

# Public Comments Issue Tracking Checklist (v3.0)

## Forum Title: Proposed Changes to the NCUC Charter

<b>Open Date:</b>	24 August 2017	<b>Close Date:</b>	3 October 2017
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A total of 8 issues, suggestions, and recommendations were offered by the community and are documented in this Checklist. They are grouped into four categories as follows:

- Category A: Membership Eligibility
- Category B: Executive Committee Appointment
- Category C: References
- Category D: Miscellaneous

The following table shows the original disposition by Status category as of 17 October 2017 after a thorough review and response provided to ICANN Staff by Farzaneh Badii, Chair of the Noncommercial Users Constituency (NCUC) on behalf of the NCUC Executive Committee.

<b>Status</b>	<b>Number of Issues 08 Oct 2017</b>	<b>Number of Issues 17 Oct 2017</b>
Resolved	1	8
Under Review	7	0
Deferred/Postponed	0	0
Unknown	0	0
Needs Clarification	0	0
<b>Total</b>	<b>8</b>	<b>8</b>

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1) Category A: Membership Eligibility		
Issue/Suggestion/Recommendation	Status	Comments/Disposition
<p>1.1 In Section III Membership of the NCUC Charter, a concern was raised by a commenter regarding the eligibility example provided regarding membership-based organizations with commercial focus not being eligible. The NCUC Charter currently reads: “In the case of a membership-based organization, the organization should not only be noncommercial itself, but should have a primarily noncommercial focus, and the membership should also be primarily composed of noncommercial members (for example, while a chamber of commerce may be a noncommercial organization itself and may even have some noncommercial members, if it is primarily composed of commercial organizations and has a commercial focus, it would be ineligible for membership).</p> <p>It is suggested by a commenter, that rather than singling out a particular business organization, it might be better to note that <i>“while business and trade groups are often not for profit organizations [e.g. chambers of commerce, business alliances and trade associations], as their members are commercial organizations, such entities would not be eligible.”</i></p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Thank you for this comment which certainly has merits but we don’t think the change in the example will make much difference, the essence of an example is to clarify concepts and by no means it is to single out organizations. this is a minor change and since we have discussed this with our members multiple times and they are more comfortable with the original text, we prefer to stay with the original text.</p>

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<p>1.2 A commenter flagged that within the NCUC Charter, when it comes to membership eligibility “there could be edge cases that could cause discussion; currently the Executive Committee has the right to review and to approve potential applicants, and while this is a practical solution, these decisions could be challenged and create friction between the Executive Committee and membership. It is therefore recommended by the commenter for the NCUC to consider changing this section to reflect that members may make the final decision if the Executive Committee is unable to reach consensus regarding eligibility matters.</p>	<b>Resolved</b>	<p><b>NCUC Response:</b> Thank you very much for pointing this out. For NCUC, accountability and transparency are two of its very important principles and we would like to be very clear on our eligibility criteria. We have clarified in the operating procedures how the members can appeal removals in section IX and XI (7)<a href="https://www.ncuc.org/wp-content/uploads/2017/09/NCUC-Operating-Procedures-Sept-2017.pdf">https://www.ncuc.org/wp-content/uploads/2017/09/NCUC-Operating-Procedures-Sept-2017.pdf</a> and have noted that members can vote on the decision of the EC.</p>
<b>2) Category B: Executive Committee Appointment</b>		
<b>Issue/Suggestion/Recommendation</b>	<b>Status</b>	<b>Comments/Disposition</b>
<p>2.1 An issue was raised by a commenter regarding any members of the NCUC’s Executive Committee being appointed to their seats. It was raised that the respondent “respectfully disagrees that any members of the Executive Committee should be appointed” noting that “a democratic membership vote on all members of an executive committee gives it greater authority with all members, and externally, with the broader community”.</p>	<b>Resolved</b>	<p><b>NCUC Response:</b> If this comment refers to the treasurer, the treasurer is an ex officio member of the EC. The position does not have the right to vote but the treasurer expertise and institutional memory is very important hence changing the treasurer at each election is not recommended.</p>
<b>3) Category C: References</b>		
<b>Issue/Suggestion/Recommendation</b>	<b>Status</b>	<b>Comments/Disposition</b>

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<p>3.1 Section IIB of the NCUC Charter states as follows: <i>B. The membership shall consist of NCSG Member organizations and individuals that meet the membership criteria, complete the process set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG Members who decide to join the NCUC.</i></p> <p>A commenter noted that “given that in order to join the NCUC, first one must join the NCSG, it might be helpful to provide a link to the NCSG website in this document. It may also be helpful to explicitly reference that the NCSG has two Constituencies, so as to allow prospective members to align themselves properly”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Since NCSG might have other constituencies in the future we don’t think it is advisable to add them to NCUC bylaws and say that there are two constituencies. Also, links can be broken or moved so we prefer to refrain from linking to websites and places as much as we can to have current bylaws.</p>
<p>3.2 A commenter noted that within Section III Membership, I – Financial Disclosures Statements of the NCUC Charter, there is currently an undefined reference to “chapters”; it is therefore suggested to clarify the concept of “chapters” since it is not familiar to all readers.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> It means ISOC chapters. We can add a footnote in the bylaws and clarify.</p>
<p>3.3 A commenter suggested for “important resources available to the NCUC” to be referenced within the NCUC charter; including: “the NCUC part-time secretariat that assists on matters of voting and elections, and [that] the ICANN Ombudsman is available to provide input on challenging decisions”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> These resources are changing and not always the same so we refrain from mentioning them in the bylaws but we have mentioned some in NCUC operating procedures.</p>
<p><b>4) Category D: Miscellaneous</b></p>		
<p><b>Issue/Suggestion/Recommendation</b></p>	<p><b>Status</b></p>	<p><b>Comments/Disposition</b></p>

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<p>4.1 Section I of the NCUC Charter “appears to represent an introduction and description of the basic principles of the NCUC as opposed to a separate governing document. Accordingly, [it is suggested to reframe] Section I as <i>Mission and Principles</i>”</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> We can make this change.</p> <p>Section I of the NCUC Bylaws has therefore been updated accordingly.</p>
<p>4.2 Several commenters flagged a typographical error in Section 1B of the NCUC Charter which currently reads: “<i>The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is and to protect noncommercial online communications, which includes expression for political, personal, research, educations and recreational purposes</i>”. It was suggested for the typographical error to be corrected by replacing the second sentence above with: “<i>The primary purpose of the Constituency is to protect...</i>”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Section 1B was updated as follows: “<i>The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is <del>and</del> to protect noncommercial online communications, which includes expression for political, personal, research, education<del>s</del> and recreational purposes</i>”</p>

**Notes:**

*Categories: Use as many separate topic groupings as needed to organize the issues; insert/delete rows as appropriate.*

*Status may include: Under Review, Closed, Active, Resolved, N/A, or other classification pertinent to the issue.*

# Bylaws of the Noncommercial Users Constituency

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## I. Mission and Principles

A. The [Noncommercial Users Constituency](#) (NCUC) of the Internet Corporation for Assigned Names and Numbers ([ICANN](#)) is a Constituency of the [Non-Commercial Stakeholders Group](#) (NCSG), which is organized under the Generic Name Supporting Organization (GNSO) as specified by Article 11, Sections 3 and 5 of the ICANN [Bylaws](#).

B. The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is to protect noncommercial online communications, which includes expression for political, personal, research, educational and recreational purposes. The NCUC gives voice and representation in ICANN processes to nonprofit organizations that serve noncommercial interests such as nonprofit educational and philanthropic organizations, human

rights and public interest policy advocacy groups, and families or individuals who register domain names for noncommercial personal use and are primarily concerned with the noncommercial, public interest aspects of domain name policy.

C. The NCUC is accountable to its constituents through elections, term limits, consultation, transparency, and review and redress mechanisms, which are described in these bylaws and in its other procedural documents.

## **II. Organization and Structure**

A. The Noncommercial Users Constituency shall consist of three distinct parts: the Membership, the Executive Committee, and the Policy Committee.

B. The Membership shall consist of NCSG member organizations and individuals that meet the membership criteria, complete the processes set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG members who decide to join the NCUC.

C. The Executive Committee (EC), directed by the Chair, shall be responsible for the administration of the Constituency, including arrangements for meetings, website communications, mailing lists, and teleconferences. The selection process of the Executive Committee, along with the EC's powers and duties, are defined in Section IV below.

D. The Policy Committee shall consist of the NCUC Chair, elected GNSO Council Representatives who are also NCUC members, and any active NCUC members who volunteer for the Policy Committee, such as those involved in policy development process (PDP) working groups, after review by the NCUC EC, within the limits set out in Section V.B. The Policy Committee should also have a vice chair. The Policy Committee's selection process and duties are set out in Section V below.

## **III. Membership**

A. Eligible organizations.

An organization that meets the following criteria is eligible for membership in the Constituency:

1. The organization has been accepted for membership by the NCSG;

2. The organization is incorporated as a noncommercial entity (in countries that have such a provision in their commercial code) or, if unincorporated or if operating in a country without provisions for noncommercial incorporation, that operates on a not-for-profit basis primarily for noncommercial purposes; and
3. The organization is the exclusive user of at least one domain name. This can be verified by:
  - (1) The individual or organization being listed as the registrant and/or administrative contact in the [WHOIS](#) data of the domain name;
  - (2) The name resolving to a website controlled by and representing the member organization; or
  - (3) Other indications that prove to the NCUC-EC that the prospective member organization is the primary user of a domain name; and
4. The organization is engaged in online activities that are primarily noncommercial, including, for example, those related to advocacy, education, religion, human rights, charity, science, and the arts.
5. In the case of a membership-based organization, the organization should not only be noncommercial itself, but should have a primarily noncommercial focus, and the membership should also be primarily composed of noncommercial members (for example, while a chamber of commerce may be a noncommercial organization itself and may even have some noncommercial members, if it is primarily composed of commercial organizations and has a commercial focus, it would be ineligible for membership).

B. Ineligible organizations.

The membership of the NCUC specifically excludes:

1. Political organizations whose primary purpose is to hold government office and/or elect government officials;
2. Commercial organizations and associations that advocate for the benefit of commercial entities (even if the organizations are nonprofit in form);
3. Organizations that are represented in ICANN through another Supporting Organization specified in the ICANN Bylaws or GNSO Stakeholder Group;



4. Organizations that provide, or have provided, services under contract or Memorandum of Understanding with ICANN within the past six (6) months;
5. Government organizations or government-run organizations; and
6. Intergovernmental organizations fully or partially composed of nation states.

C. Notification.

An organizational member of the NCSG shall take the following steps to notify the NCUC of its desire to join:

1. Upon or after joining the NCSG, designate the NCUC as a choice of Constituency.
2. Notify the NCUC Chair via email.
3. Designate its Official Representative (as defined in paragraph III.D) and any Additional Representatives to the NCUC.
4. Membership shall become complete upon notification of acceptance by the NCUC Chair or his/her agent.

D. Official Representative.

Each prospective Member organization, in its application, shall appoint an individual to serve as its Official Representative to the NCUC. This representative will have the privilege of voting and speaking publicly for the Member within proceedings and discussions of the Constituency. The Official Representative must be formally authorized to represent the Member Organization by a responsible official of that organization. In addition to verification by the NCSG, the NCUC EC may also make inquiries to the Member Organization to verify their selection if necessary. Members can change the designated Official Representative in two ways:

1. The Chief Executive or Executive Director of the Member Organization can notify the NCUC EC in writing of the change; or
2. The existing Official Representative can resign and submit to the NCUC EC in writing the name of the new Official Representative. The newly designated Official Representative must have the delegated authority to represent the Member Organization as described above. If an Official Representative holds an elected office in the NCUC and is subsequently replaced as organizational representative, the elected office will be vacated and filled by the NCUC EC according to the procedures generally applicable for filling a vacancy in that position.

E. Additional Representatives.

Each Member may also designate one or more individuals to serve as Additional Representative(s) to the Constituency. Additional Representative(s) may not vote, but otherwise may participate in the Constituency mailing list, discussions, and meetings. In case an Official Representative resigns without notifying the NCUC of a new Official Representative from the organization, the Additional Representative automatically becomes the representative of the organization within the NCUC. The Executive Committee shall, at its discretion, determine limits to the total number of Additional Representatives that an organization may appoint (provided that the limit shall apply to all Constituency Members equally).

G. Eligible Individuals.

A natural person who has been accepted as an Individual Member of the NCSG (NCSG Charter and who meet the following criteria are is eligible to join the NCUC as an “Individual Member” subject to the following additional requirements:

1. An individual Internet user who has one or more registered domain names for personal, family, or other noncommercial use; is concerned with the noncommercial aspects of domain name policy; and is not represented in ICANN through membership, personally or by his or her full-time employer, through membership in another Supporting Organization, or through membership in a GNSO Stakeholder Group. Representatives in the Government Advisory Committee (GAC), or those working for a state-supported top-level domain (TLD) registry operator may not join the NCUC as individual members. Those employed in government departments and intergovernmental organizations who are not directly involved in ICANN-related work may be eligible to join at the discretion of the NCUC EC. Individuals should provide a disclosure statement in accordance with paragraph III.I with their application. Failure to do so at the time of application could be grounds for an ineligibility finding by the EC.
2. An individual Internet user who is primarily concerned with the noncommercial aspects of domain name policy, and is not represented in ICANN personally or by his or her employer through membership in another Advisory Committee or Supporting Organization and their stakeholder groups.
3. An individual who is employed by or a member of a non-member noncommercial organization (such as a university, college, or large nongovernmental organization (NGO)) can join the NCSG in an individual capacity if his or her organization has not already joined the NCSG. The Executive Committee shall, at its discretion, determine limits to the total

number of Individual Members who can join from any single organization (provided the limit shall apply to all organizations, of the same size category, equally).

#### H. Participation Rights.

The Membership shall have the following participation rights in regard to the administration and policy development processes of the Constituency:

1. Vote in elections for the NCUC Chair and Regional Representatives.;
2. Nominate candidates for elected positions and receive timely notifications on all elections as well as full list of nominated candidates to the public NCUC mailing list.
3. Initiate proposals for policy development positions and/or Constituency responses to ICANN Public Comments within the Constituency and obtain expressions of support for it on the public discussion list.
4. Be given timely notice of all statements/positions drafted by the Policy Committee and afforded an opportunity to comment on them via the public list
5. Submit agenda items for consideration at Constituency meetings and Executive Committee meetings.
6. Propose bylaw amendments. A petition of five (5) percent of the active members shall be sufficient for putting a bylaw amendment on the ballot for consideration at the next regular election.

#### I. Financial Disclosure Statements.

A disclosure statement should be provided by an individual or an organization who is receiving an individual or group research grant, funding, or consulting fee from ICANN, another Supporting Organization or GNSO Stakeholder Group, governments, or commercial entities involved in ICANN-related activities, unless the funding or the relationship with the donor are the subject of a non-disclosure privilege. This should be done in a form and manner prescribed by the Executive Committee, which will be published and disclosed on NCUC online communication channels. Members can request the EC to keep parts of the disclosure statement confidential; however, the EC will decide, at its own discretion, whether to approve the confidentiality request. The list should be updated periodically and old disclosures removed. The EC will follow up on any disclosures they believe require further consideration. Failure to disclose financial support within three months of having been granted financial support will result in the reconsideration of membership.

#### J. In the event that a complaint is received or it becomes known to the Chair and the EC that

there is an overt and deliberate effort by one or more organization(s) or chapters<sup>1</sup> to control or dominate the Constituency; then, by majority vote of the EC, the identified organization(s) should be subject to a membership review. Remedies may include (a) cessation of the dominating/controlling behaviors, (b) suspension of membership, or (c) limiting, in a nondiscriminatory manner, the membership eligibility of chapters and sub-units and/or individuals affiliated with the affected organization(s).

## IV. Executive Committee

- A. The Constituency shall have an Executive Committee (EC).
- B. The EC shall consist of the Chair, a Vice Chair, a Treasurer, and Regional Representatives (one for each of the [geographic regions](#) recognized by ICANN). If the Chair of the NCSG is an NCUC member, at the EC's discretion, she or he may serve in an observer capacity on the NCUC Executive Committee.
- C. The Executive Committee shall create operating rules for existing members to maintain their membership eligibility, and shall review and, when justified, expel members whose status has changed in ways that no longer make them eligible for membership under the criteria stated in sections III.A for eligible organizations or III.G for eligible individuals.
- D. The Chair is elected by the NCUC membership and is responsible for the overall administration of the Constituency. Specific duties include:
1. Overseeing the establishment and management of the email lists required by the Bylaws;
  2. Arranging meetings and their facilities;
  3. Establishing and managing the Constituency website;
  4. Overseeing membership recruitment, processing, and retention;
  5. Preparing budget requests, as necessary, for approval by the EC.
  6. Managing general communication with ICANN on matters outside the Policy Committee's responsibility.
  7. Issuing announcements to the Constituency regarding in-person meetings and publishing agendas within 15 days of the meetings.

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<sup>1</sup> *ISOC Chapters*

8. Issuing announcements for calls within seven (7) days of their scheduled time.
9. Soliciting nominations from Constituency Members and representatives to be elected by the EC to fill positions that open from time-to-time in the ICANN process.
10. Establishing ballots for review by the EC.
11. Organizing and chairing Constituency meetings and teleconferences, overseeing the timely publication of meeting notes, and acting as a Constituency spokesperson on matters outside the Policy Committee's responsibility.
12. Providing oversight of the Policy Committee's process and regular communication with the Constituency membership.
13. Managing communication to the Constituency announce mailing list. The Chair may delegate this task to one of the Regional Representatives.
14. Whenever EC votes are required by these Bylaws but inaction by other members of the EC prevents tasks and duties required by the Bylaws to be executed, the Chair is empowered to act to further the interests of the Constituency. In the event of a tie vote on the EC, the Chair shall act as tiebreaker.

E. Regional EC Representatives:

1. Shall be elected on an annual basis by Constituency members.
2. Shall each serve no more than three consecutive terms on the EC. There must be at least one (1) annual term before former EC members who have served three (3) consecutive terms are eligible to run again.
3. Shall consist only of Individual Members or designated Official Representatives of Organizational Members.
4. No two EC members may be the employees of the same organization or be representatives to the NCUC of different chapters or sub-units of the same organization.

F. Responsibilities of the Regional Representatives:

1. Recruiting new members from their regions and periodically report their activities to the members.
2. Working with new and current members from their region to help them understand the

structure of ICANN and encourage them to participate in the Constituency and ICANN processes.

3. Voting in the EC on the matters listed in section IV.G. All EC votes called by the Chair must be responded to within seven (7) days.
4. Attend EC meetings.
5. Ensure that members from their region are made aware of and respond to calls for comments by members of the Policy Committee, Working Groups, GNSO Council, and other ICANN policy development activities. Regional Representatives must provide a reply to all such requests from the Policy Committee.

G. The Executive Committee shall have the following duties:

1. Hold official meetings, which are transcribed and recorded, either in person or by teleconference, at least four times a year.
2. Establish, maintain, and support procedures, policies, and governing rules concerning the management and operation of the Constituency. Each elected Executive Committee, no later than six (6) months after taking office, is required to start reviewing the operating rules that need to be established and revised and finish reviewing by the end of their term.
3. Approve all election ballots for online elections.
4. Review and approve by voting the budgets and expenditures submitted by the Chair.
5. Appoint NCUC representatives to the ICANN Nominating Committee by majority vote, with at least four members voting.
6. Appoint a Constituency representative to the Public Interest Registry Advisory Council (.ORG) by majority vote, with at least four members voting.
7. Appoint representatives to fill any position in the NCSG, GNSO, or ICANN that requires Constituency representation by majority vote, with at least four members voting.
8. Fill temporary vacancies, per section VII, in the Chair position, and oversee elections, as appropriate, for the Chair or Regional EC Representatives for violation of ICANN's

standards of behavior or nonparticipation.

9. Appoint a delegate(s) to serve on the NCSG Executive Committee. Any NCSG Executive Committee delegates shall also serve in an ex-officio (non-voting) capacity on the NCUC Policy Committee and the NCUC Executive Committee.
10. Appoint the Chair and Vice Chair of the NCUC Policy Committee.

#### H. Challenging EC Decisions

Any decision by the NCUC EC regarding removal of an officer or a member due to an eligibility change or approval of a ballot can be appealed by requesting a full vote of the NCUC membership. The appeal shall be preceded by a request for review:

1. Request for review

Requests for review shall be submitted to the NCUC Executive Committee by at least fifteen (15) NCUC members with organizational and individual members counting as one each. The NCUC EC must take requests under consideration and respond within ten (10) days. If, after consideration of any documentation and reasoning provided by those requesting review, the NCUC EC does not reverse its decision, the NCUC EC and those making the request for review should attempt to negotiate a mutually agreeable solution within ten (10) days.

2. Appeal

An appeal against the NCUC Executive Committee decisions shall be launched if the NCUC EC and those making the request for review cannot reach a mutually acceptable agreement on the decision within ten (10) days. In this case, those making the request shall file an appeal within ten (10) days.

If an appeal is launched, a vote of the NCUC membership on the appeal will be scheduled no later than sixty (60) days after the appeal is made, unless there is a general election scheduled no more than ninety (90) days from the day when the appeal process started. In this case, the voting can take place at the next general election.

3. Outcome of the appeal

For the appeal to succeed, sixty percent (60%) of all active NCUC members must vote to approve the appeal as defined in Section VI. If the appeal is approved, the NCUC EC must take all necessary steps to reverse its challenged decision within seven (7) days of the

vote.

#### 4. Suspension of the challenged decision

A decision that is challenged under procedures described in this section shall not be executed until the review or appeal process is finalized unless the circumstances require immediate execution of the decision.

### I. The Vice Chair

1. A member of the EC may be designated as Vice Chair by a majority vote of the EC.
2. The Vice Chair will take over the duties of the Chair when:
  - a. The Chair delegates those responsibilities to him or her for a temporary period.
  - b. The Chair is incapacitated or unaccountably absent for thirty (30) days or more.
  - c. The Chair resigns.

### J. The Treasurer

1. The EC shall elect a Treasurer to assist in the management of the Constituency. The Treasurer will be nominated to the EC by the Chair, with notification to the membership, and must be approved by a majority vote of the EC with at least four members voting. If four EC members fail to vote within two weeks of the nomination, the Chair shall appoint the Treasurer.
2. The Treasurer shall be responsible for depositing any contributions, managing the Constituency bookkeeping and accounting, and regularly reporting to the EC regarding finances and accounts.
3. If the Treasurer is not an EC member already, he or she shall be a nonvoting member of the EC, and shall be expected to participate in all EC meetings.

## **V. The Policy Committee**

A. The Constituency shall have a Policy Committee (PC). The PC shall have a Chair and a Vice Chair. The Chair of the Policy Committee shall be responsible for facilitating the formulation of Constituency positions on public comment requests, on matters of domain name policy and on ICANN corporate governance, and providing them in a timely manner to the Generic Names Supporting Organization (GNSO) of ICANN, the GNSO Council, and any other ICANN



committees and working groups.

B. The Chair and the Vice Chair of the Policy Committee shall be appointed by the EC and the Chair shall also serve on the NCSG Policy Committee. The PC shall include the NCUC Chair, any elected NCUC GNSO Council Representatives who are also NCUC members, and any active NCUC member, such as a member serving in a PDP working group who volunteers to serve in the Policy Committee upon review of the NCUC EC. The Policy Committee shall not exceed ten (10) members in size.

C. The Executive Committee appoints the NCUC members of the Policy Committee.

D. If a PC member appointed by the Executive Committee as a volunteer fails to perform his or her duties, the Executive Committee can take a decision to remove the member and perform a re-appointment. Before the removal decision is taken, the Executive Committee must notify the person in question under the same procedure as outlined in section VII.

E. The Policy Committee Chair shall:

1. Attend and/or participate remotely in NCSG Policy Committee Meetings.
2. Organize regular meetings of the Committee at face-to-face ICANN meetings and through teleconference.
3. Work with Constituency Members to find appropriate and expert members of the broader noncommercial community to serve in policy development activities initiated by ICANN's Board, President, or staff; GNSO Council committees or working groups; and any other groups open to Constituency participation.
4. Consult with the Constituency to develop policy positions. The Policy Committee may also start an NCUC working group and policy process on its own initiative or at the request of a bona fide member. The initiation of such working groups and policy processes should be done with the agreement of the EC.

F. The Policy Committee Chair shall also work with the NCUC Chair to help inform the Constituency, via mailing lists, the announcement list, the website, and other appropriate communication media regarding:

1. ICANN Public Comment solicitations of general interest to Constituency members;
2. ICANN Public Comment solicitations on matters of significant interest to Constituency members and for which member comments might play a role in influencing policy and protecting noncommercial interests;
3. Positions developed by the NCUC Policy Committee; and

4. Issues that are being or have been recently considered by the GNSO Council, and the positions taken by Constituency representatives on those issues.

