is an opportunity for me to make a difference on a very large scale," Atallah told *Gulf News* in an interview. "If we can make the internet available to all walks of life where people can afford it, make it more accessible worldwide in multiple languages and in the third world, that will be my goal."

ICANN, for example, recently approved the UAE's application to implement a new top-level domain name in non-Latin script giving the Emirates

.emarat in Arabic language for internet users who do not know English.

For Arabic-only speaking users, the entire world has opened up on the internet thanks to the new .emarat domain name, he said.

"This affects people more directly, it will make a big difference," said Atallah, who was educated in his formative years through to high school in French and Arabic.

With a firm command of a third language, English, Atallah moved from Lebanon at age 18 to pursue his studies at University of Colorado where he earned a Masters in Electrical Engineering.

Atallah landed several jobs within the technical realm over the next stages of his career at

firms such as Rockwell Semiconductor Systems in California where he worked as Senior Vice President and CoreObjects Software.

After a long tenure in the industry, Atallah said he wanted something different, a new direction with more of a humanitarian push to help better society. ICANN's push to reduce non-English language barriers for emerging economies, including the Arab region, is helping Atallah realise his latest goals.

"I would definitely like to bring the internet to the Arabic world, to be more pervasive. The internet is a medium for education, work," he said.

Growing up in the Middle East and studying and living for the latter part of his life in North America has given him an international viewpoint that, "we're all the same, we want to have a comfortable life and provide for our kids."

With ICANN's efforts to increase internet access globally, all cultures can "find what we have in common, rather than what differences we have...bringing the internet to the Arabic world will help bridge that gap."

Another goal for Atallah in his new role is to help find new efficiencies within ICANN. "What attracted me to ICANN is that it keeps the internet unified," he said.

"Nothing is broken in ICANN. But it has grown very fast from a small group to a very big enterprise with a \$60 million (Dh220.35 million) budget and 100 people positioned around the world. I think there are improvements that can happen. I think we can improve our processes and do more."



## Radical change coming to Net addresses (FAQ)

October 12, 2010 5:00 AM PDT  
by Stephen Shankland

Come 2012, confused camera customers might be able to point their browsers to a Web address that looks very different from what's available today: support.canon.

That's because the organization in charge of such names, the [Internet Corporation for Assigned Names and Numbers](#), is planning on a dramatic rewriting of the rules for Web addresses that could demote .com's importance.

Today there are just a few of what are called generic top-level domains--.com, .net, .org, .biz, and .edu, for example. But ICANN wants to open the door to, potentially, hundreds or thousands more of these [GTLDs](#).

That's a big change, especially for those who have a brand to protect on the Internet and were taken by surprise by the virtual land grab that took place with .com addresses in the 1990s. Here's a look at what GTLDs mean now and in the future.

### **What is a generic top-level domain, and how do I get one?**

In an Internet address, the top-level domains is what comes after the last period in the main server address. There are two broad types: the [generic top-level domains such as .com](#) and country code top-level domains such as .jp for Japan or .de for Germany. With ICANN's expansion, though, the term "generic" is something of a misnomer: it could include not only something like .auto or .hotel, but also branded domains such as .ibm or .safeway.

When .com addresses became must-have business accoutrements, companies scrambled to register their own or buy them from those who already owned them. Things will be different with the GTLD expansion though: instead of registering a domain for a modest fee through a registry such as GoDaddy, those who want a GTLD of their own must apply to ICANN. And it's expensive: table stakes are \$185,000 for the application fee and \$25,000 a year to operate the registry. If someone else wants the domain, bidding will determine the winner. And another fee will crop up when a registry is setting up secondary domains on a top-level domain: the first 50,000 are free, but they will cost 25 cents apiece after that.

For a detailed look at the process, check the [most recent GTLD applicant guidebook](#), but be warned: the most recent version is a 312-page, 4.7MB download.

### **Why expand the range of top-level domains?**

ICANN, a not-for-profit corporation founded in 1998 to oversee the Internet address system, tries to promote competition, including in the market for domain names. Most prominent global sites today need an address ending in .com, and one company, VeriSign, is the registry that oversees that domain. A company wanting more control over its brand on the Internet might

want to apply to ICANN to become a registry controlling a domain with its own name. Other companies might want to operate broader registries open to all comers, perhaps with a very generic domain such as .web or something more specific such as .art. GTLDs could help people launch Web sites using a family name even if the .com version is taken. And cities are expected to get in on the action, too, with local domains such as .sydney.

There are a lot of companies in the world, of course, and ICANN appears to be bracing itself for a lot of new activity: in [notes from its September meeting](#), ICANN indicated it thinks it will be able to accommodate adding something like 1,000 new domains each year.

Big companies worry a lot about controlling their brands, and GTLDs offers a new mechanism for doing so. A company that secured a GTLD with its own name doesn't have to open it up to use by others, said Karla Valente, director of ICANN's product services communications. It is possible to have a "top-level domain that doesn't have second- and third-level selling. There are many brand owners that find this strategy very appealing," with their own control over the domain rather than reliance on third parties. "They also believe this could lead them to all kinds of different branding and marketing strategies," Valente said.

Filling ICANN's coffers is apparently not a reason to expand the range of GTLDs, though. "The model of the program is to be revenue neutral. We are not here to make money on new TLDs," Valente said.

#### **When people start seeing GTLDs arrive?**

"I think 2012 at the earliest, Valente said.

But the run-up to offering GTLDs is already well under way. Their arrival has been delayed to deal with concerns from trademark holders, the U.S. Commerce Department ([PDF](#)), and ICANN's Governmental Advisory Committee ([PDF](#)), which reports to ICANN's board. But the expansion is proceeding, and ICANN expects to approve the final GTLD guidelines, publicize them, and accept applications for a window a few weeks long in 2011--more than [two years later than originally expected](#). So companies that might be affected by GTLDs probably should start thinking about them sooner rather than later.

The actual arrival will be gradual. "We have to pace ourselves how we add things to the root," Valente said, referring to the servers at the heart of the Internet address system that link the textual names people type into a browser with the actual numeric addresses those Web servers use. And the root servers have been undergoing significant change of late, with the arrival of IPv6 (Internet Protocol version 6) to provide vastly more addresses and the shift to a technology called [DNSSEC](#) that makes the domain name system more secure.

ICANN hasn't decided yet when the next window for submitting applications would open.

#### **Who needs to care?**

At the outset, chiefly those with trademarks and brands to promote or defend are the ones who should pay the most attention. Unfortunately, there's no clear path about what they should do.

Japanese camera maker Canon has announced its intention to apply for the .canon domain, an asset that would stamp its communications and Net presence with its own brand. "With the adoption of the new GTLD system, which enables the direct utilization of the Canon brand, Canon hopes to globally integrate open communication policies that are intuitive and easier to



remember compared with existing domain names such as 'canon.com,'" Canon said of its move. Not everybody will come to the same conclusion, though.

"I would not recommend brands invest in GTLDs at this stage of the game. The URL is only the holding place for what is most relevant--content," said Rick Gardinier, chief digital officer of marketing agency [Brunner](#). "Customers will flock to great content and engaging experiences, not to domain names."

Steve Stolfi, vice president of global partnerships at branding firm [CT Corsearch](#), is more bullish on the idea. "It completely changes the landscape of the Internet and how future commerce will happen on the Internet," he said. "Now a company can have a dot-brand and deliver more personalized and individual Web services to people. For example, a major consumer products company can have .anheuser-busch, and can have all its products--budweiser.anheuser-busch, michelob.anheuser-busch, corona.anheuser-busch. A banking company could take it one step further [by offering] each one of its customers a dedicated domain, so when they're doing banking on the Internet, they would have their own secure domain."