G. Other individuals shall be invited to participate in the deliberations of the NCUC Policy Committee, including:

1. Members (or their Official Representatives) who are serving on GNSO Working Groups, ICANN Advisory Committees, presidential committees, and other policy bodies (standing or ad hoc) within ICANN; and
2. Any NCUC delegates to the NCSG Policy Committee (in an *ex officio* capacity).

## VI. Voting

A. The EC Chair shall be responsible for ballots, agendas, and meeting schedules. If the Chair is a candidate in the election, then the Executive Committee may appoint, if deemed necessary, a replacement in charge of ballots, agendas, and meeting schedules from among members of the Executive Committee.

1. Announcement to the Constituency regarding elections shall take place at least thirty (30) days prior to their commencement.
2. The Chair shall submit the nomination, campaigning and election schedules, as well as the ballot to be used in the election, to the EC for review and approval.

B. Voting Members

1. The Chair shall publish on the website a list of the Official Representatives of all active Member Organizations and a list of active, eligible Individual Members thirty (30) days prior to the election.
2. Voting lists will be made available to be reviewed by the entire NCUC membership.
3. The following individuals are ineligible to serve as the Official Representative of their organization (for the purposes of voting):
  - a. An individual who holds the power to vote in another Constituency, Stakeholder Group, or on the ICANN Board, except those in the NCSG.
  - b. An individual who holds any form of permanent or temporary paid position with ICANN, including independent contractors who have served ICANN in paid positions within the last six months. If such an individual is identified at any time by any Member or officer, then the Chair shall provide notice to the Member

Organization requesting a replacement Official Representative who satisfies the criteria in Section III. If such a replacement is not named at least seven (7) days prior to any vote or election, the Member Organization will be ineligible to participate in that vote or election.

4. The check-in process: Before each annual election, the NCUC Chair shall send an email to all Members, active or suspended, asking them to update their contact information before the election. If the NCSG has conducted the check-in prior to the NCUC elections, the process should not be repeated; those who are listed as inactive by the NCSG will be recognized as inactive by the NCUC. If the check-in takes place by the NCUC and no response is received by the requested deadline, an attempt will be made to reach the Member by other means, e.g., telephone calls or requests through other contacts. If, after reasonable attempts fail to reach a member or its representative and confirmation of contact information cannot be completed, that Member's status will be changed to inactive and an announcement will be made on the public discussion list. An inactive member will not be included in the membership count required to establish election results. An inactive member can be reinstated to active status by updating its contact information. An inactive member may remain on the inactive list indefinitely.
5. Members who respond to the NCUC check-in process are deemed active members.

#### C. Voting Weights (Active Members Only)

To foster full and fair representation of both large and small organizations, as well as independent chapters, the Constituency shall consider:

1. Organizations that have more than fifty (50) employees, or are membership organizations with more than five hundred (500) individual members, shall be classified as "large organizations" and shall have four votes.
2. Organizations that are composed of ten (10) or more organizational members that qualify as "large" shall be classified as "large organizations" and shall have four votes.
3. Organizations that do not qualify as large organizations and have more than one member shall be classified as "small organizations" and shall have two votes.
4. Individual persons who are Members shall have one vote.

D. The Executive Committee shall, as needed, determine further procedures for nomination and voting. Such procedures shall be provided to the Constituency on the website.

E. The votes of members shall be kept confidential. The EC may appoint a trusted Constituency member who is not a candidate, or an impartial nonmember ICANN or GNSO officer, to audit any election or proceeding in which Member votes are solicited. The circumstances under which an

audit might be conducted will be elaborated in NCUC operating rules.

## **VII. Leaving Office**

A. An elected officer or appointed committee member of the NCUC may submit an email or notice of resignation to the Chair whenever circumstances call for such an action.

B. In the event of the resignation of the Chair, the Vice Chair shall finish the term of the departing Chair.

C. Elected or appointed officers and representatives of the Constituency can be removed for nonparticipation as stipulated in section VII D and E.

D. Regional representatives who fail to attend more than three (3) meetings in a row are considered to have resigned their office. If they send apologies for their absence, after three (3) times, they will be treated as per section IV.E.6 below.

E. If an EC member consistently fails to meet his/her responsibilities, the other EC members shall notify the person in question and discuss how to rectify the situation. If performance does not improve to satisfactory levels within three (3) months, the other EC members besides the person in question may, on a unanimous vote, remove the member from office.

F. Regional representatives who fail to vote within 7 days three times in a row are considered to have resigned their office.

G. When any member of the EC or any other NCUC committee has failed to meet participation criteria as specified in as specified in the bylaws and has been removed by the EC, the Chair, after consulting with members, may appoint a temporary replacement to finish the remaining term. If the remaining term of the resigning or removed elected representative(s) is greater than six (6) months, a new election shall be organized.

H. The standards for performing the duties of NCUC leadership positions include impartiality, accountability, and avoidance of conflicts of interest. NCUC officers are expected to be fair and responsible stewards of the NCUC's activities. The Chair, in particular, is expected to look after the general interests of the NCUC and to be responsive to all members and officers in their requests for information. Term limits and regular elections, as well as removal procedures for

corrupt officers or officers who fail to perform their responsibilities, are intended to keep officers accountable and responsive. The NCUC Executive Committee shall draft detailed operating rules for removal of officers who fail to meet these standards within six (6) months of the approval of the Bylaws by the Board.

## **VIII. NCUC Participation in the ICANN Empowered Community**

A. Any Member of the Constituency may request materials included per Section 22.7 of the ICANN Bylaws, Inspection of ICANN's accounting books and records, by making such a request to any member of the Executive Committee. Such request shall include, minimally:

1. The name and contact information of the requestor;
2. Specific information for which access is requested; and
3. Confirmation that such request is for a purpose permitted per Section 22.7 (a) of the ICANN Bylaws.

The Executive Committee shall act on any such request within thirty (30) days of receipt. If approved by a majority vote of the Executive Committee, the Chair shall within 5 business days submit the request to the GNSO Representative of the Empowered Community for forwarding to the Secretary of ICANN. If the Executive Committee declines to approve such a request, a rationale for said action must be provided to the Member.

B. Requests for reconsideration, per Section 4.2 of the ICANN Bylaws, may be initiated by a majority vote of either the Executive Committee or of the Policy Committee. Upon being notified of such a vote by either Committee, the Executive Committee Chair shall take appropriate action to file such request directly with the Board Governance Committee or, if so requested by the initiating Committee, to follow any and all procedures established by the GNSO that would cause said request to be filed as a Community Reconsideration Request, per Annex D, Section 4.3, of the ICANN Bylaws.

C. The Executive Committee, by majority vote, may initiate a petition to commence proceedings under the Independent Review Process, per Section 4.3 of the ICANN Bylaws. This shall include approval by majority vote of the Executive Committee for participation in any and all conditions precedent for participating in an Independent Review Process (IRP) proceeding, including the petitioning for commencement of a Cooperative Engagement Process (CEP) action. Upon notification of an Executive Committee vote initiating action related to or for a direct petition for an Independent Review Process proceeding, the Chair shall: (1) File said petition directly with the IRP provider, and/or (2) Take any action necessary and as directed by the Executive Committee, including filing for a Cooperative Engagement Process proceeding or engaging

representation for the Constituency, to commence the IRP action. If the Executive Committee intends its petition to be a Community Independent Review Process action, per Annex D, section 4.2 of the ICANN Bylaws, it shall indicate this when approving the petition. Upon such action, the Chair shall follow any and all procedures established by the GNSO that would cause said IRP petition to be filed as such. In such instance, the Chair shall coordinate all Constituency participation in the required Mediation process, per section 4.7 of the ICANN Bylaws, and any subsequent processes related to the IRP requiring Constituency representation.

D. Except as otherwise provided in these Bylaws, the Executive Committee shall be the representative voice for the NCUC for all matters involving the ICANN Empowered Community (Article 6 of ICANN's Bylaws). Decisions on matters involving the Empowered Community shall be by majority vote of the Executive Committee. The Chair shall act as the NCUC representative to any forum or committees that result from the NCUC's role in the Empowered Community, unless otherwise provided for by the Executive Committee by majority vote.

## **IX. Changes to these Bylaws**

A. Amendments may be proposed by the Executive Committee, by majority vote, or by a petition of five (5) percent of the then-current active members. Any proposed amendment must be placed on a ballot for voting by the membership during the next regular election.

B. Bylaws amendments shall be passed if at least two-thirds of the votes cast in the election favor its adoption provided a quorum of 40% or more of the eligible Individual and Organizational Members cast a ballot in the election.

## **X. Communications**

A. The Executive Committee shall maintain at least the following four (4) mailing lists:

1. An email discussion list;
2. The official voting list;
3. An Executive Committee email list; and
4. A Policy Committee email list.

Only active Official Representatives of Members and Individual Members shall be placed on the

official voting list, which shall be used for membership check-in purposes and to establish quorum for elections and other proceedings.

Only Members shall have posting rights on the discussion list; participation in the discussion list shall be voluntary. The EC list is for official communications and deliberations among members of the Executive Committee. Posting to the EC list is restricted to EC members. The Policy Committee email list is open for posting to official Policy Committee members and observers.

B. Current archives of all NCUC-managed lists shall be made accessible to the general public as well as the NCUC's web presence(s).

C. The Chair will oversee the publication of membership lists on the Constituency website. The NCUC EC is required to publish the list of current Members of the Constituency.

D. The ballots for individual members will be sent to the members' email addresses listed on their membership application.

E. For Organizational Members, only Official Representatives listed on the Constituency official voting list will receive ballots and be allowed to vote in elections.

F. The EC Chair and EC should provide a channel for nonmembers to make comments to the members and officers of the Constituency.

## **XI. Dues**

A. On an annual basis, the Chair will consult with the EC and decide, by a two-thirds majority vote, whether to establish dues for the coming year including the appropriate fee levels for Individual and Organizational Members (large and small). The Executive Committee will also decide whether to approve procedures for waivers and reduction requests. Unless otherwise stipulated, the Chair shall be authorized to hear and approve/reject any waiver or reduction requests, which decisions may be appealed to the Executive Committee. In the event that dues are invoked, the EC will publish the amounts and all related procedures on the NCUC's web presence.

B. Altering membership dues does not constitute a Bylaws revision as per Section IX.

C. If dues are instated, unless a waiver or reduction has been extended, any Member that fails to pay its assessed dues within \_\_\_ days of invoicing, will not be eligible to vote or run for elected office within the NCUC until such time as the dues are remitted.

D. Member organizations in countries with gross domestic product (GDP) per capita below 10,000 US dollars are eligible to apply to the EC for a waiver or reduction of the membership fee. The EC will manage the details of the application process, which may require information about the organization applying (such as budgetary information).

## **XII. Transparency**

A. The NCUC is committed to robust transparency and consultation, and strives to make its activities open to the public whenever possible, subject only to reasonable exceptions in line with the interests of the Constituency. Decisions to restrict access to information will be based on considerations of the potential harm from disclosure, for example where release of the information would negatively impact our engagement with a policy under discussion, or would harm internal decision-making processes.

B. The NCUC will also open its in-person meetings to the public whenever possible. However, the Executive Committee may choose to close one or more portions of a Constituency meeting if it determines that public access is not practically feasible or contrary to the best interests of the NCUC and its membership. The rationale behind any such decision will be shared with the membership as early as possible, and documented on the NCUC's web presence(s).

C. The Chair may deny any non-member's access, whether an organization or individual, to NCUC meetings and deliberations for portions or the entire duration if he/she determines that such presence is, contrary to the best interests of the NCUC and its membership. Any such decision to deny non-member access will be noted in the minutes or other official record of the proceeding.



# Bylaws of the Noncommercial Users Constituency

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## I. Mission and Principles

A. The [Noncommercial Users Constituency](#) (NCUC) of the Internet Corporation for Assigned Names and Numbers ([ICANN](#)) is a Constituency of the [Non-Commercial Stakeholders Group](#) (NCSG), which is organized under the Generic Name Supporting Organization (GNSO) as specified by Article 11, Sections 3 and 5 of the ICANN [Bylaws](#).

B. The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is to protect noncommercial online communications, which includes expression for political, personal, research, educational and recreational purposes. The NCUC gives voice and representation in ICANN processes to nonprofit organizations that serve noncommercial interests such as nonprofit educational and philanthropic organizations, human

rights and public interest policy advocacy groups, and families or individuals who register domain names for noncommercial personal use and are primarily concerned with the noncommercial, public interest aspects of domain name policy.

C. The NCUC is accountable to its constituents through elections, term limits, consultation, transparency, and review and redress mechanisms, which are described in these bylaws and in its other procedural documents.

## **II. Organization and Structure**

A. The Noncommercial Users Constituency shall consist of three distinct parts: the Membership, the Executive Committee, and the Policy Committee.

B. The Membership shall consist of NCSG member organizations and individuals that meet the membership criteria, complete the processes set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG members who decide to join the NCUC.

C. The Executive Committee (EC), directed by the Chair, shall be responsible for the administration of the Constituency, including arrangements for meetings, website communications, mailing lists, and teleconferences. The selection process of the Executive Committee, along with the EC's powers and duties, are defined in Section IV below.

D. The Policy Committee shall consist of the NCUC Chair, elected GNSO Council Representatives who are also NCUC members, and any active NCUC members who volunteer for the Policy Committee, such as those involved in policy development process (PDP) working groups, after review by the NCUC EC, within the limits set out in Section V.B. The Policy Committee should also have a vice chair. The Policy Committee's selection process and duties are set out in Section V below.

## **III. Membership**

A. Eligible organizations.

An organization that meets the following criteria is eligible for membership in the Constituency:

1. The organization has been accepted for membership by the NCSG;

2. The organization is incorporated as a noncommercial entity (in countries that have such a provision in their commercial code) or, if unincorporated or if operating in a country without provisions for noncommercial incorporation, that operates on a not-for-profit basis primarily for noncommercial purposes; and
3. The organization is the exclusive user of at least one domain name. This can be verified by:
  - (1) The individual or organization being listed as the registrant and/or administrative contact in the [WHOIS](#) data of the domain name;
  - (2) The name resolving to a website controlled by and representing the member organization; or
  - (3) Other indications that prove to the NCUC-EC that the prospective member organization is the primary user of a domain name; and
4. The organization is engaged in online activities that are primarily noncommercial, including, for example, those related to advocacy, education, religion, human rights, charity, science, and the arts.
5. In the case of a membership-based organization, the organization should not only be noncommercial itself, but should have a primarily noncommercial focus, and the membership should also be primarily composed of noncommercial members (for example, while a chamber of commerce may be a noncommercial organization itself and may even have some noncommercial members, if it is primarily composed of commercial organizations and has a commercial focus, it would be ineligible for membership).

B. Ineligible organizations.

The membership of the NCUC specifically excludes:

1. Political organizations whose primary purpose is to hold government office and/or elect government officials;
2. Commercial organizations and associations that advocate for the benefit of commercial entities (even if the organizations are nonprofit in form);
3. Organizations that are represented in ICANN through another Supporting Organization specified in the ICANN Bylaws or GNSO Stakeholder Group;

4. Organizations that provide, or have provided, services under contract or Memorandum of Understanding with ICANN within the past six (6) months;
5. Government organizations or government-run organizations; and
6. Intergovernmental organizations fully or partially composed of nation states.

C. Notification.

An organizational member of the NCSG shall take the following steps to notify the NCUC of its desire to join:

1. Upon or after joining the NCSG, designate the NCUC as a choice of Constituency.
2. Notify the NCUC Chair via email.
3. Designate its Official Representative (as defined in paragraph III.D) and any Additional Representatives to the NCUC.
4. Membership shall become complete upon notification of acceptance by the NCUC Chair or his/her agent.

D. Official Representative.

Each prospective Member organization, in its application, shall appoint an individual to serve as its Official Representative to the NCUC. This representative will have the privilege of voting and speaking publicly for the Member within proceedings and discussions of the Constituency. The Official Representative must be formally authorized to represent the Member Organization by a responsible official of that organization. In addition to verification by the NCSG, the NCUC EC may also make inquiries to the Member Organization to verify their selection if necessary. Members can change the designated Official Representative in two ways:

1. The Chief Executive or Executive Director of the Member Organization can notify the NCUC EC in writing of the change; or
2. The existing Official Representative can resign and submit to the NCUC EC in writing the name of the new Official Representative. The newly designated Official Representative must have the delegated authority to represent the Member Organization as described above. If an Official Representative holds an elected office in the NCUC and is subsequently replaced as organizational representative, the elected office will be vacated and filled by the NCUC EC according to the procedures generally applicable for filling a vacancy in that position.

E. Additional Representatives.

Each Member may also designate one or more individuals to serve as Additional Representative(s) to the Constituency. Additional Representative(s) may not vote, but otherwise may participate in the Constituency mailing list, discussions, and meetings. In case an Official Representative resigns without notifying the NCUC of a new Official Representative from the organization, the Additional Representative automatically becomes the representative of the organization within the NCUC. The Executive Committee shall, at its discretion, determine limits to the total number of Additional Representatives that an organization may appoint (provided that the limit shall apply to all Constituency Members equally).

G. Eligible Individuals.

A natural person who has been accepted as an Individual Member of the NCSG (NCSG Charter and who meet the following criteria are is eligible to join the NCUC as an “Individual Member” subject to the following additional requirements:

1. An individual Internet user who has one or more registered domain names for personal, family, or other noncommercial use; is concerned with the noncommercial aspects of domain name policy; and is not represented in ICANN through membership, personally or by his or her full-time employer, through membership in another Supporting Organization, or through membership in a GNSO Stakeholder Group. Representatives in the Government Advisory Committee (GAC), or those working for a state-supported top-level domain (TLD) registry operator may not join the NCUC as individual members. Those employed in government departments and intergovernmental organizations who are not directly involved in ICANN-related work may be eligible to join at the discretion of the NCUC EC. Individuals should provide a disclosure statement in accordance with paragraph III.I with their application. Failure to do so at the time of application could be grounds for an ineligibility finding by the EC.
2. An individual Internet user who is primarily concerned with the noncommercial aspects of domain name policy, and is not represented in ICANN personally or by his or her employer through membership in another Advisory Committee or Supporting Organization and their stakeholder groups.
3. An individual who is employed by or a member of a non-member noncommercial organization (such as a university, college, or large nongovernmental organization (NGO)) can join the NCSG in an individual capacity if his or her organization has not already joined the NCSG. The Executive Committee shall, at its discretion, determine limits to the total

number of Individual Members who can join from any single organization (provided the limit shall apply to all organizations, of the same size category, equally).

#### H. Participation Rights.

The Membership shall have the following participation rights in regard to the administration and policy development processes of the Constituency:

1. Vote in elections for the NCUC Chair and Regional Representatives.;
2. Nominate candidates for elected positions and receive timely notifications on all elections as well as full list of nominated candidates to the public NCUC mailing list.
3. Initiate proposals for policy development positions and/or Constituency responses to ICANN Public Comments within the Constituency and obtain expressions of support for it on the public discussion list.
4. Be given timely notice of all statements/positions drafted by the Policy Committee and afforded an opportunity to comment on them via the public list
5. Submit agenda items for consideration at Constituency meetings and Executive Committee meetings.
6. Propose bylaw amendments. A petition of five (5) percent of the active members shall be sufficient for putting a bylaw amendment on the ballot for consideration at the next regular election.

#### I. Financial Disclosure Statements.

A disclosure statement should be provided by an individual or an organization who is receiving an individual or group research grant, funding, or consulting fee from ICANN, another Supporting Organization or GNSO Stakeholder Group, governments, or commercial entities involved in ICANN-related activities, unless the funding or the relationship with the donor are the subject of a non-disclosure privilege. This should be done in a form and manner prescribed by the Executive Committee, which will be published and disclosed on NCUC online communication channels. Members can request the EC to keep parts of the disclosure statement confidential; however, the EC will decide, at its own discretion, whether to approve the confidentiality request. The list should be updated periodically and old disclosures removed. The EC will follow up on any disclosures they believe require further consideration. Failure to disclose financial support within three months of having been granted financial support will result in the reconsideration of membership.

#### J. In the event that a complaint is received or it becomes known to the Chair and the EC that

there is an overt and deliberate effort by one or more organization(s) or chapters<sup>1</sup> to control or dominate the Constituency; then, by majority vote of the EC, the identified organization(s) should be subject to a membership review. Remedies may include (a) cessation of the dominating/controlling behaviors, (b) suspension of membership, or (c) limiting, in a nondiscriminatory manner, the membership eligibility of chapters and sub-units and/or individuals affiliated with the affected organization(s).

## IV. Executive Committee

- A. The Constituency shall have an Executive Committee (EC).
- B. The EC shall consist of the Chair, a Vice Chair, a Treasurer, and Regional Representatives (one for each of the [geographic regions](#) recognized by ICANN). If the Chair of the NCSG is an NCUC member, at the EC's discretion, she or he may serve in an observer capacity on the NCUC Executive Committee.
- C. The Executive Committee shall create operating rules for existing members to maintain their membership eligibility, and shall review and, when justified, expel members whose status has changed in ways that no longer make them eligible for membership under the criteria stated in sections III.A for eligible organizations or III.G for eligible individuals.
- D. The Chair is elected by the NCUC membership and is responsible for the overall administration of the Constituency. Specific duties include:
1. Overseeing the establishment and management of the email lists required by the Bylaws;
  2. Arranging meetings and their facilities;
  3. Establishing and managing the Constituency website;
  4. Overseeing membership recruitment, processing, and retention;
  5. Preparing budget requests, as necessary, for approval by the EC.
  6. Managing general communication with ICANN on matters outside the Policy Committee's responsibility.
  7. Issuing announcements to the Constituency regarding in-person meetings and publishing agendas within 15 days of the meetings.

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<sup>1</sup> *ISOC Chapters*

8. Issuing announcements for calls within seven (7) days of their scheduled time.
9. Soliciting nominations from Constituency Members and representatives to be elected by the EC to fill positions that open from time-to-time in the ICANN process.
10. Establishing ballots for review by the EC.
11. Organizing and chairing Constituency meetings and teleconferences, overseeing the timely publication of meeting notes, and acting as a Constituency spokesperson on matters outside the Policy Committee's responsibility.
12. Providing oversight of the Policy Committee's process and regular communication with the Constituency membership.
13. Managing communication to the Constituency announce mailing list. The Chair may delegate this task to one of the Regional Representatives.
14. Whenever EC votes are required by these Bylaws but inaction by other members of the EC prevents tasks and duties required by the Bylaws to be executed, the Chair is empowered to act to further the interests of the Constituency. In the event of a tie vote on the EC, the Chair shall act as tiebreaker.

E. Regional EC Representatives:

1. Shall be elected on an annual basis by Constituency members.
2. Shall each serve no more than three consecutive terms on the EC. There must be at least one (1) annual term before former EC members who have served three (3) consecutive terms are eligible to run again.
3. Shall consist only of Individual Members or designated Official Representatives of Organizational Members.
4. No two EC members may be the employees of the same organization or be representatives to the NCUC of different chapters or sub-units of the same organization.

F. Responsibilities of the Regional Representatives:

1. Recruiting new members from their regions and periodically report their activities to the members.
2. Working with new and current members from their region to help them understand the



structure of ICANN and encourage them to participate in the Constituency and ICANN processes.

3. Voting in the EC on the matters listed in section IV.G. All EC votes called by the Chair must be responded to within seven (7) days.
4. Attend EC meetings.
5. Ensure that members from their region are made aware of and respond to calls for comments by members of the Policy Committee, Working Groups, GNSO Council, and other ICANN policy development activities. Regional Representatives must provide a reply to all such requests from the Policy Committee.

G. The Executive Committee shall have the following duties:

1. Hold official meetings, which are transcribed and recorded, either in person or by teleconference, at least four times a year.
2. Establish, maintain, and support procedures, policies, and governing rules concerning the management and operation of the Constituency. Each elected Executive Committee, no later than six (6) months after taking office, is required to start reviewing the operating rules that need to be established and revised and finish reviewing by the end of their term.
3. Approve all election ballots for online elections.
4. Review and approve by voting the budgets and expenditures submitted by the Chair.
5. Appoint NCUC representatives to the ICANN Nominating Committee by majority vote, with at least four members voting.
6. Appoint a Constituency representative to the Public Interest Registry Advisory Council (.ORG) by majority vote, with at least four members voting.
7. Appoint representatives to fill any position in the NCSG, GNSO, or ICANN that requires Constituency representation by majority vote, with at least four members voting.
8. Fill temporary vacancies, per section VII, in the Chair position, and oversee elections, as appropriate, for the Chair or Regional EC Representatives for violation of ICANN's

standards of behavior or nonparticipation.

9. Appoint a delegate(s) to serve on the NCSG Executive Committee. Any NCSG Executive Committee delegates shall also serve in an ex-officio (non-voting) capacity on the NCUC Policy Committee and the NCUC Executive Committee.
10. Appoint the Chair and Vice Chair of the NCUC Policy Committee.

#### H. Challenging EC Decisions

Any decision by the NCUC EC regarding removal of an officer or a member due to an eligibility change or approval of a ballot can be appealed by requesting a full vote of the NCUC membership. The appeal shall be preceded by a request for review:

1. Request for review

Requests for review shall be submitted to the NCUC Executive Committee by at least fifteen (15) NCUC members with organizational and individual members counting as one each. The NCUC EC must take requests under consideration and respond within ten (10) days. If, after consideration of any documentation and reasoning provided by those requesting review, the NCUC EC does not reverse its decision, the NCUC EC and those making the request for review should attempt to negotiate a mutually agreeable solution within ten (10) days.

2. Appeal

An appeal against the NCUC Executive Committee decisions shall be launched if the NCUC EC and those making the request for review cannot reach a mutually acceptable agreement on the decision within ten (10) days. In this case, those making the request shall file an appeal within ten (10) days.

If an appeal is launched, a vote of the NCUC membership on the appeal will be scheduled no later than sixty (60) days after the appeal is made, unless there is a general election scheduled no more than ninety (90) days from the day when the appeal process started. In this case, the voting can take place at the next general election.

3. Outcome of the appeal

For the appeal to succeed, sixty percent (60%) of all active NCUC members must vote to approve the appeal as defined in Section VI. If the appeal is approved, the NCUC EC must take all necessary steps to reverse its challenged decision within seven (7) days of the

vote.

#### 4. Suspension of the challenged decision

A decision that is challenged under procedures described in this section shall not be executed until the review or appeal process is finalized unless the circumstances require immediate execution of the decision.

### I. The Vice Chair

1. A member of the EC may be designated as Vice Chair by a majority vote of the EC.
2. The Vice Chair will take over the duties of the Chair when:
  - a. The Chair delegates those responsibilities to him or her for a temporary period.
  - b. The Chair is incapacitated or unaccountably absent for thirty (30) days or more.
  - c. The Chair resigns.

### J. The Treasurer

1. The EC shall elect a Treasurer to assist in the management of the Constituency. The Treasurer will be nominated to the EC by the Chair, with notification to the membership, and must be approved by a majority vote of the EC with at least four members voting. If four EC members fail to vote within two weeks of the nomination, the Chair shall appoint the Treasurer.
2. The Treasurer shall be responsible for depositing any contributions, managing the Constituency bookkeeping and accounting, and regularly reporting to the EC regarding finances and accounts.
3. If the Treasurer is not an EC member already, he or she shall be a nonvoting member of the EC, and shall be expected to participate in all EC meetings.

## **V. The Policy Committee**

A. The Constituency shall have a Policy Committee (PC). The PC shall have a Chair and a Vice Chair. The Chair of the Policy Committee shall be responsible for facilitating the formulation of Constituency positions on public comment requests, on matters of domain name policy and on ICANN corporate governance, and providing them in a timely manner to the Generic Names Supporting Organization (GNSO) of ICANN, the GNSO Council, and any other ICANN

committees and working groups.

B. The Chair and the Vice Chair of the Policy Committee shall be appointed by the EC and the Chair shall also serve on the NCSG Policy Committee. The PC shall include the NCUC Chair, any elected NCUC GNSO Council Representatives who are also NCUC members, and any active NCUC member, such as a member serving in a PDP working group who volunteers to serve in the Policy Committee upon review of the NCUC EC. The Policy Committee shall not exceed ten (10) members in size.

C. The Executive Committee appoints the NCUC members of the Policy Committee.

D. If a PC member appointed by the Executive Committee as a volunteer fails to perform his or her duties, the Executive Committee can take a decision to remove the member and perform a re-appointment. Before the removal decision is taken, the Executive Committee must notify the person in question under the same procedure as outlined in section VII.

E. The Policy Committee Chair shall:

1. Attend and/or participate remotely in NCSG Policy Committee Meetings.
2. Organize regular meetings of the Committee at face-to-face ICANN meetings and through teleconference.
3. Work with Constituency Members to find appropriate and expert members of the broader noncommercial community to serve in policy development activities initiated by ICANN's Board, President, or staff; GNSO Council committees or working groups; and any other groups open to Constituency participation.
4. Consult with the Constituency to develop policy positions. The Policy Committee may also start an NCUC working group and policy process on its own initiative or at the request of a bona fide member. The initiation of such working groups and policy processes should be done with the agreement of the EC.

F. The Policy Committee Chair shall also work with the NCUC Chair to help inform the Constituency, via mailing lists, the announcement list, the website, and other appropriate communication media regarding:

1. ICANN Public Comment solicitations of general interest to Constituency members;
2. ICANN Public Comment solicitations on matters of significant interest to Constituency members and for which member comments might play a role in influencing policy and protecting noncommercial interests;
3. Positions developed by the NCUC Policy Committee; and

4. Issues that are being or have been recently considered by the GNSO Council, and the positions taken by Constituency representatives on those issues.

G. Other individuals shall be invited to participate in the deliberations of the NCUC Policy Committee, including:

1. Members (or their Official Representatives) who are serving on GNSO Working Groups, ICANN Advisory Committees, presidential committees, and other policy bodies (standing or ad hoc) within ICANN; and
2. Any NCUC delegates to the NCSG Policy Committee (in an *ex officio* capacity).

## VI. Voting

A. The EC Chair shall be responsible for ballots, agendas, and meeting schedules. If the Chair is a candidate in the election, then the Executive Committee may appoint, if deemed necessary, a replacement in charge of ballots, agendas, and meeting schedules from among members of the Executive Committee.

1. Announcement to the Constituency regarding elections shall take place at least thirty (30) days prior to their commencement.
2. The Chair shall submit the nomination, campaigning and election schedules, as well as the ballot to be used in the election, to the EC for review and approval.

B. Voting Members

1. The Chair shall publish on the website a list of the Official Representatives of all active Member Organizations and a list of active, eligible Individual Members thirty (30) days prior to the election.
2. Voting lists will be made available to be reviewed by the entire NCUC membership.
3. The following individuals are ineligible to serve as the Official Representative of their organization (for the purposes of voting):
  - a. An individual who holds the power to vote in another Constituency, Stakeholder Group, or on the ICANN Board, except those in the NCSG.
  - b. An individual who holds any form of permanent or temporary paid position with ICANN, including independent contractors who have served ICANN in paid positions within the last six months. If such an individual is identified at any time by any Member or officer, then the Chair shall provide notice to the Member

Organization requesting a replacement Official Representative who satisfies the criteria in Section III. If such a replacement is not named at least seven (7) days prior to any vote or election, the Member Organization will be ineligible to participate in that vote or election.

4. The check-in process: Before each annual election, the NCUC Chair shall send an email to all Members, active or suspended, asking them to update their contact information before the election. If the NCSG has conducted the check-in prior to the NCUC elections, the process should not be repeated; those who are listed as inactive by the NCSG will be recognized as inactive by the NCUC. If the check-in takes place by the NCUC and no response is received by the requested deadline, an attempt will be made to reach the Member by other means, e.g., telephone calls or requests through other contacts. If, after reasonable attempts fail to reach a member or its representative and confirmation of contact information cannot be completed, that Member's status will be changed to inactive and an announcement will be made on the public discussion list. An inactive member will not be included in the membership count required to establish election results. An inactive member can be reinstated to active status by updating its contact information. An inactive member may remain on the inactive list indefinitely.
5. Members who respond to the NCUC check-in process are deemed active members.

#### C. Voting Weights (Active Members Only)

To foster full and fair representation of both large and small organizations, as well as independent chapters, the Constituency shall consider:

1. Organizations that have more than fifty (50) employees, or are membership organizations with more than five hundred (500) individual members, shall be classified as "large organizations" and shall have four votes.
2. Organizations that are composed of ten (10) or more organizational members that qualify as "large" shall be classified as "large organizations" and shall have four votes.
3. Organizations that do not qualify as large organizations and have more than one member shall be classified as "small organizations" and shall have two votes.
4. Individual persons who are Members shall have one vote.

D. The Executive Committee shall, as needed, determine further procedures for nomination and voting. Such procedures shall be provided to the Constituency on the website.

E. The votes of members shall be kept confidential. The EC may appoint a trusted Constituency member who is not a candidate, or an impartial nonmember ICANN or GNSO officer, to audit any election or proceeding in which Member votes are solicited. The circumstances under which an

audit might be conducted will be elaborated in NCUC operating rules.

## **VII. Leaving Office**

A. An elected officer or appointed committee member of the NCUC may submit an email or notice of resignation to the Chair whenever circumstances call for such an action.

B. In the event of the resignation of the Chair, the Vice Chair shall finish the term of the departing Chair.

C. Elected or appointed officers and representatives of the Constituency can be removed for nonparticipation as stipulated in section VII D and E.

D. Regional representatives who fail to attend more than three (3) meetings in a row are considered to have resigned their office. If they send apologies for their absence, after three (3) times, they will be treated as per section IV.E.6 below.

E. If an EC member consistently fails to meet his/her responsibilities, the other EC members shall notify the person in question and discuss how to rectify the situation. If performance does not improve to satisfactory levels within three (3) months, the other EC members besides the person in question may, on a unanimous vote, remove the member from office.

F. Regional representatives who fail to vote within 7 days three times in a row are considered to have resigned their office.

G. When any member of the EC or any other NCUC committee has failed to meet participation criteria as specified in as specified in the bylaws and has been removed by the EC, the Chair, after consulting with members, may appoint a temporary replacement to finish the remaining term. If the remaining term of the resigning or removed elected representative(s) is greater than six (6) months, a new election shall be organized.

H. The standards for performing the duties of NCUC leadership positions include impartiality, accountability, and avoidance of conflicts of interest. NCUC officers are expected to be fair and responsible stewards of the NCUC's activities. The Chair, in particular, is expected to look after the general interests of the NCUC and to be responsive to all members and officers in their requests for information. Term limits and regular elections, as well as removal procedures for

corrupt officers or officers who fail to perform their responsibilities, are intended to keep officers accountable and responsive. The NCUC Executive Committee shall draft detailed operating rules for removal of officers who fail to meet these standards within six (6) months of the approval of the Bylaws by the Board.

## **VIII. NCUC Participation in the ICANN Empowered Community**

A. Any Member of the Constituency may request materials included per Section 22.7 of the ICANN Bylaws, Inspection of ICANN's accounting books and records, by making such a request to any member of the Executive Committee. Such request shall include, minimally:

1. The name and contact information of the requestor;
2. Specific information for which access is requested; and
3. Confirmation that such request is for a purpose permitted per Section 22.7 (a) of the ICANN Bylaws.

The Executive Committee shall act on any such request within thirty (30) days of receipt. If approved by a majority vote of the Executive Committee, the Chair shall within 5 business days submit the request to the GNSO Representative of the Empowered Community for forwarding to the Secretary of ICANN. If the Executive Committee declines to approve such a request, a rationale for said action must be provided to the Member.

B. Requests for reconsideration, per Section 4.2 of the ICANN Bylaws, may be initiated by a majority vote of either the Executive Committee or of the Policy Committee. Upon being notified of such a vote by either Committee, the Executive Committee Chair shall take appropriate action to file such request directly with the Board Governance Committee or, if so requested by the initiating Committee, to follow any and all procedures established by the GNSO that would cause said request to be filed as a Community Reconsideration Request, per Annex D, Section 4.3, of the ICANN Bylaws.

C. The Executive Committee, by majority vote, may initiate a petition to commence proceedings under the Independent Review Process, per Section 4.3 of the ICANN Bylaws. This shall include approval by majority vote of the Executive Committee for participation in any and all conditions precedent for participating in an Independent Review Process (IRP) proceeding, including the petitioning for commencement of a Cooperative Engagement Process (CEP) action. Upon notification of an Executive Committee vote initiating action related to or for a direct petition for an Independent Review Process proceeding, the Chair shall: (1) File said petition directly with the IRP provider, and/or (2) Take any action necessary and as directed by the Executive Committee, including filing for a Cooperative Engagement Process proceeding or engaging



representation for the Constituency, to commence the IRP action. If the Executive Committee intends its petition to be a Community Independent Review Process action, per Annex D, section 4.2 of the ICANN Bylaws, it shall indicate this when approving the petition. Upon such action, the Chair shall follow any and all procedures established by the GNSO that would cause said IRP petition to be filed as such. In such instance, the Chair shall coordinate all Constituency participation in the required Mediation process, per section 4.7 of the ICANN Bylaws, and any subsequent processes related to the IRP requiring Constituency representation.

D. Except as otherwise provided in these Bylaws, the Executive Committee shall be the representative voice for the NCUC for all matters involving the ICANN Empowered Community (Article 6 of ICANN's Bylaws). Decisions on matters involving the Empowered Community shall be by majority vote of the Executive Committee. The Chair shall act as the NCUC representative to any forum or committees that result from the NCUC's role in the Empowered Community, unless otherwise provided for by the Executive Committee by majority vote.

## **IX. Changes to these Bylaws**

A. Amendments may be proposed by the Executive Committee, by majority vote, or by a petition of five (5) percent of the then-current active members. Any proposed amendment must be placed on a ballot for voting by the membership during the next regular election.

B. Bylaws amendments shall be passed if at least two-thirds of the votes cast in the election favor its adoption provided a quorum of 40% or more of the eligible Individual and Organizational Members cast a ballot in the election.

## **X. Communications**

A. The Executive Committee shall maintain at least the following four (4) mailing lists:

1. An email discussion list;
2. The official voting list;
3. An Executive Committee email list; and
4. A Policy Committee email list.

Only active Official Representatives of Members and Individual Members shall be placed on the official voting list, which shall be used for membership check-in purposes and to establish quorum for elections and other proceedings.

Only Members shall have posting rights on the discussion list; participation in the discussion list shall be voluntary. The EC list is for official communications and deliberations among members of the Executive Committee. Posting to the EC list is restricted to EC members. The Policy Committee email list is open for posting to official Policy Committee members and observers.

B. Current archives of all NCUC-managed lists shall be made accessible to the general public as well as the NCUC's web presence(s).

C. The Chair will oversee the publication of membership lists on the Constituency website. The NCUC EC is required to publish the list of current Members of the Constituency.

D. The ballots for individual members will be sent to the members' email addresses listed on their membership application.

E. For Organizational Members, only Official Representatives listed on the Constituency official voting list will receive ballots and be allowed to vote in elections.

F. The EC Chair and EC should provide a channel for nonmembers to make comments to the members and officers of the Constituency.

## **XI. Dues**

A. On an annual basis, the Chair will consult with the EC and decide, by a two-thirds majority vote, whether to establish dues for the coming year including the appropriate fee levels for Individual and Organizational Members (large and small). The Executive Committee will also decide whether to approve procedures for waivers and reduction requests. Unless otherwise stipulated, the Chair shall be authorized to hear and approve/reject any waiver or reduction requests, which decisions may be appealed to the Executive Committee. In the event that dues are invoked, the EC will publish the amounts and all related procedures on the NCUC's web presence.

B. Altering membership dues does not constitute a Bylaws revision as per Section IX.

C. If dues are instated, unless a waiver or reduction has been extended, any Member that fails to pay its assessed dues within \_\_\_ days of invoicing, will not be eligible to vote or run for elected office within the NCUC until such time as the dues are remitted.

D. Member organizations in countries with gross domestic product (GDP) per capita below 10,000 US dollars are eligible to apply to the EC for a waiver or reduction of the membership fee. The EC will manage the details of the application process, which may require information about

the organization applying (such as budgetary information).

## **XII. Transparency**

A. The NCUC is committed to robust transparency and consultation, and strives to make its activities open to the public whenever possible, subject only to reasonable exceptions in line with the interests of the Constituency. Decisions to restrict access to information will be based on considerations of the potential harm from disclosure, for example where release of the information would negatively impact our engagement with a policy under discussion, or would harm internal decision-making processes.

B. The NCUC will also open its in-person meetings to the public whenever possible. However, the Executive Committee may choose to close one or more portions of a Constituency meeting if it determines that public access is not practically feasible or contrary to the best interests of the NCUC and its membership. The rationale behind any such decision will be shared with the membership as early as possible, and documented on the NCUC's web presence(s).

C. The Chair may deny any non-member's access, whether an organization or individual, to NCUC meetings and deliberations for portions or the entire duration if he/she determines that such presence is, contrary to the best interests of the NCUC and its membership. Any such decision to deny non-member access will be noted in the minutes or other official record of the proceeding.

# Staff Report of Public Comment Proceeding

## Proposed Changes to the NCUC Charter

**Publication Date:** 17 October 2017

**Prepared By:** Benedetta Rossi

### Public Comment Proceeding

Open Date: 24 August 2017

Close Date: 3 October 2017

Staff Report Due Date: 17 October 2017

### Important Information Links

Announcement

Public Comment Proceeding

View Comments Submitted

**Staff Contact:** Benedetta Rossi

**Email:** [Benedetta.rossi@icann.org](mailto:Benedetta.rossi@icann.org)

## Section I: General Overview and Next Steps

The GNSO Non-Commercial Users Constituency (NCUC) completed Phase I of the formal ICANN Board Process for approval of community charter amendments and adopted its *Bylaws of the Noncommercial Users Constituency 2017* by membership vote in December 2016. Staff reviewed the proposed changes to the NCUC bylaws and provided preliminary feedback to the NCUC Executive Committee for their review. Following this review, the NCUC Executive Committee reviewed Staff comments and suggested edits and produced an updated version of the bylaws on 28 May 2017, incorporating some of the suggested edits produced by Staff. NCUC Executive Committee meeting recordings and transcripts relative to this effort can be found here:

<https://www.ncuc.org/bylaws/bylaws-meeting/>

As part of its Phase II responsibilities, ICANN Staff completed a formal review and determined that there were no direct fiscal or liability concerns that would affect the ICANN organization.

Phase III of the Board's process requires that the new Charter be shared with the larger community via ICANN Public Comment.

After review of this Summary of Public Comment and subsequent deliberations, the Organizational Effectiveness Committee (OEC) shall make a recommendation to the Board either to:

- a. Recognize the proposed charter amendment by a simple majority vote; or
- b. Reject the proposed amendment by a supermajority (2/3) vote and provide a specific rationale for its concerns.

If neither above condition is met, the Board will ask for further explanation of the proposed amendments by the community.

## Section II: Contributors

*At the time this report was prepared, a total of three (5) community submissions and one (1) staff comment had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

**Organizations and Groups:**

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
ICANN	Benedetta Rossi	BR
NCSG	Rafik Dammak	NCSG
Business Constituency	Steve DelBianco	BC

**Individuals:**

<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>
Mike O'Connor		MOC
Michael Oghia	NCUC	MO
Theo Geurts	RrSG	TG

**Section III: Summary of Comments**

*General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

There were five substantive comments submitted by individual contributors concerning the NonCommercial Users Constituency (NCUC) Bylaws, including a comment flagging a typo referencing the mission and purpose of the NCUC and an endorsement of the submitted NCUC updated Bylaws by one of its members. The substantive issues focused on membership eligibility, Executive Committee appointments, references and miscellaneous matters.

Farzaneh Badii, Chair of the NCUC, responded to substantive comments received, and all responses are outlined in the NCUC Charter Issue Tracking Checklist Document.

**1. Membership Eligibility:**

*Provision language: Section III Membership: "In the case of a membership-based organization, the organization should not only be noncommercial itself, but should have a primarily noncommercial focus, and the membership should also be primarily composed of noncommercial members (for example, while a chamber of commerce may be a noncommercial organization itself and may even have some noncommercial members, if it is primarily composed of 2 commercial organizations and has a commercial focus, it would be ineligible for membership)."*

The BC identifies a particular concern with potentially singling out a particular business organization, and offers a suggested alternative phrasing: "while business and trade groups are often not for profit

organizations [e.g. chambers of commerce, business alliances and trade associations], as their members are commercial, such entities would not be eligible.”

TG, in his individual capacity, flagged that when it comes to membership eligibility “there could be edge cases that could cause discussion; currently the Executive Committee has the right to review and to approve potential applicants” and his expressed concern is that some “decisions could be challenged and create friction between the Executive Committee and membership”. TG recommends for the NCUC to consider changing this section to reflect that “members may make the final decision if the Executive Committee is unable to reach consensus regarding eligibility matters”.

## **2. Executive Committee Appointment:**

The BC expresses their disagreement regarding the possibility of any members of the NCUC’s Executive Committee being appointed to their seats. The BC notes that the “BC respectfully disagrees that any members of the Executive Committee should be appointed” noting that “a democratic membership vote on all members of the Executive Committee gives it greater authority with all members, and externally with the broader community”.

## **3. References:**

Provision Language: Section IIB: *The membership shall consist of NCSG Member organizations and individuals that meet the membership criteria, complete the process set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG Members who decide to join the NCUC.*”

The BC flagged that for clarity purposes, given that “in order to join the NCU, first one must join the NCSG, it might be helpful to provide a link to the NCSG website in this document...[and] explicitly reference that the NCSG has two constituencies, so as to allow prospective members to align themselves properly.”

The BC also noted that within Section III Membership I – Financial Disclosures Statements of the Charter, the NCUC refers to “chapters”. This term is not familiar to the BC and might be specific to the NCUC. The BC therefore encourages the NCUC to define this term within the document.

The BC additionally suggests that the NCUC should include mentions of “important resources available to the NCUC”, therefore referenced within the Charter. This should include “the NCUC part-time secretariat that assists on matters of voting and elections, and [that] the ICANN Ombudsman is available to provide input on challenging decisions.”

## **4. Miscellaneous:**

The BC notes that Section I of the NCUC Charter “appears to represent an introduction and description of the basic principles of the NCUC as opposed to a separate governing document. Accordingly [the BC suggests to reframe] Section I as *Mission and Principles*”.

Provision language: *“The primary purpose of the Constituency is and to protect noncommercial online communications, which includes expression for political, personal, research, educational, and*

*recreational purposes.”*

MOC, an individual contributor, and the BC, identified a concern relative to this section of the primary purpose of the Constituency noting appears to be missing a clause which needs to be re-entered into the document, or that a clause was removed and the language was not updated.

MO, NCUC and NCSG member, submitted a comment in his personal capacity, to flag several items regarding the NCUC bylaws and to endorse them officially. MO divided his comments into two categories: 1. Process; and 2. Content.

Process wise, MO noted that the NCUC “bylaw revision and charter update process was done in an inclusive, transparent, and accountable manner by the NCUC leadership (executive committee (EC)). This included communicating with the consistency via the NCUC mailing list, and inviting members to offer their comments, edits, and suggestions in a bottom-up fashion via collaborative tools (such as Google Docs).

From a content standpoint, MO observes that “the updated bylaws present myriad improvements over the former ones. Aside from the changes noted by staff, the new bylaws also establish official operating procedures, which are currently under review by the NCUC”.

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#### **Section IV: Analysis of Comments**

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The feedback summarized in Section III (above) does not require any special analysis by Staff other than to document the question/comments for review and disposition as recommended by the OEC and/or ICANN Board.

Following MOC’s comment and the substantive comments submitted by the BC and TG, Staff liaised with NCUC leadership who reviewed comments received. The NCUC provided written responses to each substantive item, which are tracked in the “Public Comment Issue Tracking Checklist: NCUC Charter” for further review and disposition as recommended by the OEC and/or ICANN Board.





# Summary Report of Public Comment Proceeding

## Proposed Changes to the NCUC Charter

**Publication Date:** 17 October 2017

**Prepared By:** Benedetta Rossi

### Public Comment Proceeding

Open Date: 24 August 2017

Close Date: 3 October 2017

Staff Report Due Date: 17 October 2017

### Important Information Links

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# Public Comment Issue Tracking Checklist

## Proceeding Title: Proposed Changes to the NCUC Charter

<b>Open Date:</b>	24 August 2017	<b>Close Date:</b>	3 October 2017
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A total of 8 issues, suggestions, and recommendations were offered by the community and are documented in this Checklist. They are grouped into four categories as follows:

- Category A: Membership Eligibility
- Category B: Executive Committee Appointment
- Category C: References
- Category D: Miscellaneous

The following table shows the original disposition by Status category as of 17 October 2017 after a thorough review and response provided to ICANN Staff by Farzaneh Badii, Chair of the Noncommercial Users Constituency (NCUC) on behalf of the NCUC Executive Committee.