### **Will security be affected?**

ICANN is working to ensure security isn't worsened. There could be benefits to a generic top-level domain expansion. For example, phishing might be harder if people learn that any communication from their banks must involve Web sites or e-mail with .bankofamerica or .banking. On the other hand, new Web and e-mail addresses will be confusing to people, and confusion over authenticity and identity is a perfect opportunity for nefarious behavior.

Trust will certainly be at least a transitional issue as people see unexpected Web addresses. In the long run, though, people could end up with more faith in a branded domain than a .com, said [Jim Hendler](#), a Rensselaer Polytechnic Institute professor who among other things has worked with the Obama administration on its government transparency site, [data.gov](#). It's a double-edged sword, though, he believes. "I'm going to be a lot more comfortable I'm not being phished if I'm going to somebody who had to pay \$185,000 to get that name," he said. "But on the other hand what will happen to the other folks who don't have \$185,000?" In particular, he doesn't want to see a world where start-ups are at a disadvantage to incumbent powers. When Facebook began, "at no point did it have to go to a venture capitalist and say, 'We need \$200,000 so we can be .facebook so we can play on the same playing field...this stuff strikes me that yet another way that big players are trying get an advantage."

### **Will some cybersquatter grab my company's name?**

This was a problem in earlier days of the Internet's commercialization, but ICANN is working to thwart it with GTLDs. One mechanism is the trademark post-delegation dispute resolution procedure ([PDF](#)) that's designed to provide a way for trademark holders "to proceed against registry operators who have acted in bad faith with the intent to profit from the systemic registration of infringing domain names (or systemic cybersquatting)," according to a February draft of the process. But that doesn't mean those with trademarks will be able to sit idly by, some believe.

"Today, trademark holders are buying up domain names for brand protection. As new GTLDs come on, that will cause them to have to go out and buy more. Trademark holders may have some challenges ahead of them," said Lance Wolak, director of marketing and product management for another top-level domain, .org.

ICANN has worked to mitigate these issues with, for example, the announcement in March of a trademark clearinghouse to track registered names. "In forming this trademark clearinghouse," ICANN Chairman Peter Dengate Thrush said in a March statement, "we've listened to our community about providing trademark protection. We've also adopted an extremely rapid process by which people or organizations can challenge trademark infringement."

But worries remain. ICANN's Governmental Advisory Committee expressed strong reservations in a September document. "The GAC notes with great concern that brand-owners continue to be faced with substantial and often prohibitive defensive registration costs which constitute a negative impact on their business planning and budgeting over which they have no control. Consultations by individual GAC members with business stakeholders underline how this issue remains a fundamental downside to the expansion of the GTLD space, far outweighing any perception of opportunities for innovation and customer-orientated benefits from the creation of corporate brand TLDs," the committee said. Many large and small companies "find themselves without a sound business case to justify high levels of expenditure on large numbers of domain name registrations, most of which they are unlikely ever to use."

And of course there are two levels of trademark protection that might use branded terms: GTLDs themselves and new domains on GTLDs that don't directly use the brand name.

Valente offers assurances, though. "We tried to create brand protection mechanisms of the future, during application and afterward, that are better and stronger than what we have in today's space," she said. Defensive registration "is a common practice today," but she doesn't believe it should be necessary with the GTLD expansion.

### **What about legitimate trademark disputes?**

In the physical world, it's not a problem when two companies in different areas use the same terms for their products or services. But trademarks can collide as technology evolves, as [disputes between iPhone maker Apple and Beatles record label Apple Corps](#) have shown. When multiple entities want the same domain and each has a claim, then bidding begins.

"If both are legitimate trademark owners, they're going to have to duke it out," Stolfi said. "The one with the deeper pockets (is) going to win at this point." That could be an expensive issue if, for example, Ace Hardware and Ace Group Insurance both want the .ace GTLD.