<b>Status</b>	<b>Number of Issues 08 Oct 2017</b>	<b>Number of Issues 17 Oct 2017</b>
Resolved	1	8
Under Review	7	0
Deferred/Postponed	0	0
Unknown	0	0
Needs Clarification	0	0
<b>Total</b>	<b>8</b>	<b>8</b>

# Public Comment Issue Tracking Checklist

1) Category A: Membership Eligibility		
Issue/Suggestion/Recommendation	Status	Comments/Disposition
<p>1.1 In Section III Membership of the NCUC Charter, a concern was raised by a commenter regarding the eligibility example provided regarding membership-based organizations with commercial focus not being eligible. The NCUC Charter currently reads: “In the case of a membership-based organization, the organization should not only be noncommercial itself, but should have a primarily noncommercial focus, and the membership should also be primarily composed of noncommercial members (for example, while a chamber of commerce may be a noncommercial organization itself and may even have some noncommercial members, if it is primarily composed of commercial organizations and has a commercial focus, it would be ineligible for membership).</p> <p>It is suggested by a commenter, that rather than singling out a particular business organization, it might be better to note that <i>“while business and trade groups are often not for profit organizations [e.g. chambers of commerce, business alliances and trade associations], as their members are commercial organizations, such entities would not be eligible.”</i></p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b>            Thank you for this comment which certainly has merits but we don’t think the change in the example will make much difference, the essence of an example is to clarify concepts and by no means it is to single out organizations. this is a minor change and since we have discussed this with our members multiple times and they are more comfortable with the original text, we prefer to stay with the original text.</p>



## Public Comment Issue Tracking Checklist

<p>1.2 A commenter flagged that within the NCUC Charter, when it comes to membership eligibility “there could be edge cases that could cause discussion; currently the Executive Committee has the right to review and to approve potential applicants, and while this is a practical solution, these decisions could be challenged and create friction between the Executive Committee and membership. It is therefore recommended by the commenter for the NCUC to consider changing this section to reflect that members may make the final decision if the Executive Committee is unable to reach consensus regarding eligibility matters.</p>	<b>Resolved</b>	<p><b>NCUC Response:</b> Thank you very much for pointing this out. For NCUC, accountability and transparency are two of its very important principles and we would like to be very clear on our eligibility criteria. We have clarified in the operating procedures how the members can appeal removals in section IX and XI (7) <a href="https://www.ncuc.org/wp-content/uploads/2017/09/NCUC-Operating-Procedures-Sept-2017.pdf">https://www.ncuc.org/wp-content/uploads/2017/09/NCUC-Operating-Procedures-Sept-2017.pdf</a> and have noted that members can vote on the decision of the EC.</p>
<b>2) Category B: Executive Committee Appointment</b>		
<b>Issue/Suggestion/Recommendation</b>	<b>Status</b>	<b>Comments/Disposition</b>
<p>2.1 An issue was raised by a commenter regarding any members of the NCUC’s Executive Committee being appointed to their seats. It was raised that the respondent “respectfully disagrees that any members of the Executive Committee should be appointed” noting that “a democratic membership vote on all members of an executive committee gives it greater authority with all members, and externally, with the broader community”.</p>	<b>Resolved</b>	<p><b>NCUC Response:</b> If this comment refers to the treasurer, the treasurer is an ex officio member of the EC. The position does not have the right to vote but the treasurer expertise and institutional memory is very important hence changing the treasurer at each election is not recommended.</p>
<b>3) Category C: References</b>		
<b>Issue/Suggestion/Recommendation</b>	<b>Status</b>	<b>Comments/Disposition</b>

## Public Comment Issue Tracking Checklist

<p>3.1 Section IIB of the NCUC Charter states as follows: <i>B. The membership shall consist of NCSG Member organizations and individuals that meet the membership criteria, complete the process set out in the NCSG Charter, and choose the NCUC. The NCUC Executive Committee reserves the right to review and approve NCSG Members who decide to join the NCUC.</i></p> <p>A commenter noted that “given that in order to join the NCUC, first one must join the NCSG, it might be helpful to provide a link to the NCSG website in this document. It may also be helpful to explicitly reference that the NCSG has two Constituencies, so as to allow prospective members to align themselves properly”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b>            Since NCSG might have other constituencies in the future we don’t think it is advisable to add them to NCUC bylaws and say that there are two constituencies. Also, links can be broken or moved so we prefer to refrain from linking to websites and places as much as we can to have current bylaws.</p>
<p>3.2 A commenter noted that within Section III Membership, I – Financial Disclosures Statements of the NCUC Charter, there is currently an undefined reference to “chapters”; it is therefore suggested to clarify the concept of “chapters” since it is not familiar to all readers.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b>            It means ISOC chapters. We can add a footnote in the bylaws and clarify.</p>
<p>3.3 A commenter suggested for “important resources available to the NCUC” to be referenced within the NCUC charter; including: “the NCUC part-time secretariat that assists on matters of voting and elections, and [that] the ICANN Ombudsman is available to provide input on challenging decisions”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b>            These resources are changing and not always the same so we refrain from mentioning them in the bylaws but we have mentioned some in NCUC operating procedures.</p>
<p><b>4) Category D: Miscellaneous</b></p>		
<p><b>Issue/Suggestion/Recommendation</b></p>	<p><b>Status</b></p>	<p><b>Comments/Disposition</b></p>



## Public Comment Issue Tracking Checklist

<p>4.1 Section I of the NCUC Charter “appears to represent an introduction and description of the basic principles of the NCUC as opposed to a separate governing document. Accordingly, [it is suggested to reframe] Section I as <i>Mission and Principles</i>”</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> We can make this change.</p> <p>Section I of the NCUC Bylaws has therefore been updated accordingly.</p>
<p>4.2 Several commenters flagged a typographical error in Section 1B of the NCUC Charter which currently reads: “<i>The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is and to protect noncommercial online communications, which includes expression for political, personal, research, educations and recreational purposes</i>”. It was suggested for the typographical error to be corrected by replacing the second sentence above with: “<i>The primary purpose of the Constituency is to protect...</i>”.</p>	<p><b>Resolved</b></p>	<p><b>NCUC Response:</b> Section 1B was updated as follows: “<i>The purpose of the Noncommercial Users Constituency is to represent individuals and organizations that use the domain name system (DNS) for noncommercial purposes. The primary purpose of the Constituency is <del>and</del> to protect noncommercial online communications, which includes expression for political, personal, research, education<del>s</del> and recreational purposes</i>”</p>

**Notes:**

*Categories: Use as many separate topic groupings as needed to organize the issues; insert/delete rows as appropriate.  
Status may include: Under Review, Closed, Active, Resolved, N/A, or other classification pertinent to the issue.*

## **ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION**

### **Section 11.1. DESCRIPTION**

There shall be a policy-development body known as the Generic Names Supporting Organization (the "**Generic Names Supporting Organization**" or "**GNSO**", and collectively with the ASO and ccNSO, the "**Supporting Organizations**"), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO as set forth in these Bylaws.

### **Section 11.2. ORGANIZATION**

The GNSO shall consist of:

- (a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;
- (b) Four Stakeholder Groups organized within Houses as described in Section 11.5;
- (c) Two Houses within the GNSO Council as described in Section 11.3(h);
- (d) A GNSO Council responsible for managing the policy development process of the GNSO, as described in Section 11.3; and
- (e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

### **Section 11.3. GNSO COUNCIL**

- (a) Subject to Section 11.5, the GNSO Council shall consist of:
  - (i) three representatives selected from the Registries Stakeholder Group;
  - (ii) three representatives selected from the Registrars Stakeholder Group;
  - (iii) six representatives selected from the Commercial Stakeholder Group;
  - (iv) six representatives selected from the Non-Commercial Stakeholder Group; and
  - (v) three representatives selected by the ICANN Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee appointee voting

representative shall be assigned to each House (as described in Section 11.3(h)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO Council at the same time.

Stakeholder Groups should, in their charters, ensure their representation on the GNSO Council is as diverse as possible and practicable, including considerations of geography, GNSO Constituency, sector, ability and gender.

There may also be liaisons to the GNSO Council from other ICANN Supporting Organizations and/or Advisory Committees, from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO Council.

(b) The regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO Operating Procedures.

(c) A vacancy on the GNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the

member holding the position before the vacancy occurred by giving the GNSO Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO Council member selected by the Nominating Committee may be removed for cause: (i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or (ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see [Section 11.3\(h\)](#)). Such removal shall be subject to reversal by the ICANN Board on appeal by the affected GNSO Council member.

(d) The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "**GNSO Operating Procedures**") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in [Section 11.6](#).

(e) No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO Council at any given time.

(f) The GNSO shall nominate by written ballot or by action at a meeting individuals to fill Seats 13 and 14 on the Board. Each of the two voting Houses of the GNSO, as described in [Section 11.3\(h\)](#), shall make a nomination to fill one of two Board seats, as outlined below; any such nomination must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

(i) the Contracted Parties House (as described in [Section 11.3\(h\)\(i\)](#)) shall select a representative to fill Seat 13; and

(ii) the Non-Contracted Parties House (as described in [Section 11.3\(h\)\(ii\)](#)) shall select a representative to fill Seat 14.

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat nominations shall be given by the GNSO Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in [Section 7.25](#).

(g) The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies, but not longer than one year. Each House (as described in [Section 11.3\(h\)](#)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for

selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.

(h) Except as otherwise required in these Bylaws, for voting purposes, the GNSO Council (see Section 11.3(a)) shall be organized into a bicameral House structure as described below:

(i) the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN Nominating Committee for a total of seven voting members; and

(ii) the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO Council.

(i) Except as otherwise specified in these Bylaws, Annex A, Annex A-1 or Annex A-2 hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:

(i) Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(ii) Initiate a Policy Development Process ("**PDP**") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(iii) Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority (as defined in Section 11.3(i)(xix)).

(iv) Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(v) Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.

(vi) Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under (iv) or (v) above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.

(vii) Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in favor of termination.

(viii) Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

(ix) Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority,

(x) Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xi) Modification of Approved PDP Recommendation: Prior to Final Approval by the Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.

(xii) Initiation of an Expedited Policy Development Process ("**EPDP**"): requires an affirmative vote of a GNSO Supermajority.

(xiii) Approve an EPDP Team Charter: requires an affirmative vote of a GNSO Supermajority.

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xvi) Initiation of a GNSO Guidance Process ("**GGP**"): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO Supermajority.

(xviii) Approval of GGP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xix) A "**GNSO Supermajority**" shall mean: (A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

(j) The voting thresholds described below shall apply to the following GNSO actions as a Decisional Participant in the Empowered Community. For any action not listed, the default threshold for the GNSO to act as a Decisional Participant in the Empowered community requires a simple majority vote of each House:

(i) Amendment of PTI Articles of Incorporation as contemplated in Section 16.2: requires an affirmative vote of a GNSO Supermajority.

(ii) GNSO Council Inspection Request as contemplated in Section 22.7: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iii) GNSO Council Inspection Remedy, as contemplated in Section 22.7 - e, and Stakeholder Group / Constituency Inspection Remedy, as contemplated in Section 22.7 – e(ii) and e(iii), for an inspection requested by the GNSO as a Decisional Participant in the Empowered Community: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iv) Amendments to Fundamental Bylaws and Article Amendments as contemplated by Section 25.2 of the Bylaws, Asset Sales, as contemplated by Article 26 of the Bylaws, amendments to ICANN Articles of Incorporation: requires an affirmative vote of a GNSO Supermajority.

(v) Approval of a Nominating Committee Director Removal Petition as contemplated in Annex D, Article 3, Section 3.1(b) and support for a petition submitted by a Petitioning Decisional Participant as contemplated in Section 3.2(d): requires an affirmative vote of a GNSO Supermajority.

(vi) Approval of a Nominating Committee Director Removal Supported Petition as contemplated in Annex D, Article 3, Section 3.1(f): requires an affirmative vote of a GNSO Supermajority.

(vii) Approval of a petition to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(a): requires an affirmative vote of at least three-fourths (3/4) of the House that appointed that Director.

(viii) Approval of a petition notice to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(f): requires an affirmative vote of

at least three-fourths (3/4) of the GNSO Council ~~which should~~ and at least three-fourths (3/4) of the House that appointed that Director.

(ix) Approval of a Board Recall Petition as contemplated in Annex D, Article 3, Section 3.3(b) and support for another Petitioning Decisional Participant: requires an affirmative vote of a GNSO Supermajority.

(x) Approval of a Board Recall Supported Petition as contemplated in Annex D, Article 3, Section 3.3(e): requires an affirmative vote of a GNSO Supermajority.



## **Reconsideration Request Form**

Version of 1 October 2016

ICANN's Board Governance Committee (BGC) is responsible for receiving requests for review or reconsideration (Reconsideration Request) from any person or entity that believes it has been materially and adversely affected by the following:

- (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (b) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (c) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <https://www.icann.org/resources/pages/governance-committee-2014-03-21-en>.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

*For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.*

Please submit completed form to [reconsideration@icann.org](mailto:reconsideration@icann.org).

**1. Requestor Information**

**Name:** DotKids Foundation (New gTLD Applicant: 1-1309-46695)

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):**

(Note: ICANN will post the Requestor's name on the Reconsideration Request page at <https://www.icann.org/resources/pages/accountability/reconsideration-en>. Requestor's address, email and phone number will be removed from the posting.)

**2. Description of specific action you are seeking to have reconsidered.**

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

We are seeking for the reconsideration on taking the DotKids Foundation .KIDS community gTLD application off hold. We believe that the application should be kept on hold in light of the ongoing CPE (Community Priority Evaluation) Process Review which has implications on the .KIDS community gTLD application.

**3. Date of action/inaction:**

(Note: If Board action, this is the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the date is the date of the initial posting of the rationale.)

December 6, 2017

**4. On what date did you become aware of the action or that action would not be taken?**

(Provide the date you learned of the action/that action would not be taken. If more than thirty days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

December 6, 2017

On October 2, 2017, a notice was received from ICANN indicating that the DotKids Foundation .KIDS application was taken off hold in July 2016. DotKids Foundation subsequently responded (Case 00874319) indicating that due to the

ongoing CPE process review, and a separate but related open case at the ICANN Ombudsman office, that the DotKids Foundation .KIDS community gTLD application should be kept on hold until such mechanisms are complete.

On October 29, a further notice was received from ICANN indicating that no action will be taken to keep the DotKids Foundation application on hold until the CPE process review is complete.

On December 5, 2017, DotKids Foundation further inquired and requested (Case 00878539) ICANN to place the DotKids Foundation .KIDS community gTLD on hold pending the open case at the ICANN Ombudsman office, the ongoing CPE process review and impending action that DotKids Foundation intend to take in considering the redress of the community application process.

On December 6, 2017, two days before the deadline to submit information for the proposed ICANN Auction of Last Resort on December 8, 2017, we have not received further response from ICANN and have not seen the DotKids Foundation application placed back on hold.

<p><b>5. Describe how you believe you are materially and adversely affected by the action or inaction:</b></p>
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The DotKids Foundation has been waiting in good faith for the ongoing CPE process review to be complete to further consider appropriate actions to address the mistaken CPE process applied to the DotKids Foundation .KIDS community gTLD application, as well as the larger issue that the .KIDS gTLD represents a namespace labelled and designated for kids and therefore require special governance oversight that is different from other gTLDs, which in the current new gTLD process is afforded only through the community gTLD mechanism.

The hasty push for the .KIDS namespace which is labelled and designated for kids to an ICANN Auction of Last Resort while the above issues have not been appropriately addressed and redressed will materially and adversely affect the DotKids Foundation .KIDS community gTLD application and the global children's rights and welfare community.

As a not-for-profit community gTLD applicant that has successfully obtained financial support from the applicant support program, the DotKids Foundation depend on the integrity of the CPE process for appropriate priority to be provided to the global children's rights and welfare community for the administration of the .KIDS namespace which is labelled and designated for kids.

The DotKids Foundation also depends on the integrity of the overall new gTLD process, including the applicant support program to support its application through all phases of the new gTLD program.

The ongoing CPE process review puts into question the integrity of such processes, and until the reports are complete and accepted by the ICANN

community, it is inappropriate to take the DotKids Foundation .KIDS community gTLD application off hold.

**6. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.**

The global children's rights and welfare community is affected.

In the physical world, special places such as schools or parks that are labelled and designated for kids, special policy and requirements apply to protect the rights of the kids. We believe strongly that on the Internet, where namespaces are labeled and designated specifically for kids, some additional policy and oversight is required. Currently in the new gTLD process, the only way to ensure that is through the community gTLD process, where the children's rights and welfare community can apply and ensure that the particular gTLD, in this case .KIDS, is operated appropriately with additional policy and oversight.

If the Community Priority Evaluation process fails, .KIDS, a namespace labelled and designated for kids, who the United Nation Convention on the Rights of the Child explicitly protects, could and will effectively be delegated and governed under the same policies and agreements such as .SEX, .SHOP and other new gTLDs.

That means there will be no oversight and policy requirements for .KIDS which is a space labelled and designated for kids. This will have imminent potential harm for children around the world.

**7. Detail of the ICANN Action/Inaction – Required Information**

Please provide a detailed explanation of the facts as you understand they were provided to the Board or the ICANN organization (acting through its staff) prior to the action/inaction and the reasons why ICANN's action or inaction was: (i) contrary to ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies); (ii) taken or refused to be taken without consideration of material information; or (iii) taken as a result of ICANN's reliance on false or inaccurate relevant information..

If your request is in regards to an ICANN action or inaction that you believe is contrary to established ICANN policy(ies), the policies that are eligible to serve as the basis for a Reconsideration Request are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing Board or staff action, the outcomes of prior Reconsideration Requests challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

If your request is in regards to an action or inaction taken or refused to be taken without consideration of material information, please provide a detailed explanation of the material information not considered by the ICANN. If that information was not presented to the ICANN, provide the reasons why you did not submit the material information before ICANN acted or failed to act. “Material information” means facts that are material to the decision.

If your request is in regards to an action or inaction that you believe is taken as a result of ICANN’s reliance on false or inaccurate relevant information, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board or Organization. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections before the action/failure to act.

Reconsideration Requests are not meant for those who believe that ICANN made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by ICANN in order to state a Reconsideration Request. Similarly, new information – information that was not yet in existence at the time of the decision – is also not a proper ground for reconsideration.

Reconsideration Requests are not available as a means to seek review of country code top-level domain (“ccTLD”) delegations and re-delegations, issues relating to Internet numbering resources, or issues relating to protocol parameters.

Please keep this guidance in mind when submitting requests.

**Provide the Required Detailed Explanation here:**

(You may attach additional sheets as necessary.)

At ICANN57 in Hyderabad (November 2016), the DotKids Foundation met with the ICANN Ombudsman to discuss appropriate next steps for the redress of the .KIDS CPE process. At that time, the Ombudsman informed the DotKids Foundation that the ICANN board has (or will) initiate a review on the CPE process and suggested that the DotKids Foundation wait for the report(s) from the CPE process review to consider further steps on redress.

Subsequently at ICANN58 (Copenhagen), ICANN 59 (Johannesburg) and ICANN60 (Abu Dhabi), the DotKids Foundation had followup meetings with the ICANN Ombudsman to keep abreast of the ongoing CPE process review and how the results from that review may implicate .KIDS and hence how the DotKids Foundation should seek redress on the .KIDS CPE.

On October 3, 2017 (October 2 Pacific Time), the DotKids Foundation received a notice from ICANN indicating that the .KIDS community gTLD application has been taken off hold and that the contention set will be subjected to an ICANN

Auction of Last Resort. The DotKids Foundation subsequently explained and expressed its intent to take further actions to appropriately seek redress on the .KIDS CPE process and the larger process concerning namespaces labelled and designated for kids, pending the ongoing CPE process review.

Subsequently, on December 6, 2017, the DotKids Foundation received a response from ICANN indicating that no action will be taken to keep the DotKids Foundation .KIDS community gTLD application on hold, which prompted the filing of this Reconsideration Request.

We believe that the ICANN GDD team did not understand that even though the CPE process review as explained by the team may be specifically on some community TLD applications, the findings will affect the approach that the DotKids Foundation would take for the redress of the .KIDS CPE process. In light of the ongoing CPE process review therefore, we are seeking reconsideration.

We also note that some other processes implicating other community gTLD applications not explicitly identified in the CPE process review (e.g. the .SPA CEP/IRP by Donuts) have also been put on hold we believe due to the ongoing CPE process review this belief is, as we understand it, shared by the ICANN Ombudsman. Taking the DotKids Foundation .KIDS community gTLD application off hold while the CPE process review is still ongoing is therefore counter to the established processes.

**8. What are you asking ICANN to do now?**

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

To place the DotKids Foundation .KIDS community gTLD application on hold until the CPE review reports are complete and published.

**9. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.**

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the Requestor must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to ICANN's action or inaction that is the basis of the Reconsideration Request. The Requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested must be capable of reversing the harm alleged by the

Requestor. Injury or harm caused by third parties as a result of acting in line with the ICANN's decision/act is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

DotKids Foundation is the applicant of the .KIDS community gTLD. DotKids Foundation has expressed its intent to seek redress through appropriate accountability mechanisms (and/or otherwise) for the mistaken CPE process applied to the application. This can be attested by our continued communications with the ICANN Ombudsman and our continued wait in good faith for the CPE process review to be complete before initiating further actions to seek redress through appropriate accountability mechanisms.

The failure of ICANN to place the DotKids Foundation .KIDS community gTLD application on hold would force the application into a contention set and into the ICANN Auction of Last Resort before the DotKids Foundation is able to appropriately seek redress upon the disclosure of findings from the CPE process review.

As the entity directly affected by the ICANN staff action/inaction, DotKids Foundation have the standing and the right to assert this Request for Reconsideration.

**10. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)**

Yes

No

**10a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.**

Not Applicable

**Do you have any documents you want to provide to ICANN?**

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <https://www.icann.org/resources/pages/accountability/reconsideration-en> .

No.

**Terms and Conditions for Submission of Reconsideration Requests**

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction.

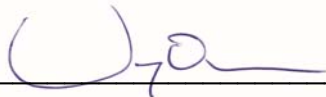
The Board Governance Committee may dismiss a Reconsideration Requests if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BGC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BGC shall be documented and promptly (i.e., as soon as practicable) posted on the ICANN Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BGC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BGC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BGC. The ICANN Board's decision on the BGC's recommendation is final and not subject to a Reconsideration Request.

  
\_\_\_\_\_

Signature

\_\_\_\_\_ Dec 6, 2017 \_\_\_\_\_

Date

Edmon Chung, as Primary Contact of the  
DotKids Foundation application for “.kids”,  
On behalf of DotKids Foundation



**Subject:** Re: [reconsider] Reconsideration Request 17-5 Correction  
**Date:** Sunday, January 21, 2018 at 10:28:46 PM Pacific Standard Time  
**From:** Herb Waye (sent by reconsider <reconsider-bounces@icann.org>)  
**To:** Reconsideration  
**CC:** ombudsman

Reconsideration Request 17-5

Pursuant to Article 4, Section 4.2(l)(iii), I am recusing myself from consideration of Request 17.5.

Best regards,

Herb Waye  
ICANN Ombudsman

[https://www.icann.org/ombudsman\[icann.org\]](https://www.icann.org/ombudsman[icann.org])

[https://www.facebook.com/ICANNOmbudsman\[facebook.com\]](https://www.facebook.com/ICANNOmbudsman[facebook.com])

Twitter: @IcannOmbudsman

ICANN Expected Standards of Behavior:

[https://www.icann.org/en/system/files/files/expected-standards-15sep16-en.pdf\[icann.org\]](https://www.icann.org/en/system/files/files/expected-standards-15sep16-en.pdf[icann.org])

Community Anti-Harassment Policy

[https://www.icann.org/resources/pages/community-anti-harassment-policy-2017-03-24-en\[icann.org\]](https://www.icann.org/resources/pages/community-anti-harassment-policy-2017-03-24-en[icann.org])

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint

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**From:** Reconsideration <Reconsideration@icann.org>

**Date:** Tuesday, January 16, 2018 at 6:50 PM

**To:** Herb Waye <herb.waye@icann.org>

**Subject:** Reconsideration Request 17-5

Dear Herb,

On 6 December 2017, DotKids Foundation (Requestor) submitted the attached Reconsideration Request 17-5 (Request 17-5), seeking reconsideration of ICANN organization's decision to take the Requestor's .KIDS community gTLD application off hold before the Community Priority Evaluation (CPE) Process Review is completed. Request 17-5 is available at <https://www.icann.org/en/system/files/files/reconsideration-17-5-dotkids-request-06dec17-en.pdf>[icann.org].

The Board Accountability Mechanisms Committee (BAMC) has determined that Request 17-5 is sufficiently stated pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws. Pursuant the Article 4, Section 4.2(l) of the ICANN Bylaws, a reconsideration request must be sent to the Ombudsman for consideration and evaluation if the request is not summarily dismissed following review by the BAMC to determine if the request is sufficiently stated. Specifically, Section 4.2(l) states:

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

(<https://www.icann.org/resources/pages/governance/bylaws-en/#article4.>)[icann.org]

Please advise whether you are accepting Request 17-5 for evaluation or whether you are

recusing yourself pursuant to the grounds for recusal set forth in Section 4.2(l)(iii). If you are accepting Request 17-5 for evaluation, please note that your substantive evaluation must be provided to the BAMC within 15 days of receipt of Request 17-5.

Best regards,  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

**RECOMMENDATION  
OF THE BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)  
RECONSIDERATION REQUEST 17-5  
5 APRIL 2018**

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The Requestor, DotKids Foundation, seeks reconsideration of ICANN organization’s decision to take the Requestor’s .KIDS community gTLD application off hold before the Community Priority Evaluation (CPE) Process Review was completed.<sup>1</sup> Specifically, the Requestor disagrees with the evaluation of its community application for the .KIDS gTLD<sup>2</sup> and claims that “the findings [of the CPE Process Review] will affect the approach that the DotKids Foundation would take for the redress of the .KIDS CPE process.”<sup>3</sup> The Requestor also claims that other community applicants “not explicitly identified in the CPE [P]rocess [R]eview (e.g. the .SPA CEP/IRP by Donuts) have been put on hold we believe due to the ongoing CPE [P]rocess [R]eview,” such that the Requestor asserts that taking .KIDS off hold “is therefore counter to the established processes.”<sup>4</sup>

**I. Brief Summary.**

The Requestor submitted a community-based application for .KIDS (DotKids Application), which was placed in a contention set with one other .KIDS application and an application for .KID (the .KID/.KIDS contention set).<sup>5</sup> The Requestor participated in CPE, but did not prevail. The Requestor previously challenged the CPE Provider’s evaluation of its community application in Reconsideration Request 16-6 (Request 16-6). The filing of Request

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<sup>1</sup> Request 17-5, § 2, at Pg. 2.

<sup>2</sup> Request 17-5, § 5, at Pg. 3.

<sup>3</sup> Request 17-5, § 7, at Pg. 6.

<sup>4</sup> Request 17-5, § 7, at Pg. 6.

<sup>5</sup> [https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus:viewcontentionsetimage/215?\\_csrf=2fa3a5b7-ca97-4722-bb10-02acbf6ac234](https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus:viewcontentionsetimage/215?_csrf=2fa3a5b7-ca97-4722-bb10-02acbf6ac234).

16-6 impacted the status of the .KID/.KIDS contention set, which was placed on hold pending resolution of Request 16-6.<sup>6</sup> ICANN's Board Governance Committee (BGC) issued a final determination denying Request 16-6 on 21 July 2016,<sup>7</sup> after which the .KID/.KIDS contention set was taken off hold.<sup>8</sup>

On 17 September 2016, the ICANN Board directed ICANN organization to undertake the CPE Process Review to evaluate the process by which ICANN organization interacted with the CPE Provider.<sup>9</sup> The BGC thereafter determined that the CPE Process Review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout and across each CPE report; and (ii) compilation of the research relied upon by the CPE Provider to the extent such research exists for the evaluations which are the subject of certain pending Reconsideration Requests.<sup>10</sup> The BGC determined that the pending Reconsideration Requests regarding the CPE process would be placed on hold until the CPE Process Review was completed.<sup>11</sup> As the Requestor did not have a pending Reconsideration Request at the time, the DotKids Application was not placed on hold pending completion of the CPE Process Review.

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<sup>6</sup> Update on Application Status and Contention Sets, *available at*

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

<sup>7</sup> Prior to 22 July 2017, the BGC was designated by the ICANN Board to review and consider Reconsideration Requests pursuant to Article 4, Section 4.2 of the Bylaws. *See* ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e), available at <https://www.icann.org/resources/pages/bylaws-2016-09-30-en#article4>.

<sup>8</sup> Attachment 1, at Pg. 1-3.

<sup>9</sup> <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

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

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

On 2 October 2017, ICANN organization invited the Requestor to an ICANN Auction for the .KID/.KIDS contention set.<sup>12</sup> Between October and December 2017, ICANN organization sent the Requestor several reminders to submit certain requested information by an 8 December 2017 deadline in order to participate in the ICANN Auction.

On 6 December 2017, two days before the deadline to submit information for the ICANN Auction, the Requestor filed Reconsideration Request 17-5 (Request 17-5) challenging ICANN organization's decision to take the Requestor's .KIDS gTLD application off hold before the CPE Process Review was completed.<sup>13</sup> The filing of Request 17-5 impacted the status of the .KID/.KIDS contention set, which was placed on hold pending resolution of Request 17-5, and which resulted in the cancellation of the ICANN Auction of the .KID/.KIDS contention set.<sup>14</sup>

On 13 December 2017, ICANN organization published the three reports on the CPE Process Review.<sup>15</sup>

On 15 March 2018, the Board acknowledged and accepted the findings set forth in the CPE Process Review reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review.<sup>16</sup>

The BAMC has considered Request 17-5 and all relevant materials and recommends that the Board deny Request 17-5 because: (1) the Requestor has received the relief requested and

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<sup>12</sup> Attachment 1, at Pg. 3.

<sup>13</sup> Request 17-5, § 2, at Pg. 2.

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

<sup>15</sup> See <https://www.icann.org/news/announcement-2017-12-13-en>.

<sup>16</sup> <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

therefore Request 17-5 is moot; and (2) ICANN organization complied with established policy(ies) when it took the .KID/.KIDS contention set off hold after the resolution of all accountability mechanisms affecting the contention set.

## **II. Facts.**

### **A. The CPE Process Review**

CPE is a method of resolving string contention,<sup>17</sup> described in section 4.2 of the gTLD Applicant Guidebook (Guidebook). It will occur only if a community application is in contention and if that applicant elects to pursue CPE. CPE is performed by an independent provider (CPE Provider).<sup>18</sup> If the application does not prevail in CPE, string contention may be resolved by an ICANN Auction of Last Resort (Auction) among the applications within the contention set.<sup>19</sup> An application may be placed on hold “if there are pending activities (e.g., ICANN accountability mechanisms . . . ) that may impact the status of the application.”<sup>20</sup>

On 17 September 2016, ICANN’s Board directed ICANN organization to undertake a review of the process by which ICANN org interacted with the CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider as part of the New gTLD Program.<sup>21</sup> The Board’s action was part of the ongoing discussions regarding various aspects of the CPE process.

On 18 October 2016, the BGC discussed potential next steps regarding the review of pending reconsideration requests relating to the CPE process.<sup>22</sup> The BGC determined that, in

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<sup>17</sup> “String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings.” Guidebook § 1.1.2.10.

<sup>18</sup> The CPE Provider includes those who were involved in: (i) evaluating and scoring the Application; (ii) validating letters of support and opposition; and (iii) issuing the CPE Report on the Requestor’s Application.

<sup>19</sup> Guidebook § 4.3, available at <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>.

<sup>20</sup> <https://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en>.

<sup>21</sup> <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

<sup>22</sup> <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

addition to reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1), the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout and across each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for evaluations that are the subject of pending reconsideration requests (Scope 3).<sup>23</sup> Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. FTI Consulting, Inc.’s (FTI) Global Risk and Investigations Practice and Technology Practice were retained to conduct the CPE Process Review. The BGC determined that the then eight pending Reconsideration Requests relating to the CPE process would be on hold until the CPE Process Review was completed.<sup>24</sup>

On 13 December 2017, ICANN organization published FTI’s reports issued in connection with the CPE Process Review.<sup>25</sup>

With respect to Scope 1, FTI concluded:

there is no evidence that ICANN organization had any undue influence on the CPE Provider with respect to the CPE reports issued by the CPE Provider or engaged in any impropriety in the CPE process<sup>26</sup>;

For Scope 2, FTI concluded that “the CPE Provider consistently applied the criteria set forth in the New gTLD Applicant Guidebook (Applicant Guidebook)<sup>27</sup> and the CPE Guidelines throughout each CPE.”<sup>28</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

<sup>25</sup> See <https://www.icann.org/news/announcement-2017-12-13-en>.

<sup>26</sup> Scope 1 Report, at Pg. 2, available at <https://www.icann.org/en/system/files/files/cpe-process-review-scope-1-communications-between-icann-cpe-provider-13dec17-en.pdf>.

<sup>27</sup> See Guidebook § 4.2 at Pgs. 4-7 to 4-19, available at <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>.

<sup>28</sup> Scope 2 Report, at Pg. 2, available at <https://www.icann.org/en/system/files/files/cpe-process-review-scope-2-cpe-criteria-analysis-13dec17-en.pdf>.



For Scope 3, “FTI identified and compiled all reference material cited in each final report, as well as any additional reference material cited in the CPE Provider’s working papers to the extent that such material was not otherwise cited in the final CPE report.”<sup>29</sup> FTI observed that all eight of the relevant CPE reports (which are the ones at issue in the Reconsideration Requests placed on hold) referenced research. Two of the eight relevant CPE reports included citations for each reference to research. Of the remaining six relevant CPE reports, while the reports did not include citations to each reference to research, in five of the six instances, FTI found citations to, or the materials that corresponded with, the research in the working papers underlying the reports. In the other instance (for which two CPE reports were completed on the same application) FTI did not find citations to each reference to research in the working papers underlying the relevant report. However, FTI did find citations to the research in the working papers underlying the first CPE of that same application.<sup>30</sup> Accordingly, based on FTI’s observations, it is possible that the research being referenced in the relevant CPE report was the research for which citations were found in the working papers underlying the first CPE on that particular application.<sup>31</sup>

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

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<sup>29</sup> Scope 3 Report, at Pg. 3-4, available at <https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf>.

<sup>30</sup> Scope 3 Report, at Pg. 4, available at <https://www.icann.org/en/system/files/files/cpe-process-review-scope-3-cpe-provider-reference-material-compilation-redacted-13dec17-en.pdf>.

<sup>31</sup> *Id.* at Pg. 34.

Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Reviews.<sup>32</sup>

B. The Requestor's Application for .KIDS and the .KID/.KIDS Contention Set

The Requestor submitted a community-based application for .KIDS, which was placed in the .KID/.KIDS contention set.<sup>33</sup> The Requestor participated in CPE, but did not prevail. On 23 April 2016, the Requestor submitted Request 16-6, seeking reconsideration of the CPE Provider's conclusion that the Requestor did not prevail in CPE.<sup>34</sup> The filing of Request 16-6 impacted the status of the .KID/.KIDS contention set, which was placed on hold pending resolution of Request 16-6.<sup>35</sup> The BGC issued a final determination denying Request 16-6 on 21 July 2016.<sup>36</sup> On 16 September 2016, ICANN organization notified the Requestor that the application statuses and contention sets have been updated on the New gTLD Program microsite and that the "[t]he KID/KIDS contention set and your application status are no longer 'On-Hold'" given that there are no pending accountability mechanisms impacting the status of the contention set.<sup>37</sup>

On 18 October 2016, the Requestor sent a case comment to ICANN organization asserting that the BGC's Determination on Request 16-6 was not final because the Board should consider the Request as required under the amended Bylaws effective 1 October 2016.<sup>38</sup>

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<sup>32</sup> <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

<sup>33</sup> [https://gtdresult.icann.org/application-result/applicationstatus/stringcontentionstatus:viewcontentionsetimage/215?\\_csrf=2fa3a5b7-ca97-4722-bb10-02acbf6ac234](https://gtdresult.icann.org/application-result/applicationstatus/stringcontentionstatus:viewcontentionsetimage/215?_csrf=2fa3a5b7-ca97-4722-bb10-02acbf6ac234).

<sup>34</sup> Request 16-6, available at <https://www.icann.org/en/system/files/files/reconsideration-16-6-dotkids-request-23apr16-en.pdf>.

<sup>35</sup> Update on Application Status and Contention Sets, available at <https://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en>.

<sup>36</sup> Attachment 1, at Pg. 1.

<sup>37</sup> Attachment 2, at Pg. 1.

<sup>38</sup> Attachment 3, at Pg. 1.

On 31 October 2016, in response to the Requestor's case comment inquiry, ICANN organization explained that the Bylaws in effect at the time Request 16-6 was filed allowed the BGC to issue a final determination on challenges relating to staff action and therefore, no further consideration by the Board was warranted.<sup>39</sup> ICANN organization also explained that the Requestor's "application and the .KID/.KIDS contention set was updated to 'Active'" on 12 September 2016 following the posting of the 21 July 2016 BGC meeting minutes.<sup>40</sup>

On 2 October 2017, ICANN organization sent the Requestor an update regarding the .KID/.KIDS contention set.

In light of the fact that the .KID/.KIDS Reconsideration Request has been resolved and there are currently no other accountability mechanisms or other activities pending for the contention set, ICANN will be moving forward with the .KID/.KIDS contention set and plans to invite the contention set to an ICANN Auction of Last Resort 30 days from this notification. At that time, you will receive information regarding the auction, including the date, time and how to begin the process of completing your auction documentation. Typically, auctions are scheduled three months from the date of invitation.<sup>41</sup>

On 4 October 2017, the Requestor responded to ICANN organization's update, stating:

Thanks for your note, however, we must admit that we were not expecting such a notice given the ongoing CPE review process: <https://www.icann.org/news/announcement-2017-09-01-en>

The DotKids Foundation remains committed to contend, in collaboration with ICANN and the ICANN community, that the CPE process was inadequately executed and that kids around the world do form a distinct community worthy of consideration as a community TLD through the new gTLD process.

Since mid 2016, we have been in communications with the ICANN Ombudsman and have been provided with information

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<sup>39</sup> Attachment 4, at Pg. 1.

<sup>40</sup> *Id.*; see also <https://www.icann.org/resources/board-material/minutes-bgc-2016-07-21-en>.

<sup>41</sup> Attachment 5, at Pg. 1.

that we should wait for the CPE Review to be completed first before we, together with the ICANN Ombudsman, the ICANN community and the Childrens Rights and welfare community should consider what further steps to take on the matter.<sup>42</sup>

On 28 October 2017, ICANN organization replied to the Requestor's case comment.

Your message referenced the Board-directed Community Priority Evaluation (CPE) process review (CPE Process Review). In his letter of 26 April 2017 to concerned parties, Chris Disspain, the Chair of the Board Governance Committee, advised that the Board's consideration of certain Reconsideration Requests related to CPE are on-hold pending completion of the CPE Process Review; these Reconsideration Requests affect the following strings: .LLC, .INC, .LLP, .GAY, .MUSIC, .CPA, .HOTEL, and .MERCK. The letter is published at <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>. The letter has been incorporated in the 2 June 2017 (<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-02jun17-en.pdf>) and 1 September 2017 (<https://newgtlds.icann.org/en/applicants/cpe/process-review-update-01sep17-en.pdf>) updates on the CPE Process Review issued by ICANN organization.

Reconsideration Request 16-6, affecting the .KID/.KIDS contention set resolved in July 2016 and the contention set was subsequently taken off hold. As mentioned in our [2 October 2017] communication, there are currently no accountability mechanisms or other pending activities that would interfere with progression of the contention set.<sup>43</sup>

On 10 November 2017, ICANN organization sent the Requestor a Notice of Intent to Auction and Notice to Participate in an Action. The Notice to Participate identified four forms that needed to be completed and submitted within 28 days of the notice, by 8 December 2017.<sup>44</sup>

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<sup>42</sup> Attachment 6, at Pg. 1.

<sup>43</sup> Attachment 7, at Pg. 1.

<sup>44</sup> Attachment 8, at Pg. 1; Attachment 9, at Pg. 1.

On 17 November 2017, 27 November 2017, and 4 December 2017, ICANN organization sent the Requestor additional reminders regarding the information required to be submitted by 8 December 2017 in order to participate in an Auction to resolve string contention.<sup>45</sup>

On 5 December 2017, the Requestor notified ICANN organization that

[w]e have been advised by the ICANN Ombudsman that there is an open case for DotKids Foundation at the Ombudsman office, mainly on the seemingly unfair treatment of the DotKids application, including but not limited to the unknown reason for .kids to be pushed to auction at this time while the CPE review is still ongoing and other community applications are held.

Please confirm the above and that given that there is an accountability mechanism open, the application and the auction process should be held.<sup>46</sup>

The next day, on 6 December 2017, the Requestor filed the instant Request 17-5.<sup>47</sup> Request 17-5 claims that a “mistaken CPE process [was] applied to the DotKids Foundation .KIDS community gTLD application,”<sup>48</sup> that “the findings [of the CPE Process Review] will affect the approach that the DotKids Foundation would take for the redress of the .KIDS CPE process,”<sup>49</sup> and that other community applicants “not explicitly identified in the CPE process review (e.g. the .SPA CEP/IRP by Donuts) have been put on hold we believe due to the ongoing CPE process review,” such that the Requestor asserts that taking .KIDS off hold “is therefore counter to the established processes.”<sup>50</sup> The Requestor also suggested (wrongly, as discussed below) that ICANN

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<sup>45</sup> Attachment 10, at Pg. 1; Attachment 11, at Pg. 1; Attachment 12, at Pg. 1.

<sup>46</sup> Attachment 13, at Pg. 1; Attachment 14, at Pg. 1.

<sup>47</sup> <https://www.icann.org/en/system/files/files/reconsideration-17-5-dotkids-request-06dec17-en.pdf>.

<sup>48</sup> Request 17-5, § 5, at Pg. 3.

<sup>49</sup> Request 17-5, § 7, at Pg. 6.

<sup>50</sup> Request 17-5, § 7, at Pg. 6.

organization did not notify it of the change in the .KIDS application status until over a year after the application was taken off hold.<sup>51</sup>

Following ICANN organization's receipt of Request 17-5, the .KID/.KIDS contention set Auction, which was scheduled for 25 January 2018, was cancelled, and the Requestor's .KIDS application was put back on hold, because string contention sets are only eligible to enter into an Auction if, among other things, there is no pending ICANN Accountability Mechanism.<sup>52</sup>

On 16 January 2018, the BAMC concluded that Request 17-5 is sufficiently stated pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws.<sup>53</sup>

In accordance with the Reconsideration process, ICANN organization transmitted Request 17-5 to the Ombudsman for consideration pursuant to Article 4, Section 4.2(l) of the ICANN Bylaws. On 21 January 2018, the Ombudsman recused himself pursuant to Article 4, Section 4.2(l)(iii) of ICANN's Bylaws.<sup>54</sup> Accordingly, the BAMC reviews Request 17-5 pursuant to Article 4, Sections 4.2(l)(iii) and 4.2(q).

### **C. Relief Requested**

The Requestor asks the BAMC "[t]o place the DotKids Foundation .KIDS community gTLD application on hold until the CPE [Process R]eview reports are complete and published."<sup>55</sup>

### **III. Issues Presented.**

The issues are as follows:

1. Whether Request 17-5 is moot because the CPE Process Review reports are complete and published; and

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<sup>51</sup> Request 17-5, § 7, at Pg. 5-6.

<sup>52</sup> <http://newgtlds.icann.org/en/applicants/auctions>.

<sup>53</sup> ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(l)(iii).

<sup>54</sup> ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(l)(iii); *see also* Ombudsman Action Regarding Request 17-5, Pg. 1, <https://www.icann.org/en/system/files/files/reconsideration-17-5-dotkids-ombudsman-action-21jan18-en.pdf>.

<sup>55</sup> Request 17-5, § 8, at Pg. 6.

2. Whether ICANN organization complied with applicable Commitments, Core Values, and established policies when it took the .KID/.KIDS contention set off “Hold” status and resumed processing the contention set in accordance with the New gTLD Program by scheduling an ICANN Auction.

#### **IV. The Relevant Standards for Reconsideration Requests.**

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

- (i) One or more Board or Staff actions or inactions that contradict ICANN’s Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board’s or Staff’s consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board’s or staff’s reliance on false or inaccurate relevant information.<sup>56</sup>

Pursuant to Article 4, Section 4.2(k) of the Bylaws, if the BGC determines that the Request is sufficiently stated, the Request is sent to the Ombudsman for review and consideration.<sup>57</sup> Pursuant to the Bylaws, where the Ombudsman has recused himself from the consideration of a reconsideration request, the BAMC shall review the request without involvement by the Ombudsman, and provide a recommendation to the Board.<sup>58</sup> Denial of a request for reconsideration of ICANN organization action or inaction is appropriate if the BAMC

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<sup>56</sup> ICANN Bylaws, 22 July 2017, Art. 4, §§ 4.2(a), (c).

<sup>57</sup> ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(l).

<sup>58</sup> ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(l)(iii).

recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws.<sup>59</sup>

On 16 January 2018, the BAMC determined that Request 17-5 is sufficiently stated and sent Request 17-5 to the Ombudsman for review and consideration.<sup>60</sup> The Ombudsman thereafter recused himself from this matter.<sup>61</sup> Accordingly, the BAMC has reviewed Request 17-5 and issues this Recommendation.

## **V. Analysis and Rationale.**

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

The Requestor asked ICANN organization to “place the [.KIDS] application on hold until the CPE review reports are complete and published.”<sup>62</sup> This is precisely what ICANN organization has done. Immediately following ICANN organization’s receipt of Request 17-5, ICANN organization cancelled the .KID/.KIDS contention set Auction, and placed the .KID/.KIDS contention set on hold, because string contention sets are only eligible to enter into an Auction if, among other things, there is no pending ICANN Accountability Mechanism relevant to the string.<sup>63</sup>

On 13 December 2017, while the .KID/.KIDS contention set was on hold pending resolution of Request 17-5, ICANN organization published three reports in connection with the CPE Process Review.<sup>64</sup> On 15 March 2018, the ICANN Board acknowledged and accepted the

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<sup>59</sup> ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(e)(vi), (q), (r).

<sup>60</sup> Ombudsman Action Regarding Request 17-5, Pg. 2.

<sup>61</sup> Ombudsman Action Regarding Request 17-5, Pg. 1.

<sup>62</sup> Request 17-5, § 8, at Pg. 6.

<sup>63</sup> See Application Details, “Application Status,” available at <https://gtldresult.icann.org/applicationstatus/applicationdetails/161>; see also <http://newgtlds.icann.org/en/applicants/auctions>.

<sup>64</sup> See <https://www.icann.org/news/announcement-2017-12-13-en>.



findings set forth in the three CPE Process Review reports, and declared that the CPE Process Review was complete.<sup>65</sup> Accordingly, the Requestor has received the relief requested in Request 17-5, which renders Request 17-5 moot and reconsideration unnecessary.

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

The Requestor claims that other community applicants “not explicitly identified in the CPE process review (e.g. the .SPA CEP/IRP by Donuts) have been put on hold we believe due to the ongoing CPE process review,” such that the Requestor asserts that taking .KIDS off hold “is therefore counter to the established processes.”<sup>66</sup> This claim conflates multiple issues and relies on facts which are not supported. There is no evidence that the Cooperative Engagement Process (CEP) initiated on 20 January 2016 by Donuts, Inc. a relating to the .SPA string was put on hold due to the ongoing CPE Process Review. Further, the Requestor does not indicate which “established processes” it believes ICANN organization violated by taking the .KID/.KIDS contention off hold in September 2016 following the resolution of Request 16-6,<sup>67</sup> nor does the Requestor provide any evidence of such a process violation, because none exists.

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

[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties),<sup>68</sup>

this argument does not support reconsideration.

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<sup>65</sup> <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>.

<sup>66</sup> Request 17-5, § 7, at Pg. 6.

<sup>67</sup> *See id.*

<sup>68</sup> ICANN Bylaws, 22 July 2017, Art. 1, § 1.2(a)(v).

The BGC’s Chair, Chris Disspain, identified certain Reconsideration Requests that would be on hold until the completion of the CPE Process Review.<sup>69</sup> Each of the Reconsideration Requests placed on hold raised claims relating to CPE, and each was pending at the time the CPE Process Review was commenced. Because the Requestor did not have a pending Reconsideration Request at the time the CPE Process Review was commenced, the DotKids Application and the .KID/.KIDS contention set were not placed on hold.

Contrary to the Requestor’s claims and consistent with its commitment to “[m]ake decisions by applying documented policies consistently, neutrally, objectively, and fairly,”<sup>70</sup> ICANN organization treated the DotKids Application and the .KID/.KIDS contention set the same way it treated other gTLD applications and contention sets that had no pending Accountability Mechanism when the CPE Process Review started. Specifically, *none* of the applications or contention sets that were in active status when the CPE Process Review commenced, including the DotKids Application and .KID/.KIDS contention set, were placed on hold in connection with the CPE Process Review. If the BAMC were to adopt the Requestor’s position, ICANN organization would have had to “single out” the DotKids Application and “mak[e] an unjustified prejudicial distinction between or among different parties” to place it on hold without placing all of the other active gTLD applications that had undergone CPE on hold as well, which itself would comprise a violation of this commitment.<sup>71</sup>

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<sup>69</sup> <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>. The reconsideration requests on hold pending completion of the CPE Process Review are: 14-30 (.LLC) (withdrawn on 7 December 2017, *see* <https://www.icann.org/en/system/files/files/dotregistry-llc-withdrawal-redacted-07dec17-en.pdf>), 14-32 (.INC) (withdrawn on 11 December 2017, *see* <https://www.icann.org/en/system/files/files/reconsideration-14-32-dotregistry-request-redacted-11dec17-en.pdf>), 14-33 (.LLP) (withdrawn on 15 February 2018, *see* <https://www.icann.org/en/system/files/files/reconsideration-14-33-dotregistry-request-redacted-15feb18-en.pdf>), 16-3 (.GAY), 16-5 (.MUSIC), 16-8 (.CPA), 16-11 (.HOTEL), and 16-12 (.MERCK).