### **Is this the beginning of the end of .com dominance?**

It's possible in the long run that new GTLDs could become influential, but it's way too soon now to write off .com as just another top-level domain. Today's Web user is well trained to point a browser at [www.companyname.com](#). Most people probably don't even know .coop, .pro, and .museum exist, and some more general-purpose GLTDs such as .biz haven't made much of a dent in competing with .com.

"If you look at examples like .museum, .info, and .biz., you'll find the growth rate in general has been average across the entire top-level domain base," Wolak said. However, .com addresses still command a price premium: "On the secondary market for domain names, the names that are getting the highest dollar amount are still primarily with .com."

And even though companies might see opportunities in new GTLDs, they'd have to retrain Web users, reverse .com momentum, and potentially undermine existing brand investments, said Toby Southgate, managing director of [The Brand Union](#), a branding firm. "Particularly with

higher profile or global brands, consumer expectation and even assumption would steer towards a .com suffix," he said. "This won't be supplanted as the de facto global domain name."

# THE JORDAN TIMES

## NITC announces launch of Jordan's Arabic top-level domain

Wednesday, October 13th, 2010, 8:21 pm Amman Time  
By Mohammad Ghazal



Minister of Information and Communications Technology Marwan Juma types in the first Arabic domain name on His Majesty King Abdullah's website on Monday (Photo courtesy of MENA ICT Forum)

**AMMAN** - The National Information Technology Centre (NITC) on Monday announced the launch of Jordan's Arabic top-level domain: **ندرال.ا** (.alordon).

The launch of the new top-level domain will help increase Internet penetration in the country from 30 per cent currently to 50 per cent by the beginning of 2012, NITC General Manager Nabeel Al Fayoumi told The Jordan Times on the sidelines of the MENA ICT Forum 2010, which concluded Monday.

In Internet parlance, top-level domains, or TLDs, are the last label of a fully qualified domain name and the end of a URL, according to web sources. Common TLDs include .com, .org, .net, and Latin-alphabet country codes like .jo.

"By launching the domain in Arabic, we will be able to reach a larger number of people and encourage them to use the Internet. Currently, those who do not know English might find it difficult to surf certain websites, but when the domains are in Arabic, they will find it more convenient to use the web," Fayoumi said.

He added that the first Arabic domain name launched in Jordan is His Majesty King Abdullah's website, adding that all websites of ministries and public agencies and educational institutions will soon have Arabic domain names.

“Jordan is the fourth Arab state to launch domains in Arabic,” Fayoumi, said, adding that the plan is to have about 9,000 websites with Arabic domain names by the end of 2011.

In a press conference Monday, Minister of Information and Communications Technology Marwan Juma stressed the significance of launching the Arabic TLD in Jordan.

“The decision to widen the language scope of the Internet will have a landmark impact on how the Internet will be received not only in Jordan but around the world. This comes at a critical time when expanding the language of the Internet is vital to its growth and reception to all users.”

The efforts to launch the TLD came as a result of the need to develop a means to further encourage Internet use and increase its dissemination to local communities. Research has indicated that 80 per cent of Internet users do not know English, but 80 per cent of Internet content is in English, according to a statement released by forum organisers.

Jordan has been keen to increase Internet penetration by bridging gaps that prevent inaccessibility, organisers said, adding that NITC recognised the need to submit a formal request to reserve a top-level domain under the name **ندرال.ا**.

Its efforts culminated when the Internet Corporation for Assigned Names and Numbers, the entity in charge of introducing new TLDs, approved the proposed top-level domain **ندرال.ا**, which was initiated on August 20, 2010.

After the launch, registration will be open to government institutes and ministries, diplomatic missions and trademarks for a period of time, and will later be open to anyone interested in registering a domain under the TLD, according to the statement.

## Peter Dengate Thrush: the internet's ringleader

By: Adam Smith

Interview  
By Adam Smith



## Peter Dengate Thrush: the internet's ringleader



On the cusp of the new generic top-level domain application period, ICANN Chairman Peter Dengate Thrush tells *WTR* that the trademark community may have delayed the process enough and that the board may be ready to force it into submission



As the Internet Corporation for Assigned Names and Numbers (ICANN) is a community-driven organisation, its chairman views developments in the domain space not from the top, but from the centre. Peter Dengate Thrush is the internet's ringleader: a diplomat in the eye of the storm. In many respects, this is an unenviable position. For over two years, trademark owners have angrily criticised ICANN and the policies developed by its community. But now those policies are set to be implemented, as ICANN prepares to launch its flagship new generic top-level domain (gTLD) programme. *WTR* sat down with Dengate Thrush at ICANN's most recent meeting to hear what he honestly thinks of the rights protection measures developed by the community.

**We know that IP lawyers don't want new gTLDs and that marketing people do. Do we know whether consumers actually want them?**  
I don't believe the IP community seriously advances that as a proposition; it's just a device to slow down the process. The suggestion that innovation of this sort will not benefit the market seems to be a bit of a leap. There are over 300 documented indications from organisations that want to run new gTLDs.

**But do consumers want them?**  
Innovation works by people coming up with products and services that no one has thought of. The suggestion that you can ask people what you would like them to innovate completely misconceives the innovation process.

**We're here in Brussels at ICANN's 38th meeting. How would you describe the discussion here with regard to trademark protection and new gTLDs?**

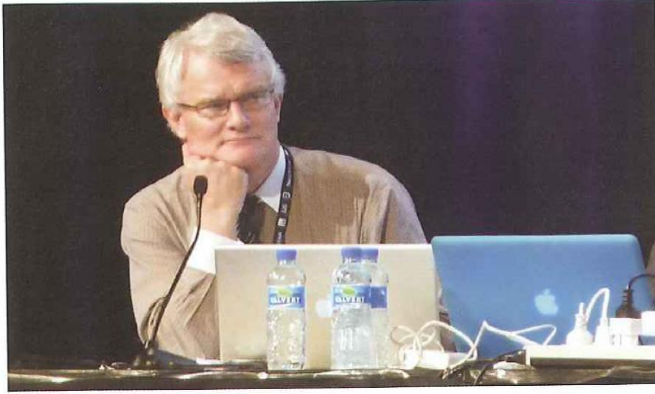
The reception in Brussels has been very good. People have moved past the point of trying to stop the gTLD expansion and are looking at how to live with it. That's the success of the Brussels meeting. The reality is that ICANN has gone to extraordinary lengths to alleviate the concerns of rights holders. Our policy states that the new gTLD programme has to be developed without infringing the rights of others. That includes trademark rights, so we've worked hard to make sure we honour that commitment.

**Are the rights protection mechanisms as drafted in the fourth Draft Applicant Guidebook (DAG) strong enough to honour that commitment?**

I think they are. The IP concerns are genuine, but you have to balance them: we'll put the phone down from hearing the complaints of a corporate IP counsel and then the phone will ring again with the marketing manager from the same company saying, "When does it start? And how do we do it?" So there's the balance. We're about to open an extraordinary amount of real estate and that will bring enormous opportunities for brand owners.

**So why can't corporations decide what to do with this?**

It's a reflection of the complexity of issues and the different budgets that the corporations have to solve them. I think most of them will



be very interested in a brand-name TLD. This will be a very powerful tool in helping a brand to build its culture. I think we'll see many of them as time goes by.

**Trademark owners have criticised the current form of the proposed Uniform Rapid Suspension (URS) system (a swift takedown procedure to fight cybersquatting), arguing that it is too burdened by procedure to have any practical use. Do you agree?**

I find the rights holders' issues with that interesting. What has been added is due process steps. If we were to set up a system against IP owners because they were offending domain name holders, you'd never hear the end of it: trademark owners would be howling that due process was not being adhered to. Any problems with the URS will be fixed. None of these rights protection mechanisms is set in stone. They are created by community processes and they should be editable by community processes. From publication of the final applicant guidebook to the opening of the first round, there will be a considerable amount of time. There'll be opportunity to improve these processes.