<sup>70</sup> ICANN Bylaws, 22 July 2017, Art. 1, § 1.2(a)(v).

<sup>71</sup> *Id.*

The Requestor's claim that it was treated differently than the applicant for .SPA is factually incorrect and does not support reconsideration. The Requestor asserts that ICANN organization placed the .SPA contention set "on hold, we believe due to the ongoing CPE [P]rocess [R]eview."<sup>72</sup>

In fact, the .SPA application was placed on hold on 20 January 2016 when the applicant for .SPA initiated a CEP proceeding, nine months before the Board directed ICANN organization's President or his designee to commence the CPE Process Review.<sup>73</sup> The CEP is an accountability mechanism; accordingly Donuts Inc.'s initiation of CEP caused the .SPA contention set to be placed on hold.<sup>74</sup> As such, there is no evidence that the .SPA CEP "ha[s] been put on hold we believe due to the ongoing CPE process review" as claimed by the Requestor.<sup>75</sup>

Ultimately, the "on hold" status of the .SPA contention set does not reflect inconsistent or discriminatory application of established policy or procedure, because the .SPA contention set is on hold as a result of Donuts Inc.'s initiation of CEP and *not* as a result of an ICANN organization determination to place the contention set on hold pending completion of the CPE Process Review.<sup>76</sup> ICANN organization applied its policies consistently, insofar as both the DotKids Application and Donuts Inc.'s application for .SPA were placed on hold as a result of pending Accountability Mechanisms (albeit different Accountability Mechanisms). Reconsideration is not warranted on these grounds.

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<sup>72</sup> Request 17-5, § 7, at Pg. 6.

<sup>73</sup> See <https://www.icann.org/en/system/files/files/irp-cep-status-15nov17-en.pdf>.

<sup>74</sup> <http://newgtlds.icann.org/en/applicants/auctions>.

<sup>75</sup> Request 17-5, § 7, at Pg. 6.

<sup>76</sup> Request 17-5, § 7, at Pg. 6.

Finally, the Requestor suggests that it did not receive notice from ICANN organization indicating that the .KID/.KIDS contention set had been taken off hold until 2 October 2017.<sup>77</sup> While the Requestor does not specifically assert that reconsideration is warranted on these grounds, the BAMC addresses the Requestor's claims, as the Requestor is mistaken.

The Requestor was notified by ICANN organization on 16 September 2016 that its Application was no longer on hold.<sup>78</sup> ICANN organization notified the Requestor less than one week after the BGC issued its determination on Request 16-6 that the determination was available on ICANN organization's website, and provided a URL to the determination.<sup>79</sup> Moreover, Global Support explained that "[t]he [.]KID/[.]KIDS contention set and your application status are no longer 'On-Hold'" less than one week after the BGC posted minutes on the ICANN website indicating that the .KID/.KIDS contention set would be taken off hold,<sup>80</sup> and more than one year before scheduling the Auction.<sup>81</sup> Indeed, on 18 October 2016, the Requestor expressly acknowledged that "we see that the application status ha[s] been updated."<sup>82</sup> Later that month, ICANN organization reiterated to the Requestor that "[i]n light of the BGC determination that no further consideration by the Board is required, your application and the .KID/.KIDS contention set was updated to 'Active'" on 12 September 2016 following the posting of the 21 July 2016 BGC meeting minutes.<sup>83</sup>

Ultimately, the Requestor has not identified any element of ICANN's Mission, Commitments, Core Values, or established ICANN policy(ies) violated by ICANN

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<sup>77</sup> Request 17-5, § 4, at Pg. 2.

<sup>78</sup> Attachment 1, at Pg. 1.

<sup>79</sup> Attachment 1, at Pg. 1.

<sup>80</sup> Compare <https://www.icann.org/resources/board-material/minutes-bgc-2016-07-21-en> (ICANN minutes, posted 12 September 2016) with Attachment 1, at Pg. 1 (notice to the Requestor dated 16 September 2016).

<sup>81</sup> See Attachment 1, at Pg. 1, 3.

<sup>82</sup> Attachment 1, Pg. 1-2.

<sup>83</sup> *Id.*, Pg. 2.

organization's correspondence with the Requestor, as none were violated. Accordingly, reconsideration is not warranted.

## **VI. Recommendation**

The BAMC has considered the merits of Request 17-5, and, based on the foregoing, concludes that ICANN organization did not violate ICANN's Mission, Commitments and Core Values or established ICANN policy(ies) when it took .KID/.KIDS off hold and further that Request 17-5 is moot. Accordingly, the BAMC recommends that the Board deny Request 17-5.

In terms of the timing of this decision, Section 4.2(q) of Article 4 of the Bylaws provides that the BAMC "shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the Reconsideration Request."

To satisfy the ninety-day target deadline, the BAMC would have to have acted by 6 March 2018. On 17 January 2018 and 2 February 2018, the BAMC recommended that the Board acknowledge and accept the findings set forth in the CPE Process Review reports, declare that the CPE Process Review was complete, and conclude that there will be no overhaul or change to the CPE process in the current New gTLD round.<sup>84</sup> The Board did not have the opportunity to adopt Resolutions 2018.03.15.08 – 2018.03.15.11 accepting the BAMC's recommendations until 15 March 2018.<sup>85</sup> As the Board's actions concerning the CPE Process Review in Resolutions 2018.03.15.08 – 2018.03.15.11 are relevant the BAMC's consideration of Request 17-5, the first opportunity that the BAMC has to make a recommendation on Request 17-5 is 5 April 2018.

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<sup>84</sup> <https://www.icann.org/resources/board-material/minutes-bamc-2018-01-17-en>;  
<https://www.icann.org/resources/board-material/minutes-bamc-2018-02-02-en>.

<sup>85</sup> <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>; *see also* <https://www.icann.org/resources/board-material/minutes-2018-02-04-en#2.e> (Board Minutes of 4 February 2018 continuing the Board's consideration of the CPE Process Review until the Board's 15 March 2018 meeting in Puerto Rico to allow the Board members additional time to consider letters and reports submitted by community applicants whose pending Reconsideration Requests were placed on hold pending completion of the CPE Process Review).

**Subject:** Re: [Reconsideration Request] Update on Reconsideration Request 17-5  
**Date:** Monday, April 16, 2018 at 5:23:25 PM Pacific Daylight Time  
**From:** Edmon (sent by reconsider <reconsider-bounces@icann.org>)  
**To:** Reconsideration, edmon@registry.asia

Yes we intend to respond by filing a rebuttal shortly.  
Edmon

----- Original Message -----

From: Reconsideration <[Reconsideration@icann.org](mailto:Reconsideration@icann.org)>  
Sent: 17 April 2018 3:08:32 AM HKT  
To: Contact information Redacted  
Cc: Reconsideration <[Reconsideration@icann.org](mailto:Reconsideration@icann.org)>  
Subject: Update on Reconsideration Request 17-5

Dear Mr. Chung,

We write to follow up on our email below. Please let us know by 17 April 2018, 00:00 UTC (17 April 2018, 8:00 HKT) if you intend to file a rebuttal to the Board Accountability Mechanism Committee's (BAMC) Recommendation on Request 17-5 and if so, when you intend to do so.

The ICANN Board will be meeting on 17 April 2018 at 20:00 UTC, and one of the items currently scheduled to be on the agenda is the Board's consideration of the BAMC's Recommendation on your Request 17-5. However, if you do intend to file a rebuttal within your allotted time, the Board will remove this item from its agenda to allow itself sufficient time to consider the arguments raised in the rebuttal. As the BAMC's Recommendation on Request 17-5 reflects, the BAMC took longer than the recommended time under the Bylaws to issue its recommendation on Request 17-5 because of the pendency of the related issue of the consideration of the Community Priority Evaluation (CPE) Process Review. If you are filing a rebuttal, and therefore the Board is not able to consider the BAMC's Recommendation on Request 17-5 at its 17 April 2018 meeting, there is a possibility that the Board will not be able to issue a final determination on Request 17-5 within 135 days from the initial receipt of the request. Of course, the Board would prefer to issue a final determination based on a full and complete record, so we are reaching out to inquire whether the record for Request 17-5 is complete at this time.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

From: reconsider <[reconsider-bounces@icann.org](mailto:reconsider-bounces@icann.org)> on behalf of "[reconsideration@icann.org](mailto:reconsideration@icann.org)" <[reconsideration@icann.org](mailto:reconsideration@icann.org)>  
Date: Thursday, April 5, 2018 at 12:11 PM

To: Edmon Chung Contact information Redacted  
Subject: [Reconsideration Request] Reconsideration Request 17-5

Dear Mr. Chung,

Please be advised that the Board Accountability Mechanisms Committee's (BAMC) Recommendation on Reconsideration Request 17-5, issued on 5 April 2018, has been posted and is available at [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_resources\\_pages\\_reconsideration-2D17-2D5-2Ddotkids-2Drequest-2D2017-2D12-2D06-2Den-5Bicann.org-5D&d=DwIGaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=3mBfUTvyfqDEumrbzweVla6qFyeEmDaNE5eHQf9QFdU&m=MaOggppmnuJ8i8mPoUjXdIVLWnbfJw7y7U8uYxCqsTc&s=VC8si3Pm0W7T6Erc93ZFcRAHoJzYIW9Eh1Qb-0j854M&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_reconsideration-2D17-2D5-2Ddotkids-2Drequest-2D2017-2D12-2D06-2Den-5Bicann.org-5D&d=DwIGaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=3mBfUTvyfqDEumrbzweVla6qFyeEmDaNE5eHQf9QFdU&m=MaOggppmnuJ8i8mPoUjXdIVLWnbfJw7y7U8uYxCqsTc&s=VC8si3Pm0W7T6Erc93ZFcRAHoJzYIW9Eh1Qb-0j854M&e=).

Pursuant to Article 4, Section 4.2(q) of the ICANN Bylaws, "[t]he Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Accountability Mechanisms Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Accountability Mechanisms Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request." ([https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_resources\\_pages\\_governance\\_bylaws-2Den\\_-23article4&d=DwIGaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=3mBfUTvyfqDEumrbzweVla6qFyeEmDaNE5eHQf9QFdU&m=MaOggppmnuJ8i8mPoUjXdIVLWnbfJw7y7U8uYxCqsTc&s=eqIraInSMVpPAXPlmH9vIs1Mc6drjJO1bywh70cYpRs&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_governance_bylaws-2Den_-23article4&d=DwIGaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=3mBfUTvyfqDEumrbzweVla6qFyeEmDaNE5eHQf9QFdU&m=MaOggppmnuJ8i8mPoUjXdIVLWnbfJw7y7U8uYxCqsTc&s=eqIraInSMVpPAXPlmH9vIs1Mc6drjJO1bywh70cYpRs&e=).) The 15 days will expire at 23:59 PDT on 20 April 2018.

The BAMC's Recommendation, along with all relevant materials including any rebuttal submitted in accordance with Article 4, Section 4.2(q) of the Bylaws, will be provided to the Board for review as soon as practicable and feasible. Once the Board makes a final decision on Request 17-5, the Determination will be reflected on the same page as the Request and the BAMC Recommendation at [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_resources\\_pages\\_reconsideration-2D17-2D5-2Ddotkids-2Drequest-2D2017-2D12-2D06-2Den-5Bicann.org-5D&d=DwIGaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=3mBfUTvyfqDEumrbzweVla6qFyeEmDaNE5eHQf9QFdU&m=MaOggppmnuJ8i8mPoUjXdIVLWnbfJw7y7U8uYxCqsTc&s=VC8si3Pm0W7T6Erc93ZFcRAHoJzYIW9Eh1Qb-0j854M&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_reconsideration-2D17-2D5-2Ddotkids-2Drequest-2D2017-2D12-2D06-2Den-5Bicann.org-5D&d=DwIGaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=3mBfUTvyfqDEumrbzweVla6qFyeEmDaNE5eHQf9QFdU&m=MaOggppmnuJ8i8mPoUjXdIVLWnbfJw7y7U8uYxCqsTc&s=VC8si3Pm0W7T6Erc93ZFcRAHoJzYIW9Eh1Qb-0j854M&e=) and you will be notified shortly after the Board's decision is posted.

Best regards,

ICANN

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

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reconsider mailing list

[reconsider@icann.org](mailto:reconsider@icann.org)

<https://mm.icann.org/mailman/listinfo/reconsider>



**REFERENCE MATERIALS – BOARD PAPER NO. 2018.05.13.XX**

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

**Document/Background Links**

The following attachments are relevant to the Board's consideration of Reconsideration Request 17-5.

Attachment A is [Reconsideration Request 17-5](#), submitted on 6 December 2017.

Attachment B is the [Ombudsman Action on Request 17-5](#), dated 21 January 2018.

Attachment C is the [BAMC Recommendation on Request 17-5](#), issued 5 April 2017.

Attachment D is the email correspondence between [reconsideration@icann.org](mailto:reconsideration@icann.org) and the Requestor, dated 16 April 2018.

Submitted By: Amy Stathos, Deputy General Counsel

Date Noted: 27 April 2018

Email: amy.stathos@icann.org

# 2018 KSK Outreach Plan

ICANN Office of the Chief Technical Officer  
27 April 2018



## Introduction

This document describes the plan to reach out to the various parties who might be affected by the 2018 KSK roll. ICANN will, of course, do more than just what is in this document as new opportunities arise to help assure that affected parties are ready for the rollover.

Our intention is to build upon the foundation of outreach that has already been conducted, rather than to duplicate those efforts. We have, for example, reached out to a large number of Network Operator Groups (NOGs), who are now well aware of the impending key roll. Regional Internet Registries (RIRs) have also been extremely helpful in informing relevant parties about the roll.

The Communications and the Global Stakeholder Engagement teams continue to engage appropriate audiences and media outlets to assure that word of the roll receives wide distribution.

Government regulators have already received correspondence from CEO Göran Marby about the roll and its scheduled date of 11 October 2018.

## Outreach to Operators of Resolvers to Prepare for the KSK Roll

ICANN org will continue to present at appropriate events attended by resolver operators who may not have heard about the KSK roll. We will continue to reach out to groups like

the ccNSO, to help reach communities of resolver operators where our material would be beneficial.

ICANN org will continue to actively maintain the two web pages [Checking the Current Trust Anchors in DNS Validating Resolvers](#) and [Updating of DNS Validating Resolvers with the Latest Trust Anchor](#). These will be expanded as we obtain new information from software vendors and users.

## **Outreach to Search Engines**

ICANN org will reach out to the major search engine to make the DNSSEC/DNS failure-related searches (for terms like SERVFAIL, DNSSEC, DNS resolution failure, and so on) more obvious during the rollover.

## **Collecting Measurements**

We will facilitate planning and community consultation on the measurement of, and the improvements to, the many technical mechanisms involved in KSK rollover. After the roll, ICANN will publish these measurements in order to facilitate community discussion about future KSK rolls.

## **Outreach During the Roll Itself**

ICANN org will be actively monitoring media and social media channels from before the KSK roll begins through the time when all active validating resolvers will have seen the new signatures on the root zone. There will be outreach as needed to help answer questions that arise, both from users and resolver operators.

## **Outreach After the Roll**

After the roll is completed, ICANN org will produce one or more reports of what we saw during the roll. Some of these will be aimed at the technical community (in order to help them assess the operational documentation for resolvers), and some will be aimed at the non-technical communities (to help them understand what happened, and what to expect for future rolls).

# 2018 KSK Roll Operational Implementation Plan

ICANN Office of the Chief Technical Officer  
27 April 2018

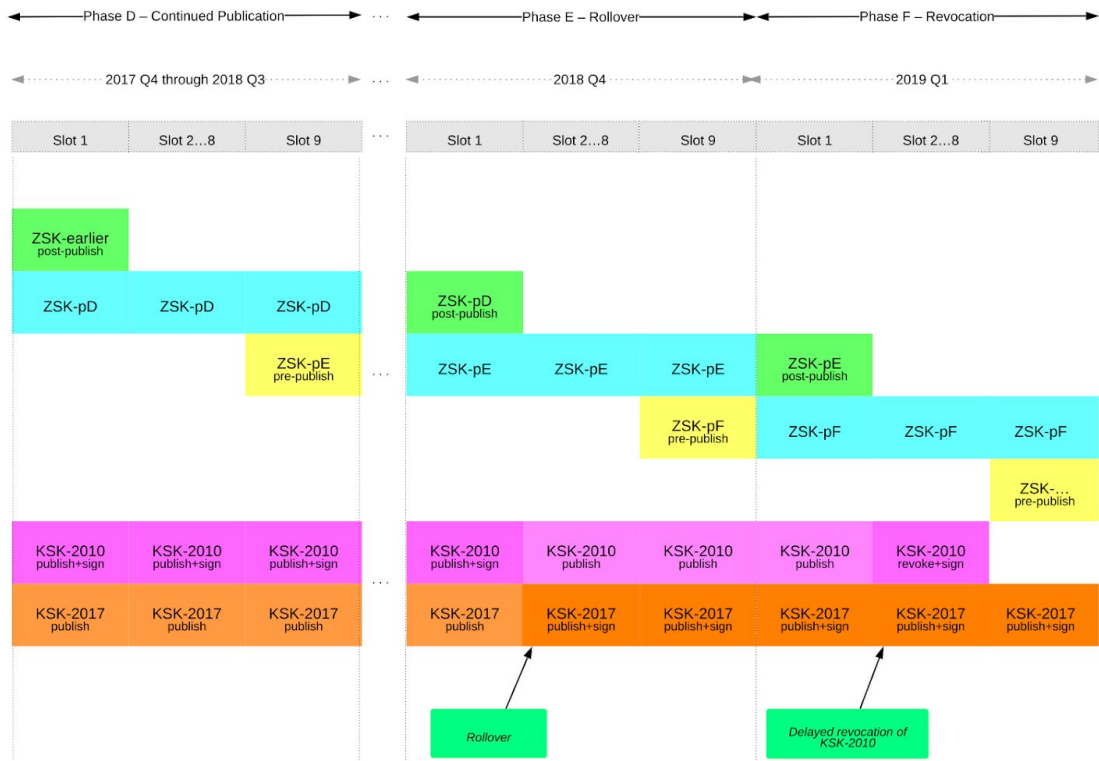


## Introduction

The [2017 KSK Rollover Operational Implementation Plan](#) describes in detail the operational steps to accomplish the KSK Roll project. The steps are those performed by the IANA Functions Operator and the Root Zone Maintainer. The steps to be performed are based on the processes documented in the [Root Zone KSK Rollover Plan](#) developed by the Design Team, and internal documents and meetings of the IANA Functions Operator and Root Zone Maintainer.

Although some of those steps from the 2017 plan have already been performed, separating them out into an updated operational implementation plan would make the overall plan harder to read, so it is not done here. Readers should look at the original plan, understanding that any dates listed as October 11, 2017 or later should simply be incremented by exactly one year. That is, the new planned rollover date is October 11, 2018; the new date on which KSK-2010 KSK is published as revoked is January 11, 2019; and so on.

The “phases” chart on page 5 of the 2017 operational plan was accurate when it was published, but now that KSK-2017 has been published in the root zone for many quarters, it might be hard to read. The following chart can be used instead.



# 2018 KSK Rollover Back Out Plan

*Revised from 2017 KSK Rollover Back Out Plan*

ICANN Office of the Chief Technical Officer  
27 April 2018



## Introduction

This document describes anticipated deviations from the Operational Implementation Plan based on anomalies occurring while executing that plan. It describes the process to be followed, including data collection, applicable criteria, and the steps involved in changing the contents of the DNS. It updates the [2017 KSK Roll Back Out Plan](#).

At the beginning of 2017, there were three type of events that might require a back out: updating the trust anchor XML file, changing the KSKs in the root DNSKEY RRset, and an increase in the size of DNS responses to priming queries. All three of those events already happened without noticeable issues.

During the KSK rollover process, the ZSK is rolled regularly. The KSK rollover process is designed to work independent of the regular ZSK roll. A back out scenario will not hamper a regular ZSK roll. When there is a back out, it will appear as if the latest step of the KSK roll did not happen while the ZSK has actually rolled forward. For example, a back out from D9 to C9 changes the KSKs from what they were in D9 to what they were in C9, but the ZSKs after back out remain the same.

## Summary of Events

The following critical events have been identified and will be referred to in this document:

Event	Date	Slot	Response Size	Description
1	2017-03-08	B8		Add KSK-2017 to TA XML
2	2017-07-11	D2	1139 bytes	Publish KSK-2017 in the DNSKEY RRset
3	2017-09-19	D9	1414 bytes	Response size increase
4	<b>2018-10-11</b>	E2	1139 bytes	KSK-2017 signed the DNSKEY RRset
5	<b>2019-01-11</b>	F2		Set KSK-2010 as not valid in TA XML
6	<b>2019-01-11</b>	F2	1424 bytes	Publish KSK-2010 as revoked
7	<b>2019-03-22</b>	F9	1139 bytes	Remove KSK-2010 from the DNSKEY RRset

Events 1, 2, and 3 already happened. Events 4, 5, 6, and 7 (marked in bold type in the “Date” column) are part of the plan for resuming the root KSK roll, with each date moved one year into the future. The specific details for these events are covered in the updated back out plan.

### ***Response Size Changes***

Response size is considered to be a sensitive parameter in designing the KSK roll because above some threshold responses in UDP may be fragmented and/or repeated over TCP. The threshold is subject to many factors in the query/response path rendering a fixed limit impossible to establish. Despite many reasons why large response sizes ought to have negative impacts, in practice there have been many cases of TLDs operating with a large DNSKEY RR set without reports of problems. However, to be operationally conservative, there is a general desire to minimize the response size and concerns over growing the size beyond what has been proven to work.

The next increase in response size for priming queries occurs at the start of slot F2, where it increases from 1414 to 1425 bytes. This is where KSK-2010 is published as revoked and signs the DNSKEY RRset. If a back out is ordered during or after F2, the result is that the rollover is brought to the next stage (G). The F2 back out is a keyset that contains the current ZSK and KSK-2017. The revoked KSK-2010 and its signature are absent from the DNSKEY RRset (and signatures), and the response size becomes 864 bytes. The impact of this back out is that KSK-2010, while not present in any DNSKEY set, is not actually revoked from the set of trust anchors for any resolver

relying on RFC 5011 that did not see the revoked key; however it is revoked for those resolvers that saw the revoked key before the back out. Chronologically, this is event 6.

**Back out Criteria:** Possibly related to fragmentation issues, significant retries for DNSKEY records (exempting retries related to fallback from UDP to TCP). Operators (relying on automated updates) reporting that their validators are not seeing the new trust anchors.

### **DNSKEY RRset Changes**

The next change in the KSK part is in slot E2 when the RRSIG generated by KSK-2010 is replaced by the RRSIG by KSK-2017 (that is, the DNSKEY RRset is signed with KSK-2017 instead of KSK-2010). The back out for slot E2 is to go back to phase D: use the RRSIG for KSK-2010 to sign the DNSKEY RRset. The impact of using this back out is that phase E needs to be postponed until the cause of the damage is found and can be mitigated. Chronologically, this is event 4.

The third change in the KSK part is in slot F2, when KSK-2010 is revoked. The back out for slot F2 is to go forward to phase G: remove the revoked KSK-2010 and its signature. The impact of using this back out is that KSK-2010 is not revoked in validators that have not observed the revoked KSK-2010; for these validators, the KSK roll is not complete because they still have KSK-2010 as a trust anchor. Chronologically, this is event 6.

Lastly, there is a fourth change in the KSK part in slot F9, where the revoked KSK-2010 is permanently removed from the keyset. The back out scenario here is to go to slot G9, which happens to be exactly the same as slot F9: a keyset with KSK-2017, signed by KSK-2017. Chronologically, this is event 7.

**Back out Criteria:** Higher frequency retries for DNSKEY records by a significant rise in queries from a large distribution of ASNs. Operators (relying on automated updates) reporting that their validators are not seeing the new trust anchors. Reports of distress.

## **Changes Runbook**

1. Status of automated monitoring system verified and phone bridge opened.
2. Root Zone Maintainer (RZM) inserts a root zone with a DNSKEY RR set "of concern" (tied to the events), or the IANA web site is changed.
3. Automated monitoring continues and watched carefully.
4. If there is any sign of a problem, whether reported by an operator looking at a monitor or reported otherwise, the bridge is alerted.
  - a. Any reports are evaluated to see if a report meets the criteria for executing a backout.



- b. The backout plan leading to the quickest stable state is enacted.
  - c. Adjustments needed to achieve a longer term stable state are determined.
  - d. Post-mortem examination of the change begins.
5. After 72 or more (perhaps related to TTL of the affected records) the phone bridge closes.
6. If there is a reason to reopen the phone bridge, it is opened again and step (4) above continues.
7. If there was a problem, before long-term decisions are made a root cause analysis meeting and report are completed and reviewed.

## **Coordination of Events**

At each event, the Root Zone Management Partners will deploy a telephone bridge. During this call the changes are deployed. Additionally, the behavior of resolvers is tracked by continuously analyzing traffic to a subset of root servers whose traffic is available to the IANA Functions Operator and the Root Zone Maintainer.

## **Backout Recovery**

This document does not define the process that deals with recovery after a backout. Invoking a backout is a significant event that is used as a last resort.

# 2018 KSK Rollover Monitoring Plan

*Revised from 2017 KSK Rollover Monitoring Plan*

ICANN Office of the Chief Technical Officer  
27 April 2018



## Introduction

This document describes the plan to monitor the traffic towards root name servers to evaluate the effects of changing the root zone KSK. The results of this monitoring effort will help ICANN understand the scale of possible failures due to rolling the KSK. It updates the [2017 KSK Rollover Monitoring Plan](#).

During the rollover of KSK-2010 to KSK-2017, ICANN plans to capture and analyse traffic to the ICANN-Managed Root Server (*IMRS*, also known as *L-root*) in near real time to understand the scale of resolvers that have problems with the KSK rollover. To make sure that the sample is statistically representative, a comparison will be made with traffic to other root servers who share data with ICANN.

A subset of resolvers that send traffic to the IMRS currently perform validation using DNSSEC. Some of these resolvers are able to follow the KSK rollover by implementing the protocol described in RFC 5011. In other cases, the resolvers' operators will configure a new trust anchor manually. But some resolvers will not have the root trust anchor updated and validation will fail. It is important to first establish a baseline to understand the behavior before rolling the key. There might be anomalies during this time, but measuring before the roll makes sure that these anomalies are part of the baseline. The underlying premise is that validating resolvers that do not have the new KSK will behave differently than those that do.

## Expected Anomalies

During the rollover process, the response size for a DNS query for the DNSKEY resource records for the root zone will change. At some point, there will be more than two keys in the root DNSKEY resource record set. This larger packet size might lead to incomplete fragments received by the resolver, fallback to TCP, or both. These effects are referred to as “response size effects”.

Resolvers that have a “stale” trust anchor (meaning a trust anchor that has not been updated for some reason during the rollover process) will not be able to validate the root zone once the new KSK begins signing the key set. This situation will also have an effect on root server traffic because these resolvers might increase their query rate. These are referred to as “stale key effects”.

Stale key effects are measured based on the volume of requests and the number of unique AS numbers that are associated with the source IP addresses of those requests. In this way, the scale of impact can be understood.

## Measurement Infrastructure

To cope with the sheer volume of requests and to process these requests in a timely fashion, ICANN has deployed a new measuring infrastructure.

Traffic to IMRS is captured locally at Anycast instances. Compressed traffic captures are then moved to the storage location for further processing. This storage location is either ICANN's LAX or DC data center, depending on availability and bandwidth. Traffic for other root server operators is stored at the ICANN data centers as well.

The measuring infrastructure consists of two large machines, one for the DC location and one for the LAX location. Custom analysis software has been deployed and is already in daily use analysing IMRS traffic.

# Steps of the KSK Roll Already Performed in 2017

ICANN Office of the Chief Technical Officer  
27 April 2018



## Introduction

The KSK Roll process was initiated in 2016 with the original plan to roll the root KSK on October 2017. Many of the steps of the original plan were fully executed before the process was paused in September 2017. See [KSK Rollover Postponed](#) for a description of the postponement.

This document briefly recaps the planned steps that were performed before the postponement and thus are considered complete.

## 2017 KSK Roll Systems Test Plan

The [2017 KSK Roll Systems Test Plan](#) listed the actions needed to test changes to the ICANN infrastructure involved in the KSK roll. Performance of the plan was by the IANA Functions Operator, coordinating with the Root Zone Maintainer (RZM). The tests included the interface with the Root Zone Maintainer, handling of the Key Signing Request and Signed Key Response, and generation of files containing the trust anchors to be published via HTTP(S). All tests in that plan were executed successfully.

## 2017 KSK Roll External Test Plan

This [2017 KSK Roll External Test Plan](#) document covers the preparation of operational test environments, accessed by the general Internet public, to evaluate whether external systems are prepared to participate in the KSK roll. The [Automated Trust Anchor](#)

[Update Testbed](#) allows operators of validating resolvers to test their implementation and confirm its ability to properly follow a KSK roll and update its trust anchor configuration.

ICANN created a “real time 5011 environment” that allows operators of validating resolvers to test whether their systems are likely to work during the KSK rollover if they are using RFC 5011. It has been reported that some distributions of resolver software are misconfigured so that after the 30-day hold down is complete, the new KSK is not written to permanent storage. This testbed allows operators to test their configuration before the the new KSK is installed into the root. The tests take place in test zones far down the DNS hierarchy, and will not affect any of the root zone trust anchors or the signatures on the root zone.

In addition, ICANN provides two extensive sets of instructions for operators of validating resolvers.

The web page [Checking the Current Trust Anchors in DNS Validating Resolvers](#) describes how to be sure they are using the latest trust anchor for DNSSEC validation. The web page [Updating of DNS Validating Resolvers with the Latest Trust Anchor](#) is useful for operators who discover that they do not have the new KSK installed, or whose resolvers are giving errors for all DNS requests after the KSK rollover.

All activities called for in this plan have been completed and therefore this plan document does not need to be updated.

## **2017 KSK Rollover Back Out Plan**

Parts of the [2017 KSK Rollover Back Out Plan](#) are no longer needed because the events that might have necessitated a backout didn't happen have already occurred without incident. A revised version of this plan will be used in 2018.

At the beginning of 2017, there were three type of events that might have required a back out: updating the trust anchor XML file, changing the KSKs in the root DNSKEY RRset, and an increase in the size of DNS responses to priming queries. All three of those events already occurred without noticeable issues. The following critical events were identified:

Event	Date	Slot	Response Size	Description
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Events 1, 2, and 3 already happened. Events 4, 5, 6, and 7 (marked in bold type in the “Date” column) are part of the plan for resuming the root KSK roll, with each date moved one year into the future. The specific details for these events are covered in the updated back out plan for 2018.

## 2018 KSK Roll Operational Implementation Plan

Because the [2017 KSK Roll Operational Implementation Plan](#) lists many steps that were already completed, the updated 2018 KSK Roll Operational Implementation Plan only amends a small portion of the 2017 plan.

## Outreach for the KSK Roll

In the lead-up to the expected KSK roll in 2017, the ICANN organization communicated its plans with different communities in numerous ways, including:

- Outreach to operators of resolvers to help them be prepared for the roll
  - Presentations at local and regional network operator groups
  - Presentations at local and regional technical conferences
  - Presentations at ICANN meetings
- Discussions with the technical communities about the mechanics of the roll
  - Presentations at IETF meetings
  - Presentations at DNS-OARC meetings
  - Presentations at the Tech Day at ICANN meetings

- Detailed web pages explaining of how operators can configure their systems to be ready for the roll
  - [Checking the Current Trust Anchors in DNS Validating Resolvers](#)
  - [Updating of DNS Validating Resolvers with the Latest Trust Anchor](#)
- General communications to increase community interest
  - Social media announcements
  - Informal mentions to business leaders and government ministers as part of other discussions

A new outreach plan will be used in 2018.

**Attachment B**

**High-Level Summary of Requirements: Proposed Temporary Specification for gTLD  
Registration Data**

Superseded by <https://www.icann.org/en/system/files/files/proposed-gtld-registration-data-temp-specs-summary-14may18-en.pdf>



Superseded by <https://www.icann.org/en/system/files/files/proposed-gtld-registration-data-temp-specs-summary-14may18-en.pdf>

Superseded by <https://www.icann.org/en/system/files/files/proposed-gtld-registration-data-temp-specs-summary-14may18-en.pdf>

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Superseded by <https://www.icann.org/en/system/files/files/proposed-gtld-registration-data-temp-specs-summary-14may18-en.pdf>

# Comparison of Calzone Model and Temporary Specification Requirements

Working Draft as of: 11 May 2018

	<b>ICANN Interim Model (Calzone Model)</b>
<b>Data Collection, Processing, and Retention</b>	
Collection from Registrant to Registrar	Full Thick data
Data Transfer from Registrar to Registry	Full transfer of data collected
Data Transfer to Escrow Agents	Full transfer of data collected
Data Retention	Life of registration + 2 years (Note: existing waivers for European registrars would be preserved)
<b>Applicability</b>	
Must Model be applied globally or only to European Economic Area?	Must be applied to EEA, may be applied globally, subject to a data processing agreement between ICANN and the contracted parties
Registrant Types Affected	Registrations of natural and legal persons
<b>Layered/Tiered Access to WHOIS data</b>	<b>Yes, layered/tiered access</b>
<b>Public WHOIS</b>	
Registrant Name in Public WHOIS?	Only Registrant Organization (if applicable) in public WHOIS (not Registrant Name)
Registrant Postal Address in Public WHOIS?	Only Registrant State/Province and Country in public WHOIS (not Registrant street, city, postal code)

	<b>ICANN Interim Model (Calzone Model)</b>
<b>Registrant Email in Public WHOIS?</b>	Create anonymized email or a web form to contact registrant
<b>Registrant Phone and Fax in Public WHOIS?</b>	No
<b>Admin and Tech Contact Names in Public WHOIS?</b>	No
<b>Admin and Tech Contact Postal Addresses in Public WHOIS?</b>	No
<b>Admin and Tech Contact Email Addresses in Public WHOIS?</b>	Create anonymized email or a web form to contact Admin and Tech contacts
<b>Admin and Tech Contact Phone in Public WHOIS?</b>	No
<b>Registrar Must Offer Registrant an Opt-in to Publish Additional Data in Public WHOIS?</b>	Yes
<i>Non-Public WHOIS</i>	
<b>Self-certification Access to Non-public WHOIS?</b>	No. Create anonymized email address or a web form to contact registrant or due process

	ICANN Interim Model (Calzone Model)
<b>Accreditation Program for Access to Non-public WHOIS?</b>	<p>Yes, in consultation with the Governmental Advisory Committee, data protection authorities and contracted parties with full transparency to the ICANN community. User groups with a legitimate interest and who are bound to abide by codes of conduct requiring adequate measures of protection could access non public WHOIS data based on pre defined criteria and limitations under the accreditation program.</p>

**Blue** = no change needed in Temp Spec because already required by existing provisions

<b>Temporary Specification</b>
<b>Full Thick data</b>
<b>Full transfer of data collected</b>
<b>Full transfer of data collected</b>
<b>Life of registration + 2 years</b> (Note: existing waivers for European registrars would be preserved)
Must be applied to EEA, may be applied beyond EEA where it is commercially reasonable to do so
Registrations of natural and legal persons
<b>Yes, layered/tiered access</b>
Only Registrant Organization (if applicable) in public WHOIS (not Registrant Name)
Only Registrant State/Province and Country in public WHOIS (not Registrant street, city, postal code)



**Temporary Specification**

**Registrar:** required to create anonymized email or a web form to contact Registrant

**Registry:** required to direct user to Registrar for method to contact Registrant

No

No

No

**Registrar:** required to create anonymized email or a web form to contact Admin and Tech contacts

**Registry:** required to direct user to Registrar for method to contact Admin and Tech contacts

No

Registrar must offer opt in to publish additional registrant data; Registrar may (but is not required) to offer opt in to publish additional Admin and Tech contact data

No

### **Temporary Specification**

Yes, Registrar and Registry required to provide reasonable access to non public data to 3rd parties with legitimate interests, except where such interests are overridden by the interests or fundamental rights and freedoms of the registrant or other data subject; also required to provide access where WP29/European Data Protection Board provides guidance that provision of data to specified classes of users is lawful.

Further community discussion will result in standardized accreditation model to be implemented.

# Proposed Temporary Specification for gTLD Registration Data – **WORKING DRAFT**

(As of 11 May 2018)

Prepared by: ICANN organization

The General Data Protection Regulation (GDPR) was adopted by the European Union (EU) in April 2016 and takes effect on 25 May 2018 uniformly across the EU countries. Over the past year, ICANN organization (ICANN org) has consulted with contracted parties, European data protection authorities, legal experts, and interested governments and community stakeholders to understand the potential impact of the GDPR to Personal Data that is Processed by certain participants in the gTLD domain name ecosystem (including Registry Operators and Registrars) pursuant to ICANN policies and contracts between ICANN and such participants that are subject to the GDPR.

This Temporary Specification for gTLD Registration Data (Temporary Specification) establishes temporary requirements to allow ICANN and gTLD registry operators and registrars to continue to comply with existing ICANN contractual requirements and community-developed policies in light of the GDPR. Consistent with ICANN's stated objective to comply with the GDPR while maintaining the existing WHOIS system to the greatest extent possible, the Temporary Specification maintains robust collection of Registration Data (including Registrant, Administrative, and Technical contact information), but restricts most Personal Data to layered/tiered access. Users with legitimate purpose for accessing the non-public Personal Data would be able to request such access through Registrars and Registry Operators. Users would also maintain the ability to contact the Registrant or Administrative and Technical contacts through an anonymized email or web form. The Temporary Specification would be implemented where required because of a nexus to the European Economic Area, while providing flexibility to Registry Operators and Registrars to apply the requirements on a global basis based on implementation, commercial reasonableness and fairness considerations. The Temporary Specification would apply to all registrations, without requiring Registrars to differentiate between registrations of legal and natural persons. It would also include data processing agreements between and among ICANN, Registry Operators, Registrars, and Data Escrow Agents as necessary for compliance with the GDPR.

This Temporary Specification was adopted by resolution of the ICANN Board of Directors (ICANN Board) on [TBD], pursuant to the requirements for the establishment of Temporary

Policies and Temporary Specification or Policies (as such terms are defined in ICANN’s registry agreements and registrar accreditation agreements). An advisory statement containing a detailed explanation of the ICANN Board’s reasons for adopting this Temporary Specification is available here <<TBD>>.

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# 1. Scope

- 1.1. Terms used in this Temporary Specification are defined in Section 2.
- 1.2. This Temporary Specification applies to all gTLD Registry Operators and ICANN-accredited Registrars.
- 1.3. Where specified, this Temporary Specification includes requirements for registrations for which Registry Operator and Registrar are required to, or MAY opt to, apply the “Interim Model for Compliance with ICANN Agreements and Policies in Relation to the European Union’s General Data Protection Regulation”.
- 1.4. The requirements of this Temporary Specification supersede and replace the requirements contained in Registry Operator’s Registry Agreement and Registrar’s Registrar Accreditation Agreement regarding the matters contained in this Temporary Specification. To the extent there is a conflict between the requirements of this Temporary Specification and the requirements of Registry Operator’s Registry Agreement and Registrar’s Registrar Accreditation Agreement, the terms of this Temporary Specification SHALL control, unless ICANN determines in its reasonable discretion that this Temporary Specification SHALL NOT control.

# 2. Definitions and Interpretation

The terms “MAY”, “MUST”, “MUST NOT”, “REQUIRED”, “RECOMMENDED”, “SHALL”, “SHALL NOT”, “SHOULD NOT” and “SHOULD” are used to indicate the requirement level in accordance with RFC 2119, which is available at <http://www.ietf.org/rfc/rfc2119.txt>.

“Consent”, “Controller”, “Personal Data”, “Processing”, and “Processor” SHALL have the same definition as Article 4 of the GDPR.

“Registration Data” means data collected from a natural and legal person in connection with a domain name registration.

“Registered Name Holder” SHALL have the meaning given in the Registrar Accreditation Agreement.

“Registered Name” SHALL have the meaning given in the Registrar Accreditation Agreement.

“gTLD” SHALL have the meaning given in the Registrar Accreditation Agreement.

“Registration Data Directory Services” refers to the collective of WHOIS, Web-based WHOIS, and RDAP services.

“Registrar Accreditation Agreement” means any Registrar Accreditation Agreement between a Registrar and ICANN that is based on that certain 2013 Registrar Accreditation Agreement approved by the ICANN Board on June 27, 2013 (“2013 Registrar Accreditation Agreement”) or any successor to such agreements that is approved by the ICANN Board.

“Registry Agreement” means any gTLD registry agreement between Registry Operator and ICANN, including any Registry Agreement that is based on the new gTLD Registry Agreement approved by the ICANN Board on 2 July 2013, as amended (“Base Registry Agreement”).

If a term is capitalized but not defined in this Temporary Specification, such term SHALL have the meaning given to it in the Registry Agreement or Registrar Accreditation Agreement, as applicable.

Unless otherwise specifically provided for herein, the term “or” SHALL NOT be deemed to be exclusive.

When Registry Operator and Registrar are referenced together in a provision of this Temporary Specification, each such provision represents a separate requirement and obligation of each Registry Operator and each Registrar pursuant to its respective Registry Agreement or Registrar Accreditation Agreement.

### 3. Policy Effective Date

This Temporary Specification is effective as of                     .

### 4. Lawfulness and Purposes of Processing gTLD Registration Data

Stakeholders in the Internet’s unique identifier system have a legitimate interest in maintaining the availability of Registration Data Directory Services to promote trust, confidence, and safety in the Internet. Section 4.6(e) of ICANN's Bylaws state: “Subject to applicable laws, ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration

data, as well as consider safeguards for protecting such data.” Thus, Processing Personal Data in Registration Data by Registry Operator and Registrar, as required and permitted under the Registry Operator’s Registry Agreement with ICANN and Registrar’s Registrar Accreditation Agreement, is needed to ensure a coordinated, stable and secure operation of the Internet’s unique identifier system.

However, such Processing must be in a manner that complies with the GDPR, including on the basis of a specific identified purpose for such Processing. Accordingly, Personal Data included in Registration Data may be processed on the basis of a legitimate interest, and only for the following legitimate purposes:

- 4.1. Providing access to accurate, reliable, and uniform Registration Data based on legitimate purposes not outweighed by the fundamental rights of relevant data subjects, consistent with GDPR;
- 4.2. Enabling a reliable mechanism for identifying and contacting the Registered Name Holder;
- 4.3. Enabling the publication of technical and administrative points of contact administering the domain names at the request of the Registered Name Holder;
- 4.4. Providing reasonably accurate and up-to-date information about the technical and administrative points of contact administering the domain names;
- 4.5. Supporting a framework to address issues involving domain name registrations, including but not limited to: consumer protection, investigation of cybercrime, DNS abuse, and intellectual property protection;
- 4.6. Providing a framework to address appropriate law enforcement needs;
- 4.7. Facilitating the provision of zone files of gTLDs to Internet users;
- 4.8. Providing mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator;
- 4.9. Coordinating dispute resolution services for certain disputes concerning domain names; and



- 4.10. Handling contractual compliance monitoring, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users.

## 5. Requirements Applicable to Registry Operators and Registrars

- 5.1. **Publication of Registration Data.** Registry Operator and Registrar MUST comply with the requirements of, and MUST provide public access to Registration Data in accordance with, Appendix A attached hereto (“**Appendix A**”), which SHALL modify the requirements of Registry Operator’s Registry Agreement with ICANN and Registrar’s Registrar Accreditation Agreement with ICANN.
- 5.2. **Registrar and Registry Operator Service Level Agreement.** Registrar and Registry Operator MUST comply with the additional requirements and the updated Registration Data Directory Services Service Level Agreements set forth in Appendix B attached hereto (“**Appendix B**”), which SHALL modify the requirements of Registry Operator’s Registry Agreement with ICANN and Registrar’s Registrar Accreditation Agreement with ICANN.
- 5.3. **Data Escrow.** Registry Operator and Registrar MUST comply with the additional requirements of Registration Data escrow procedures set forth in Appendix C attached hereto (“**Appendix C**”), which SHALL modify the requirements of Registry Operator’s Registry Agreement with ICANN and Registrar’s Registrar Accreditation Agreement with ICANN.
- 5.4. **Data Processing Requirements.** Registry Operator and Registrar MUST comply with the requirements of, and MUST Process Personal Data in accordance with the terms and conditions set forth in Appendix D attached hereto (“**Appendix D**”).
- 5.5. **International Data Transfers between Registry Operator, Registrar, and ICANN.** In the course of performing the requirements under this Temporary Specification, the Registry Agreement, and Registrar Accreditation Agreement, it may be necessary for Registry Operator, Registrar and/or ICANN to transfer Personal Data to a country that is not deemed adequate by the European Commission per Article 45(1) GDPR. In such a case, the transfer of Personal Data by ICANN, Registry Operators, and/or Registrar, as the case may be, will Process

the Personal Data on the basis of adequate safeguards permitted under Chapter V GDPR, including the use of Standard Contractual Clauses (2004/915/EC) (or its successor clauses), and each of ICANN, Registry Operator and/or Registrar MUST comply with such appropriate safeguards.

- 5.6. **Uniform Rapid Suspension (URS)**. Registrar and Registry Operator MUST comply with the additional requirements set forth in Appendix E attached hereto (“**Appendix E**”).
- 5.7. **Uniform Domain Name Dispute Resolution Policy**. Registrar and Registry Operator MUST comply with the additional requirements set forth in Appendix F attached hereto (“**Appendix F**”).
- 5.8. **ICANN Contractual Compliance**. Registrar and Registry Operator MUST provide reasonable access to Registration Data to ICANN upon reasonable notice and request from ICANN for the purpose of investigating compliance-related inquiries and enforcement of the Registry Agreement, Registrar Accreditation Agreement and ICANN Consensus Policies.

## 6. Requirements Applicable to Registry Operators Only

- 6.1. **Bulk Registration Data Access to ICANN**. Registry Operator MUST comply with, and MUST provide ICANN with periodic access to Registration Data in accordance with Appendix G attached hereto (“**Appendix G**”).
- 6.2. **Registry Monthly Reports**. Registry Operator MUST comply with the additional Registry Monthly Reports requirements set forth in Appendix H attached hereto (“**Appendix H**”).
- 6.3. **Registry-Registrar Agreements**.
  - 6.3.1. Registry Operator MUST include Processing provisions in its Registry-Registrar Agreement with Registrar concerning the handling of Personal Data in a manner that complies with Article 28 GDPR.
  - 6.3.2. Registry Operator MAY amend or restate its Registry-Registrar Agreement to incorporate data processing terms and conditions

substantially similar to the requirements provided at **[INSERT LINK TO APPROVED FORM]**, without any further approval of ICANN, provided that Registry Operator MUST promptly deliver any such amended or restated Registry-Registrar Agreement to ICANN. Upon ICANN's receipt thereof, such amended or restated Registry-Registrar Agreements will be deemed to supplement or replace, as applicable, the approved Registry-Registry Agreement that is attached as an appendix (if any) to Registry Operator's Registry Agreement.

## 7. Requirements Applicable to Registrars Only

- 7.1. **Notices to Registered Name Holders Regarding Data Processing.** Registrar SHALL provide notice to each existing, new or renewed Registered Name Holder stating:
- 7.1.1. The specific purposes for which any Personal Data will be Processed by the Registrar;
  - 7.1.2. The intended recipients or categories of recipients of the Personal Data (including the Registry Operator and others who will receive the Personal Data from Registry Operator);
  - 7.1.3. Which data are obligatory and which data, if any, are voluntary;
  - 7.1.4. How the Registered Name Holder or data subject can access and, if necessary, rectify Personal Data held about them;
  - 7.1.5. The identity and the contact details of the Registrar (as controller) and, where applicable, of the Registrar's representative in the European Economic Area;
  - 7.1.6. The contact details of its data protection officer, where applicable;
  - 7.1.7. The specified legitimate interest for Processing under Article 6(1)(f) GDPR;
  - 7.1.8. The recipients or categories of recipients of the Personal Data, if any;

- 7.1.9. Where applicable, the fact that the Registrar intends to transfer Personal Data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47 GDPR, or the second subparagraph of Article 49(1) GDPR, reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.
- 7.1.10. The period for which the Personal Data will be stored, or if that is not possible, the criteria used to determine that period;
- 7.1.11. The existence of the right to request from the Registrar access to and rectification or erasure of Personal Data or restriction of Processing concerning the Registered Name Holder or data subject or to object to Processing as well as the right to data portability;
- 7.1.12. Compliance with Article 6(1)(a) GDPR and Article 9(2)(a) GDPR, where the Registrar relies on consent of the Registered Name Holder for Processing;
- 7.1.13. The right of the Registered Name Holder or data subject to lodge a complaint with a relevant supervisory authority;
- 7.1.14. Whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Registered Name Holder is obliged to provide the Personal Data and of the possible consequences of failure to provide such Personal Data; and
- 7.1.15. The existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) GDPR and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such Processing for the data subject.

The requirements of this Section 7.1 shall supersede and replace the requirements of Section 3.7.7.4 of the Registrar Accreditation Agreement.