**Due process is important, but is it necessary for a system that is supposed to kill the most blatantly infringing registrations?**

As an IP trial lawyer, I understand the need for prompt remediation. I have conceptually no problem with making sure that expedited processes are available. If this one turns out to be too slow, we'll do something else. What we can't have is the appearance that the entire gTLD process can be held up until this is resolved.

**Is the URS fast enough?**

It's the best consensus policy that the community can come up with. Can it can be improved? I'm sure. But I'm also sure that the civil liberties people will make sure there's no abridgement of due process obligations.

**Do you expect that the URS will shed some of its layers through community policy development?**

I can't predict what improvements will be made, but it's clear that the process is open. It certainly will be reviewed; there's no question about that. This is the beauty of the multi-stakeholder model: if the IP holders can persuade the community – and they're good at doing that – then the URS may be developed. Most participants in the ICANN community are realists. People are cautious at the beginning and want to set up more barriers until they have trust in the system.

**Imagine that you were not chairman of the board, but emperor of**

**ICANN, with absolute power. What would be on your wish list for rights protection mechanisms under new gTLDs?**

I'm not sure that I can answer that – maybe because it's too tempting a prospect! My wish list would include prompt and accurate disposition processes so that through any procedure (appeals, injunctions, whatever we decide), there's a fair way to assert a right, have it checked quickly and then obtain some kind of remediation.

**ICANN invests a lot in IT and management expertise. Given the increasing significance of IP rights in the domain space, should ICANN employ an IP lawyer on staff?**

I think that's naive: we don't have a tax lawyer, but we deal with tax issues. As a matter of interest, we have two IP lawyers on the board and have had an IP lawyer on the board since 1998. There's no shortage of expertise. If IP lawyers want to help with policy drafting, they can – that's what our public comment periods are for.

**If the community proposed to elevate ICANN's IP Constituency (IPC) to a level equivalent to that of the Government Advisory Committee (GAC) (ie, direct adviser to the board), what would you make of that?**

I'd say that it's competing with a proposal to remove the IPC completely and fold its function into the Business Constituency. Do I think that trademark lawyers are equivalent to the advice of sovereign governments? No. We have a permanent cadre of IP lawyers in the IPC – the new gTLD programme has generated a great deal of interest in ICANN among the trademark community, which is really involved now. Once we've solved the issues around trademark protection, I think that interest will diminish and they'll go back to their day jobs. That's the way the process needs to work.

**ICANN predicts that it will receive 300 to 500 applications for new gTLDs in the first round. How did you arrive at that number?**

It's an educated guess. A new TLD will have to be run by a competent registry. When you look at how many registries are campaigning for work, and then estimate that they can each do five or 10 in the first round, that doesn't lead to tens of thousands of new TLDs. There's just not the registry infrastructure for that. At the same time, the presumption is changing from the fact that everything that goes into the root has to be treated as sacrosanct – the new idea is that some of these TLDs are going to fail. That's the way the market works. Because of that, I suspect there will be fewer people wanting to build a million-dollar registry in case the market treats it with disdain.

**Will trademark concerns be cleared up at the board's retreat in September?**

I hope that all issues are going to be cleared up by the community by then – the board tries not to create policy or decide things. If the issues are not cleared up by September, we'll be forced to make some decisions. If the community can't decide, we'll step in and force it into some sort of arrangement or decision.

**So what happens next?**

We're ready to go. I'm hoping that DAG 4 is the final draft. After September, we should be working on writing the applicant guidebook. Meanwhile, the GAC is signalling that it has concerns over public order and morality. The GAC meeting in Brussels was very conflicted. We might end up with the situation where some countries that favour free speech have to sign agreements that limit speech. The GAC is finding it hard to live with its own rules. [WTR](#)

Adam Smith, *World Trademark Review*, London