7.2. **Additional Publication of Registration Data.**

- 7.2.1. As soon as commercially reasonable, Registrar MUST provide the opportunity for the Registered Name Holder to provide its Consent to publish the additional contact information outlined in Section 2.3 of Appendix A for the Registered Name Holder.
  - 7.2.2. Registrar MAY provide the opportunity for other contacts to provide Consent to publish additional contact information outlined in Section 2.4 of Appendix A.
  - 7.2.3. Where such Consent is sought, the request for Consent SHALL be presented in a manner which is clearly distinguishable from other matters (including other Personal Data Processed based on a legitimate interest), in an intelligible and easily accessible form, using clear and plain language. The Registered Name Holder SHALL have the right to withdraw its Consent at any time. The withdrawal of Consent SHALL NOT affect the lawfulness of Processing based on Consent obtained before the withdrawal.
  - 7.2.4. Registrar MUST publish the additional contact information for which it has received Consent.
- 7.3. **Transfer Policy**. Registrar MUST comply with the supplemental procedures to the Transfer Policy set forth in Appendix I attached hereto (“**Appendix I**”).

## Appendix A: Registration Data Directory Services

### 1. Registration Data Directory Services

This Section modifies the relevant requirements of following: (i) the Registration Data Directory Service (WHOIS) Specification of the 2013 Registrar Accreditation Agreement; (ii) in the case of a Registry Agreement that is modeled after the Base Registry Agreement, Section 1 of Specification 4 of the Base Registry Agreement; (iii) in the case of a Registry Agreement that is not modeled on the Base Registry Agreement, the provisions of such Registry Agreement that are comparable to the provisions of Section 1 of Specification 4 of the Base Registry Agreement; and (iv) provisions 10 of the Registry Registration Data Directory Services Consistent Labeling and Display Policy.

- 1.1. Registrar and Registry Operator **MUST** operate a Registration Data Access Protocol (RDAP) service. ICANN and the community will define the appropriate profile(s) by 31 July 2018. ICANN will subsequently give notice to implement such service, and Registrar and Registry Operator **SHALL** implement the service no later than 135 days after being requested by ICANN. Registrar and Registry Operator **MAY** operate a pilot RDAP service before the date upon which an RDAP (production) service is required.

#### 1.2. RDDS Search Capabilities

- 1.2.1. Where search capabilities are permitted and offered, Registry Operator and Registrar **MUST**: (1) ensure such search capability is in compliance with all applicable privacy laws or policies, (2) only do searches on data otherwise available to the querying user based on their access level and **MUST** only provide results otherwise available to the querying user based on their access level; and (3) ensure such search capability is otherwise consistent with the requirements of this Temporary Specification regarding access to public and non-public Registration Data.
- 1.2.2. Search capabilities **MUST** be offered on the web-based Directory Service and/or RDAP.

## 2. Requirements for Processing Personal Data in Public RDDS with a Nexus to the European Economic Area (EEA)

2.1. Registry Operator and Registrar MUST apply the requirements in Section 4 of this Appendix to Personal Data included in Registration Data where:

- (i) the Registrar or Registry Operator is established in the EEA as provided in Article 3(1) GDPR and Process Personal Data included in Registration Data;
- (ii) the Registrar or Registry Operator is established outside the EEA and offers registration services to Registered Name Holder located in the EEA as contemplated by Article 3(2) GDPR that involves the Processing of Personal Data from registrants located in the EEA; or
- (iii) the Registrar or Registry Operator is located outside the EEA and Processes Personal Data included in Registration Data and where the Registry Operator or Registrar engages a Processor located within the EEA to Process such Personal Data.

2.2. For fields that Sections 2.3 and 2.4 of this Appendix requires to be “redacted”, Registrar and Registry Operator MUST provide in the value section of the redacted field the text: “REDACTED FOR PRIVACY”. Prior to the required date of implementation of RDAP, Registrar and Registry Operator MAY (i) provide no information in the value section of the redacted field; or (ii) not publish the redacted field.

2.3. In responses to domain name queries, Registrar and Registry Operator MUST treat the following Registrant fields as “redacted” unless the Registered Name Holder has provided Consent to publish the Registered Name Holder’s data:

- Registry Registrant ID
- Registrant Name
- Registrant Street
- Registrant City
- Registrant Postal Code
- Registrant Phone
- Registrant Phone Ext
- Registrant Fax

- Registrant Fax Ext

2.4. In responses to domain name queries, Registrar and Registry Operator MUST treat the following fields as “redacted” unless the contact (e.g., Admin, Tech) has provided Consent to publish the contact’s data:

- Registry Admin/Tech/Other ID
- Admin/Tech/Other Name
- Admin/Tech/Other Organization
- Admin/Tech/Other Street
- Admin/Tech/Other City
- Admin/Tech/Other State/Province
- Admin/Tech/Other Postal Code
- Admin/Tech/Other Country
- Admin/Tech/Other Phone
- Admin/Tech/Other Phone Ext
- Admin/Tech/Other Fax
- Admin/Tech/Other Fax Ext

2.5. In responses to domain name queries, in the value of the “Email” field of every contact (e.g., Registrant, Admin, Tech):

2.5.1. Registrar MUST provide an email address or a web form to contact, but MUST NOT identify the contact email address or the contact itself. The email address and the URL to the web form MUST NOT contain or be derived in any way from the email address of the contact.

2.5.2. Registry Operator MUST provide a message substantially similar to the following: “Please query the RDDS service of the Registrar of Record identified in this output for information on how to contact the Registrant, Admin, or Tech contact of the queried domain name.”

### **3. Requirements for Processing Personal Data in Public RDDS without a Nexus to the European Economic Area (EEA)**

3.1. Registry Operator and Registrar MAY apply the requirements in Section 2 of this Appendix where it has a commercially reasonable purpose to do so.



#### **4. Access to Non-Public Registration Data**

- 4.1. Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to third parties for a purpose specified in Section 4 of this Temporary Specification and on the basis of a legitimate interests pursued by the third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Registered Name Holder or data subject pursuant to Article 6(1)(f) GDPR.
  
- 4.2. Notwithstanding Section 4.1 of this Appendix, Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to a third-party where the Article 29 Working Party/European Data Protection Board has provided guidance that the provision of specified non-public elements of Registration Data to a specified class of third-party for a specified purpose is lawful. Registrar and Registry Operator MUST provide such reasonable access within 90 days of the date ICANN publishes any such guidance, unless legal requirements otherwise demand an earlier implementation.

#### **5. Publication of Additional Data Fields**

Registrar and Registry Operator MAY output additional data fields, subject to the Data Processing requirements in Appendix D.

## Appendix B: Registrar and Registry Operator Service Level Agreement

This Appendix modifies the following: i) Section 2 of the Registration Data Directory Service (WHOIS) Specification in the 2013 Registrar Accreditation Agreement; ii) Registry Agreement requirements concerning Service Level Agreements.

This Appendix will become effective on the day that offering RDAP becomes a requirement pursuant to **Appendix A**.

1. The following additional requirements supplement the existing requirements in Section 2 of the Registration Data Directory Service (WHOIS) Specification of the 2013 Registrar Accreditation Agreement and Specification 10 of the Base Registry Agreement.
  - 1.1. "Registration Data Directory Services" (RDDS) refers to the collective of WHOIS, Web based WHOIS, and RDAP services.
  - 1.2. The following definition is added to the performance specifications for Registry Operator and Registrars: "RDAP-query RTT" means the RTT of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If implementing a multiple-step process to get to the information, only the last step shall be measured. If the RTT is 5-times or more the corresponding SLR, the RTT will be considered undefined.
  - 1.3. The definition for "RDDS query RTT" means: The collective of "WHOIS query RTT", "Web-based-WHOIS query RTT", and "RDAP-query RTT".
2. The following requirements apply to Registry Operators with a Registry Agreement not modeled on the Base Registry Agreement. Such Registry Operator SHALL comply with the following performance specifications.

### 2.1. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
<b>RDAP</b>	RDAP availability	≤ 864 min of downtime (≈ 98%)
	RDAP query RTT	≤ 2000 ms, for at least 95% of the queries
	RDAP update time	≤ 60 min, for at least 95% of the probes

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar periods of unavailable or slow service; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

## 2.2 RDAP

- 2.2.1 **RDAP Availability.** Refers to the ability of the RDAP service for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDAP testing probes see any of the RDAP services as unavailable during a given time, the RDAP will be considered unavailable.
- 2.2.2 **RDAP query RTT.** Refers to the RTT of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If implementing a multiple-step process to get to the information, only the last step SHALL be measured. If the RTT is 5-times or more the corresponding SLR, the RTT will be considered undefined.
- 2.2.3 **RDAP update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDAP services reflect the changes made.
- 2.2.4 **RDAP test.** Means one query sent to particular “IP address” of one of the servers of one of the RDAP services. Queries SHALL be about existing objects in the Registry System and the responses MUST contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDAP test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 2.2.5 **Measuring RDAP parameters.** Every 5 minutes, RDAP probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDAP service of the TLD being monitored and make an “**RDAP test**” to each one. If an “**RDAP test**” result is undefined/unanswered, the corresponding RDAP service will be considered as unavailable from that probe until it is time to make a new test.
- 2.2.6 **Collating the results from RDAP probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period,

otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

- 2.2.7 **Placement of RDAP probes.** Probes for measuring RDAP parameters SHALL be placed inside the networks with the most users across the different geographic regions; care SHALL be taken not to deploy probes behind high propagation-delay links, such as satellite links.

### **2.3 Covenants of Performance Measurement**

- 2.3.1 **No interference.** Registry Operator SHALL NOT interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator SHALL respond to the measurement tests described in this Specification as it would to any other request from an Internet user for RDAP.

### **2.4 Domain name used for RDAP monitoring**

- 2.4.1 Registry Operator SHALL provide ICANN a domain name to be used for RDAP testing.

## Appendix C: Supplemental Data Escrow Requirements

### **1. Data Processing Requirements**

Registry Operator and Registrar MUST respectively ensure that any data escrow agreement between Registry Operator and the Escrow Agent and Registrar and the Escrow Agent include data processing requirements consistent with Article 28 GDPR where such Escrow Agents provides sufficient guarantees to implement appropriate technical and organizational measures in such a manner that Processing will meet the requirements of the GDPR and ensure the protection of the rights of the data subject.

### **2. International Transfers**

In the course of performing the requirements under the agreement with the Escrow Agent, it may be necessary for the Escrow Agent to Process Personal Data in a country that is not deemed adequate by the European Commission per Article 45(1) GDPR. In such a case, the transfer and Processing will be on the basis of adequate safeguards permitted under Chapter V GDPR, including the use of Standard Contractual Clauses (2004/915/EC) (or its successor clauses), and the Escrow Agent and Controller MUST comply with such appropriate safeguards.

### **3. Additional Requirements**

In addition to the above requirements, the data escrow agreement may contain other data processing provisions that are not contradictory, inconsistent with, or intended to subvert the required terms provided above.

## Appendix D: Data Processing Requirements

In accordance with the “Interim Model for Compliance with ICANN Agreements and Policies in Relation to the European Union’s General Data Protection Regulation” and in particular in accordance with section 7.2.11.3. which states that each contracting party with ICANN is acting as an independent “Controller” (as defined in Article 2 GDPR) for purposes of GDPR compliance, Registrars and Registry Operators will each comply with the following Processing requirements:

### **1. Principles for Processing**

Each Controller will observe the following principles to govern its Processing of Personal Data contained in Registration Data, except as required by applicable laws or regulations. Personal Data SHALL:

- 1.1. only be Processed lawfully, fairly, and in a transparent manner in relation to the Registered Name Holders and other data subjects (“lawfulness, fairness, and transparency”);
- 1.2. be obtained only for specified, explicit, and legitimate purposes, and SHALL NOT be further Processed in any manner incompatible with those purposes (“purpose limitation”);
- 1.3. be adequate, relevant, and not excessive in relation to the purposes for which they are Processed (“data minimization”);
- 1.4. be accurate and, if necessary, kept current, as appropriate to the purposes for which they are Processed (“accuracy”);
- 1.5. not be kept in a form that permits identification of the Registered Name Holder and other data subjects for longer than necessary for the permitted purposes (“storage limitation”); and
- 1.6. be Processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorized or unlawful Processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures (“integrity and confidentiality”).

Each Registrar and Registry Operator SHALL be responsible for, and be able to demonstrate compliance with principles (1.1) to (1.6) (“accountability”). The Registrar and Registry Operator SHALL inform ICANN immediately if such Registrar or Registry Operator (i) cannot abide by the processing principles outlined in Section 1 of this Appendix, or (ii) upon receipt of a complaint by a Registered Name Holder or other data subject that the Registrar or Registry Operator has failed to abide by such principles.

## **2. Lawfulness of Processing**

For Personal Data Processed in connection with the Registration Data Directory Services, such Processing will take place on the basis of a legitimate interests of the Controller or of the third party or parties to whom the Personal Data are disclosed. For other Personal Data collected for other purposes, such Personal Data SHALL not be Processed unless a legal basis specified under Article 6(1) GDPR applies.

## **3. Specific Controller Processing requirements**

In addition to the general principles and requirements for lawful Processing, each Controller SHALL comply with the following specific requirements:

- 3.1. **Implementing appropriate measures.** Implementing appropriate technical and organizational measures to ensure and to be able to demonstrate the Processing is performed in compliance with GDPR, such as appropriate data protection policies, approved code of conducts or approved certification mechanisms. Such measures SHALL be reviewed regularly and updated when necessary by the Controller;
- 3.2. **Engaging only selected Processors.** Engaging only selected Processors and implement a contract with the Processor that sets out the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subjects and the obligations and rights of the Controller. The engagement of Processor must comply with Article 28 GDPR.;
- 3.3. **Designating a Data Protection Officer.** Designating a “Data Protection Officer” where required by Article 37 GDPR or Member State national data protection law;

- 3.4. **Maintaining a record of Processing.** Maintaining a record of the Processing activities under the Controller's responsibility in accordance with Article 30 GDPR;
- 3.5. **Providing transparent information.** Taking appropriate measures to provide any information referred to in Articles 13 and 14 GDPR and any communication under Articles 15 to 22 and 34 GDPR relating to Processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language;
- 3.6. **Facilitating of the exercise of data subject rights.** Facilitating the exercise of data subject rights under Articles 15 to 22 GDPR. In the cases referred to in Article 11(2) GDPR, the Controller SHALL NOT refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22 GDPR, unless the Controller demonstrates that it is not in a position to identify the data subject;
- 3.7. **Implementing measures for data protection by design and by default.** Implementing appropriate technical and organizational measures, both at the time of the determination of the means for Processing and at the time of the Processing itself, which are designed to implement data protection principles, in an effective manner and to integrate the necessary safeguards into the Processing in order to meet the requirements of the GDPR and to protect the rights of data subjects. Implement appropriate technical and organizational measures for ensuring that, by default, only Personal Data which are necessary for each specific purpose of the Processing are Processed.
- 3.8. **Implementing appropriate security measures.** Implementing appropriate technical and organizational measures to ensure a level of security appropriate to the risk of data processing, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons;
- 3.9. **Developing procedures for breach notification.** Developing procedures for breach notification to ensure compliance with the obligations pursuant to Articles 33-34 GDPR. Any notifications provided in connection with Articles 33-34 GDPR will also be provided to ICANN.



- 3.10. **Observing conditions for international data transfers.** Observing conditions for international data transfers so that any transfer of Personal Data which are undergoing Processing or are intended for Processing after transfer to a third country or to an international organization SHALL take place only if, the conditions laid down in Chapter V of the GDPR are complied with, including for onward transfers of Personal Data from the third country or an international organization to another third country or to another international organization.
- 3.11. **Cooperating with Supervisory Authorities.** Cooperating with Supervisory Authorities, on request, in the performance of their tasks.

## Appendix E: Uniform Rapid Suspension

This Appendix contains supplemental requirements for the 17 October 2013 URS High Level Technical Requirements for Registries and Registrars. All other requirements not specified herein remain applicable and in force.

### 1. URS High Level Technical Requirements for Registry Operator and Registrar

- 1.1. **Registry Operator Requirement:** The Registry Operator (or appointed BERO) MUST provide the URS provider with the full Registration Data for each of the specified domain names, upon the URS provider notifying the Registry Operator (or appointed BERO) of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN. If the gTLD operates as a “thin” registry, the Registry Operator MUST provide the available Registration Data to the URS Provider.
- 1.2. **Registrar Requirement:** If the domain name(s) subject to the complaint reside on a “thin” registry, the Registrar MUST provide the full Registration Data to the URS Provider upon notification of a complaint.

## Appendix F: Uniform Domain Name Dispute Resolution Policy

This Appendix contains supplemental requirements for the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”). All other requirements not specified herein remain applicable and in force.

### 1. Uniform Domain Name Dispute Resolution Policy

- 1.1. **Registrar Requirement:** The Registrar MUST provide the UDRP provider with the full Registration Data for each of the specified domain names, upon the UDRP provider notifying the Registrar of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN.

## Appendix G: Bulk Registration Data Access to ICANN

This Appendix replaces the requirement in: i) Section 3.1.1 of Specification 4 of each Registry Agreement that is modeled on the Base Registry Agreement; ii) The relevant provision in Registry Agreement not based on the Base Registry Agreement to provide Bulk Registration Data Access to ICANN, also called “Whois Data Specification – ICANN” in some gTLD agreements.

1. **Contents.** Registry Operator MUST only provide the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, Registry Operator MUST only provide: registrar name, registrar id (IANA ID), hostname of registrar Whois server, and URL of registrar.

## Appendix H: Registry Operator Monthly Reports

Section 2 of Specification 3 of each Registry Agreement that is modeled on the Base Registry Agreement is updated to include the following fields in the Registry Functions Activity Report:

Field #	Field Name	Description
38	rdap-queries	Total number of RDAP queries received during the period.
39	rdap-domain	Number of RDAP domain queries, authorized or not, received during the period.
40	rdap-entity	Number of RDAP entity queries, authorized or not, received during the period.
41	rdap-nameserver	Number of RDAP nameserver queries, authorized or not, received during the period.
42	rdap-help	Number of RDAP help queries, authorized or not, received during the period.
43	rdap-domain-authorized	Number of successfully-authorized RDAP domain queries received during the period.
44	rdap-entity-authorized	Number of successfully-authorized RDAP entity queries received during the period.
45	rdap-nameserver-authorized	Number of successfully-authorized RDAP nameserver queries received during the period.
46	rdap-help-authorized	Number of successfully-authorized RDAP help queries received during the period.
47	rdap-rate-limit	Number of RDAP queries refused due to rate limiting for the period.
48	rdap-search-domain	Number of RDAP domain search queries, authorized or not, for the period.
49	rdap-search-entity	Number of RDAP entity search queries,

		authorized or not, for the period.
50	rdap-search-nameserver	Number of RDAP nameserver search queries, authorized or not, for the period.
51	rdap-search-domain-authorized	Number of successfully-authorized RDAP domain search queries for the period.
52	rdap-search-entity-authorized	Number of successfully-authorized RDAP entity search queries for the period.
53	rdap-search-nameserver-authorized	Number of successfully-authorized RDAP nameserver search queries for the period.
54	rdap-truncated-authorization	Number of RDAP responses truncated due to lack of proper authorization. Includes both results and object truncation events.
55	rdap-truncated-load	Number of RDAP responses truncated due to server load. Includes both results and object truncation events.
56	rdap-truncated-unexplainable	Number of RDAP responses truncated due to unexplainable reasons. Includes both results and object truncation events.

## Appendix I: Supplemental Procedures to the Transfer Policy

This Appendix provides supplemental procedures for the [Transfer Policy](#) applicable to all ICANN-accredited Registrars.

1. Until such time when the RDAP service (or other secure methods for transferring data) is required by ICANN to be offered, if the Gaining Registrar is unable to gain access to then-current Registration Data for a domain name subject of a transfer, the related requirements in the Transfer Policy will be superseded by the below provisions:
  - 1.1. The Gaining Registrar will not be required to obtain a Form of Authorization from the Transfer Contact.
  - 1.2. The Registrar of Record MAY deny a transfer if no response is received from the Registered Name Holder or Administrative Contact within the time allotted by the Transfer Policy.
  - 1.3. The Registrant will independently re-enter Registration Data with the Gaining Registrar. In such instance, the Gaining Registrar will not be required to follow the Change of Registrant Process as provided in Section II.C. of the Transfer Policy.
2. As used in the Transfer Policy:
  - 2.1. The term "Whois data" SHALL have the same meaning as "Registration Data".
  - 2.2. The term "Whois details" SHALL have the same meaning as "Registration Data".
  - 2.3. The term "Publicly accessible Whois" SHALL have the same meaning as "RDDS".
  - 2.4. The term "Whois" SHALL have the same meaning as "RDDS".
3. Registrar and Registry Operator SHALL follow best practices in generating and updating the "AuthInfo" code to facilitate a secure transfer process.
4. Registry Operator MUST verify that the "AuthInfo" code provided by the Gaining Registrar is valid in order to accept an inter-registrar transfer request.

## Implementation Notes

### 1. Background on Board Adoption of Temporary Specification.

- 1.1. **[TENTATIVE – PENDING BOARD ACTION]** [On        May 2018, the ICANN Board adopted the Temporary Specification on gTLD Registration Data (“Temporary Specification”) pursuant to the procedures for the establishment of temporary policies in ICANN’s agreements with Registry Operators and Registrars.] The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation Agreement and Registry Agreements about how gTLD registration data is collected, displayed, and processed. It addresses immediate temporary changes that are needed to maintain the stability or security of Registrar Services, Registry Services, the DNS and/or the Internet. At risk, absent the Board’s action in adopting the Temporary Specification, is the stable operation of the Internet, which relies on the basic concept that you cannot run a hierarchical and decentralized system like the Internet (a network or networks) if you cannot find the people who operate it to warn of problems and coordinate responses to operational issues. The WHOIS system makes this possible through the collection and publication of WHOIS registration data, which includes contact information for the Registrant, Administrative and Technical contacts as well as technical information associated with a domain name.
- 1.2. In particular, the Temporary Specification provides modified requirements to ensure continued availability of Registration Data Directory Services/WHOIS while complying with new legal regulations impacting how personal data in the domain name ecosystem is treated. This Temporary Specification avoids fragmentation of the WHOIS system by ensuring a common framework for continued provision and access to WHOIS services, which supports the critical role the WHOIS system plays in ensuring the operational integrity and continued trust upon which the DNS is built, and supports ICANN’s mission to “to ensure the stable and secure operation of the Internet’s unique identifier systems”.
- 1.3. See the Advisory Statement: Temporary Specification for gTLD Registration Data for additional information on how the Temporary Specification preserves the WHOIS system in the context of security and stability, as well as steps ICANN has taken to build consensus support and to ensure that the Temporary Specification complies with the GDPR and addresses other public policy considerations.



## 2. References

- 2.1. [gTLD Registration Dataflow Matrix and Information](#). With the help from Registrars and Registry Operators as well as interested stakeholders, ICANN collected information needed to help evaluate GDPR compliance in the context of registry, registrar, and registrant data. This information was used to inform legal analysis, as well as to engage with data protection authorities.
- 2.2. [Hamilton Memoranda](#). At the request of the community, ICANN org commissioned European law firm Hamilton to produce three memoranda outlining the GDPR's impact on gTLD registration directory services. The memoranda concluded that WHOIS would have to change in light of the law, responded to community questions about the law, and provided examples of how WHOIS services may change to comply with the GDPR.
- 2.3. [Statement from ICANN Contractual Compliance](#). On 2 November 2017, ICANN issued a statement from ICANN Contractual Compliance regarding the ability of Registry Operators and Registrars to comply with their WHOIS and other contractual requirements related to domain name registration data in light of the European Union's General Data Protection Regulation (GDPR).
- 2.4. [Community-Proposed Models for GDPR Compliance](#). In response to the Statement from ICANN Contractual Compliance, several proposed models for GDPR compliance were submitted by various stakeholders.
- 2.5. [ICANN Organization's Three Proposed Interim Compliance Model](#). On 12 January 2018, ICANN org published three proposed interim models for compliance and sought community input. The models reflected discussions from across the community and with data protection authorities, legal analyses and the proposed community models received to date.
- 2.6. [ICANN Org's Proposed Interim GDPR Compliance Model \(Calzone\)](#). On 28 February 2018, ICANN org published the Proposed Interim GDPR Compliance Model (Calzone), which incorporated input from the community and feedback from data protection authorities. The Calzone provides a high-level summary of the proposed model. In addition, ICANN org also published an updated [Working Draft Non-Paper](#) that compares ICANN- and community-proposed models.

- 2.7. [ICANN Org's Proposed Interim GDPR Compliance Model \(Cookbook\)](#). On 8 March 2018, ICANN Org published the Cookbook that contains the Proposed Interim GDPR Compliance Model and legal justification for collection and use of the WHOIS data included in the Calzone.

### **3. Legal Basis and Purposes of Processing gTLD Registration Data Elements**